

2003 SENATE BILL 550

March 11, 2004 – Introduced by Senators MOORE and COGGS, cosponsored by Representatives TURNER, TAYLOR and YOUNG. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to repeal* 46.03 (18) (fm), 302.113 (9) (at) and 961.472; *to renumber*
2 973.10 (2) (a) and 973.10 (2) (b); *to renumber and amend* 302.113 (9) (am),
3 961.47 (title), 961.47 (1), 961.47 (2) and 973.10 (2) (intro.); *to amend* 20.410 (1)
4 (ge), 302.113 (7), 302.113 (9) (b), 302.113 (9) (c), 808.075 (4) (g) 3., 961.475,
5 973.09 (4) (a), 973.09 (4) (b), 973.10 (1), 973.15 (2m) (a) 3. and 973.15 (2m) (e);
6 and *to create* 51.49, 301.08 (1) (c) 1., 302.113 (9) (am) 2., 302.113 (9) (am) 3.,
7 302.113 (9) (ar), 304.06 (3b), 304.074 (1d), 971.41 (1), 971.41 (2) (title) and (a)
8 1. to 3., 971.41 (2) (b), 971.41 (2) (c), 971.41 (3), 971.41 (5), 971.41 (6), 971.41 (7)
9 to (12), 973.10 (2) (bm), 973.10 (2) (c), 973.10 (2b) and 973.10 (2e) of the statutes;
10 **relating to:** alternatives to prosecution and incarceration for persons who
11 commit certain drug-related or alcohol-related offenses, violations of extended
12 supervision, parole, or probation related to the use of alcohol or other drugs or
13 to substance abuse treatment, providing an exemption from emergency rule

SENATE BILL 550

1 procedures, requiring the exercise of rule-making authority, and making an
2 appropriation.

Analysis by the Legislative Reference Bureau

This bill permits, and in some cases requires, a nonviolent offender who is charged with an offense related to the person's use of drugs or alcohol to be provided substance abuse treatment as an alternative to prosecution or incarceration. It also authorizes treatment in lieu of revocation of probation, parole, or extended supervision.

Substance abuse treatment as an alternative to prosecution or incarceration

1. *Alternatives to prosecution and incarceration under current law.* Current law generally prohibits the manufacture, distribution, delivery, and possession of controlled substances. The penalties for violating these prohibitions depend on the conduct, the drug, and the amount of the drug involved. Maximum terms of imprisonment range from as high as 46 years in cases involving repeat offenders who manufacture, distribute, or deliver large quantities of certain drugs to as low as 30 days for simple possession of certain nonnarcotic drugs. Maximum fines vary in a similar way. Current law also prohibits certain other conduct (such as the possession, manufacture or delivery of drug paraphernalia or maintaining a drug house) that is related to the unlawful use of drugs.

Current law, however, provides prosecutors significant discretion in whether and how to prosecute such offenses (as well as all other offenses). For example, a prosecutor may defer or suspend the prosecution of a person in exchange for his or her agreement to complete a substance abuse treatment program, refrain from committing other crimes, or comply with any other requirement. If the person abides by the agreement, the prosecutor never files a criminal complaint or, if a complaint has been filed, dismisses the case. In addition, courts have alternatives to sentencing in certain drug cases. First, a court may allow a person who pleads guilty to or is found guilty of drug possession to participate in a drug treatment program as an alternative to sentencing if the person volunteers to participate and if a treatment facility agrees to provide it. At the end of treatment, the court may waive sentencing for the drug possession offense. Second, if a person with no prior drug convictions pleads guilty to or is found guilty of possession of certain nonnarcotic drugs, the court, without entering a judgment of conviction, may enter a conditional discharge order, which places the person on probation. If the person successfully completes probation, the court dismisses the case. Finally, a court may sentence a person to probation but require that the person submit to an assessment or participate in treatment as a condition of probation.

2. *Automatic eligibility.* Under this bill, if a Wisconsin resident pleads guilty or no contest to or is found guilty of a simple drug offense (defined as unlawful possession of a controlled substance, keeping a drug house, fraudulently obtaining a controlled substance, or possession of drug paraphernalia that is unrelated to the

SENATE BILL 550

production or use of methamphetamine), the court must, in general, order the person to submit to a substance abuse assessment and enter a conditional discharge order. This requirement does not apply if the person does not consent or if: 1) the person has two or more prior simple drug offense convictions; 2) at least one of those simple drug offenses was committed within the preceding ten years; and 3) the person was offered an opportunity to receive substance abuse treatment and rehabilitation services, through the program created by this bill, in connection with one of those offenses.

The conditional discharge order must require that the person participate in substance abuse treatment and rehabilitation services, and the court and the Department of Corrections (DOC) must monitor the person's compliance with the order. Unless revoked, the order must remain in effect until the court determines that the person has successfully completed his or her treatment and for at least an additional six months thereafter.

As under current law, if the person complies with the conditions of the order, the court discharges the person and dismisses the criminal case. How the court responds to violations of the order depends on the nature of the violation. If the violation is unrelated to the person's substance abuse treatment or use of alcohol or drugs, the court may revoke the order, enter a judgment of conviction, and sentence the person. But if the violation is related to the person's substance abuse treatment or the person's use of alcohol or other drugs, any sanctions that the court imposes must be graduated sanctions. The court may revoke the conditional discharge order for that type for violation only if it has already used other sanctions.

If the court revokes the conditional discharge order for a violation related to the person's substance abuse treatment or the person's use of alcohol or other drugs, the court must enter a judgment of conviction and place the person on probation. An order placing a person on probation under the bill is similar to a conditional discharge order. It must require that the person participate in substance abuse treatment; the court and DOC monitor the person's compliance with the order; and, unless revoked, the order remains in effect until the court determines that the person has successfully completed his or her treatment and for at least an additional six months thereafter. If the person successfully completes probation, the court must vacate the judgment of conviction. If the person violates a condition of probation that is unrelated to the person's substance abuse treatment or the person's use of alcohol or other drugs, the court may revoke the person's probation. If the violation is related to the treatment or the person's use of alcohol or other drugs, any sanctions that the court imposes must be graduated sanctions. Unlike the case with a conditional discharge order, however, graduated sanctions for a violation of probation may include incarceration. The bill specifies that the first period of incarceration may not exceed two weeks and the second may not exceed 30 days.

The court may revoke a person's probation order for a violation related to the person's substance abuse treatment or the person's use of alcohol or other drugs only if the court finds that there is no reasonable likelihood that the person will abstain from illegal activity for the rest of his or her probation and that either: 1) the violation occurred after the court modified the treatment and rehabilitation conditions of the probation order or imposed graduated sanctions; or 2) there are no reasonable

SENATE BILL 550

treatment and rehabilitation services options other than the services originally ordered by the court. If the court revokes a person's probation, the court must sentence the person.

3. *Discretionary eligibility.* The bill also allows a court to enter a conditional discharge order in a case in which a Wisconsin resident commits an offense other than a simple drug offense. The court may do so, however, only after the person completes a substance abuse assessment and the court finds that: 1) the offense was significantly motivated by the person's substance abuse; 2) neither the victim of the offense nor the public will be harmed by the entry of a conditional discharge order; 3) entering a conditional discharge order is in the best interests of the public; and 4) entering a conditional discharge order will not unduly depreciate the seriousness of the offense. But the court may not enter a conditional discharge if the person committed a Class A, B, C, D, or E felony or a weapon offense specified in the bill or operated a motor vehicle, motorboat, snowmobile, or all-terrain vehicle with a prohibited alcohol content, while intoxicated, or while having a restricted controlled substance in his or her blood (a disqualifying offense). Moreover, even if the court makes the findings described in the previous paragraph, the court is not required to enter a conditional discharge order. As an alternative, the court may place the person directly on probation (unless the person committed a disqualifying offense). Other provisions of the bill regarding conditional discharge and probation apply to this group of people in the same way as they do to a person who is automatically eligible for conditional discharge.

4. *Violent offenders.* The bill specifies that the court may not use a conditional discharge order or probation in the manner described above in a case involving a violent offender. The bill defines a violent offender as a person to whom one of the following applies: 1) the person has been charged with or convicted of an offense in a pending case and, during the course of the offense, the person carried, possessed, or used a dangerous weapon, the person used force against another person, or a person died or suffered serious bodily harm; or 2) the person has one or more prior convictions for a felony involving the use or attempted use of force against another person with the intent to cause death or serious bodily harm.

5. *Expungement.* If a person successfully completes his or her treatment under a conditional discharge or probation order entered under the bill, the person may petition the court to expunge the record of the case. The court may expunge the record if it determines that the person will benefit and society will not be harmed by the expungement.

6. *Miscellaneous provisions.* The bill also: 1) requires DOC to contract for the supervision of persons who reside in a first class city and who are subject to a conditional discharge or probation order; 2) specifies that the provisions relating to conditional discharge and probation do not apply if a person is given the opportunity to participate in certain county drug court programs in existence when the bill takes effect; and 3) requires DOC and the department of health and family services (DHFS) to report periodically to the legislature regarding the effectiveness of the conditional discharge/probation program.

SENATE BILL 550***Drug treatment as an alternative to revocation***

Under current law, a person on probation or extended supervision (ES) must comply with conditions imposed by the court or DOC; a person on parole must comply with conditions imposed by DOC. If a person violates one of those conditions, DOC may seek to revoke the person's probation, ES, or parole through a proceeding before the Division of Hearings and Appeals (DHA) in the Department of Administration (DOA). If the person waives a hearing, the DOC secretary decides whether to revoke the person's probation, ES, or parole. Otherwise, after a hearing before a hearing examiner, the DHA administrator decides whether to revoke the person's probation, ES, or parole. In any event, current law requires that alternatives to revocation be considered.

Post-revocation proceedings vary between probation, ES, and parole. If probation is being revoked, the person is returned to the court for sentencing or DOC implements any sentence that was already imposed but that was stayed (postponed) while the person was on probation. If ES is being revoked, the person is returned to the sentencing court, which determines the length of time for which the person should be returned to prison. If parole is being revoked, the person resumes serving his or her sentence in prison.

This bill specifies that, if a person violates probation, ES, or parole and the violation relates to the person's use of alcohol or other drugs, DHA or DOC (the reviewing authority) may require the person to submit to a substance abuse assessment or treatment as an alternative to revoking the person's probation, ES, or parole. If the person is already required to participate in a substance abuse treatment program as a condition of probation, ES, or parole, the reviewing authority may establish, maintain, or modify conditions of probation, ES, or parole relating to the person's participation. In addition, the bill specifies that if the reviewing authority revokes a person's probation for a violation related to the person's use of alcohol or other drugs or participation in a court-ordered or DOC-ordered substance abuse treatment program, DOC must return the person to court, even if the court has already imposed (and stayed) a sentence. The court must then decide whether the revocation order should remain in effect, in which case the person is sent to prison; or be vacated in conjunction with the court entering an order requiring the person to submit to a substance abuse assessment or treatment or, if the person is already required to participate in a substance abuse treatment program as a condition of probation, establishing, maintaining, or modifying conditions of probation relating to the person's participation. Under the bill, the court has similar authority to vacate an order revoking a person's ES when the person is returned to court.

County development of substance abuse treatment programs

Under current law, county departments of community programs (county departments) provide certain services relating to the assessment and treatment of alcohol and other drug abuse. This bill requires DHFS to promulgate rules specifying: 1) the services that county departments must make available to persons who participate in the conditional discharge/probation program or who are to be provided substance abuse assessments or treatment as an alternative to revocation; 2) minimum standards for those services; 3) requirements for substance abuse

SENATE BILL 550

assessments ordered under the bill; and 4) the qualifications of service providers. County departments must then develop a network of substance abuse treatment and rehabilitation services, including the services required by DHFS's rules. They must also provide the services (including assessments ordered by the court) to persons who participate in the conditional discharge/probation program (from whose insurers the county departments may be able to obtain reimbursement) or who are to be provided substance abuse assessments or treatment as an alternative to revocation. The services must include different options for substance abuse treatment, be consistent with the best practices in substance abuse treatment, and be evaluated for the purpose of determining their effectiveness. County departments may provide the required assessments and services themselves or may do so by contract with others.

The bill requires each county department to submit a plan to DHFS, on a one-time basis, specifying who will provide its substance assessments and treatment and describing how and where they will be provided. The bill requires each county to create a community corrections committee (with the committee's membership specified in the bill) to advise its county department in developing the plan of services.

Funding for implementing the bill

The changes made by the bill regarding alternatives to prosecution and incarceration are contingent upon the state having sufficient resources to facilitate the implementation of those changes. Under the bill, by November 15, 2004, each county must submit an estimate to DOA of the amount of additional money that it will need (for example, for its county department of community programs and its court system) and the amount of money that it will save (for example, in incarceration costs) to implement the bill. By December 1, 2004, DOA must prepare a similar estimate for state agencies. In consultation with the attorney general and the secretaries of corrections and health and family services, the secretary of administration must then determine the amount of funding that the state and counties would need to implement the bill. (The secretary of administration must consider counties' estimates in making that determination but need not rely on them.)

The secretary of DOA must then periodically assess whether there are adequate resources available to enable the state and counties to implement the bill. If the secretary determines that there are adequate resources available, the secretary must provide written notice of that fact to the revisor of statutes, who then publishes that notice in the Wisconsin Administrative Register. The provisions of the bill regarding alternatives to prosecution, incarceration, and revocation take effect on the first day of the seventh month beginning after that certification.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

SENATE BILL 550

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.410 (1) (ge) of the statutes, as affected by 2003 Wisconsin Act 33,
2 is amended to read:

3 20.410 (1) (ge) *Administrative and minimum supervision.* The amounts in the
4 schedule for the supervision of ~~probationers~~ persons placed on probation under s.
5 973.09, parolees, and persons on extended supervision, and, as determined by the
6 department under s. 971.41 (10m), persons subject to a conditional discharge order
7 or on probation under s. 971.41 under minimum or administrative supervision and
8 for the department's costs associated with contracts under s. 301.08 (1) (c) 2. All
9 moneys received from vendors under s. 301.08 (1) (c) 4. shall be credited to this
10 appropriation account.

11 **SECTION 2.** 46.03 (18) (fm) of the statutes is repealed.

12 **SECTION 3.** 51.49 of the statutes is created to read:

13 **51.49 Treatment intervention program. (1) DEFINITION.** In this section,
14 “reviewing authority,” in the context of proceedings to revoke a person's extended
15 supervision, parole, or probation, means the division of hearings and appeals in the
16 department of administration or, if the person waives the final administrative
17 hearing, the secretary of corrections.

18 **(1m) COUNTY RESPONSIBILITY.** (a) The county department of community
19 programs shall provide substance abuse assessments that are ordered by the circuit
20 court under s. 302.113 (9) (ar) 2., 971.41 (2), or 973.10 (2e) (c) or by the reviewing
21 authority under s. 302.113 (9) (am) 2., 304.06 (3b) (b), or 973.10 (2) (bm). The

SENATE BILL 550

1 assessments shall comply with standards established by the department of health
2 and family services under sub. (2). The assessor shall report the results of each
3 assessment to the court or the reviewing authority.

4 (b) The county department of community programs shall develop a network of
5 substance abuse treatment and rehabilitation services, including the services
6 required by rule under sub. (2) and any other services that the county elects to
7 provide, and shall provide the services, as ordered by the circuit court under s.
8 302.113 (9) (ar) 2. or 3., 971.41 (3), or 973.10 (2e) (c) or (d) or by the reviewing
9 authority under s. 302.113 (9) (am) 2. or 3., 304.06 (3b) (b) or (c), or 973.10 (2) (bm)
10 or (c). The services shall include different options for substance abuse treatment, be
11 consistent with the best practices in substance abuse treatment, and be evaluated
12 for the purpose of determining their effectiveness.

13 (c) The county department of community programs may directly provide the
14 assessments and services that are required under this subsection or may contract
15 with another person to provide the assessments and services.

16 **(2) RULES.** The department of health and family services shall promulgate
17 rules specifying all of the following:

18 (a) The services that county departments of community programs must make
19 available to persons under s. 302.113 (9) (am) 2. or 3. or (ar) 2. or 3., 304.06 (3b) (b)
20 or (c), 971.41 (2), (3), or (6), or 973.10 (2) (bm) or (c) or (2e) (c) or (d). The rules shall
21 require that the services include, at the least, treatment for substance abuse,
22 education concerning the effects of substance abuse, tests to determine if a person
23 has used alcohol or other drugs, and employment support.

24 (b) Minimum standards for the services specified under par. (a).

25 (c) Requirements for substance abuse assessments ordered under s. 961.41 (2).

SENATE BILL 550

1 (d) Qualifications of providers of the services required under par. (a) and for the
2 providers of assessments ordered under s. 961.41 (2).

3 **SECTION 4.** 301.08 (1) (c) 1. of the statutes is created to read:

4 301.08 (1) (c) 1. In this paragraph, “probationer” includes a person subject to
5 a conditional discharge order or on probation under s. 971.41 if so determined by the
6 department under s. 971.41 (10m).

7 **SECTION 5.** 302.113 (7) of the statutes, as affected by 2001 Wisconsin Act 109,
8 is amended to read:

9 302.113 (7) Any inmate released to extended supervision under this section is
10 subject to all conditions and rules of extended supervision until the expiration of the
11 term of extended supervision portion of the bifurcated sentence. The department
12 may set conditions of extended supervision in addition to any conditions of extended
13 supervision required under s. 302.116, if applicable, or set by the court under sub.
14 (7m) or (9) (ar) 2. or 3. or s. 973.01 (5) if the conditions set by the department do not
15 conflict with the court’s conditions. The reviewing authority, as defined in sub. (9)
16 (ag), may set or modify conditions under sub. (9) (am) 2. or 3.

17 **SECTION 6.** 302.113 (9) (am) of the statutes, as affected by 2001 Wisconsin Act
18 109, is renumbered 302.113 (9) (am) (intro.) and amended to read:

19 302.113 (9) (am) (intro.) If a person released to extended supervision under this
20 section violates a condition of extended supervision, the reviewing authority may
21 revoke do one of the following:

22 1. Revoke the extended supervision of the person.

23 (ap) If the extended supervision of the person is revoked, the person shall be
24 returned to the circuit court for the county in which the person was convicted of the
25 offense for which he or she was on extended supervision, and the court shall order

SENATE BILL 550

1 ~~the person to be returned to prison for any specified period of time that does not~~
2 ~~exceed the time remaining on the bifurcated sentence~~ reviewing authority shall
3 make a recommendation to the court concerning the period of time for which the
4 person should be returned to prison. The recommended time period may not exceed
5 the time remaining on the bifurcated sentence, which is the total length of the
6 bifurcated sentence, less time served by the person in confinement under the
7 sentence before release to extended supervision under sub. (2) and less all time
8 served in confinement for previous revocations of extended supervision under the
9 sentence. ~~A court order returning a person to prison under this subdivision shall~~
10 ~~provide the person whose extended supervision was revoked with credit in~~
11 ~~accordance with ss. 304.072 and 973.155.~~

12 **SECTION 7.** 302.113 (9) (am) 2. of the statutes is created to read:

13 302.113 **(9)** (am) 2. If the violation relates to the person's use of alcohol or other
14 drugs and subd. 3. does not apply, order the person to submit to a substance abuse
15 assessment or substance abuse treatment or both under s. 51.49 in the person's
16 county of residence as a condition of extended supervision.

17 **SECTION 8.** 302.113 (9) (am) 3. of the statutes is created to read:

18 302.113 **(9)** (am) 3. If the person is required to participate in a substance abuse
19 treatment program as a condition of extended supervision and the violation relates
20 to the person's participation in the program, establish, maintain, or modify
21 conditions of extended supervision relating to the person's participation in the
22 program.

23 **SECTION 9.** 302.113 (9) (ar) of the statutes is created to read:

24 302.113 **(9)** (ar) If a person is returned to court under par. (ap) after revocation
25 of extended supervision, the court shall do one of the following:

SENATE BILL 550

1 1. Order the person to be returned to prison for any specified period of time that
2 does not exceed the time remaining on the bifurcated sentence, as calculated under
3 par. (ap). A court order returning a person to prison under this subdivision shall
4 provide the person whose extended supervision was revoked with credit in
5 accordance with ss. 304.072 and 973.155.

6 2. If the violation relates to the person's use of alcohol or other drugs and subd.
7 3. does not apply, vacate the reviewing authority's decision to revoke the person's
8 extended supervision and order the person to submit to a substance abuse
9 assessment or substance abuse treatment or both under s. 51.49 in the person's
10 county of residence as a condition of extended supervision.

11 3. If the person is required to participate in a substance abuse treatment
12 program as a condition of extended supervision and the violation relates to the
13 person's participation in the program, vacate the reviewing authority's decision to
14 revoke the person's extended supervision and establish, maintain, or modify
15 conditions of extended supervision relating to the person's participation in the
16 program.

17 **SECTION 10.** 302.113 (9) (at) of the statutes, as created by 2001 Wisconsin Act
18 109, is repealed.

19 **SECTION 11.** 302.113 (9) (b) of the statutes, as affected by 2001 Wisconsin Act
20 109, is amended to read:

21 302.113 **(9)** (b) A person who is returned to prison after revocation of extended
22 supervision shall be incarcerated for the entire period of time specified by the court
23 under par. ~~(am)~~ (ar) 1. The period of time specified under par. ~~(am)~~ (ar) 1. may be
24 extended in accordance with sub. (3). If a person is returned to prison under par. ~~(am)~~
25 (ar) 1. for a period of time that is less than the time remaining on the bifurcated

SENATE BILL 550

1 sentence, the person shall be released to extended supervision after he or she has
2 served the period of time specified by the court under par. ~~(am)~~ (ar) 1. and any periods
3 of extension imposed in accordance with sub. (3).

4 **SECTION 12.** 302.113 (9) (c) of the statutes, as affected by 2001 Wisconsin Act
5 109, is amended to read:

6 302.113 **(9)** (c) A person who is subsequently released to extended supervision
7 after service of the period of time specified by the court under par. ~~(am)~~ (ar) 1. is
8 subject to all conditions and rules under subs. (7) and, if applicable, (7m) until the
9 expiration of the remaining extended supervision portion of the bifurcated sentence.
10 The remaining extended supervision portion of the bifurcated sentence is the total
11 length of the bifurcated sentence, less the time served by the person in confinement
12 under the bifurcated sentence before release to extended supervision under sub. (2)
13 and less all time served in confinement for previous revocations of extended
14 supervision under the bifurcated sentence.

15 **SECTION 13.** 304.06 (3b) of the statutes is created to read:

16 304.06 **(3b)** (a) In this subsection, “reviewing authority” means the division of
17 hearings and appeals in the department of administration or, if the parolee waives
18 the final administrative hearing, the secretary of corrections.

19 (b) If a parolee violates a condition of parole, the violation relates to the
20 parolee’s use of alcohol or other drugs, and par. (c) does not apply, the reviewing
21 authority may, in lieu of revoking parole, order the parolee to submit to a substance
22 abuse assessment or substance abuse treatment or both under s. 51.49 in the
23 person’s county of residence as a condition of parole.

24 (c) If a parolee is required to participate in a substance abuse treatment
25 program as a condition of parole and the parolee violates a condition of parole that

SENATE BILL 550

1 relates to the parolee's participation in the program, the division of hearings and
2 appeals in the department of administration or, if the parolee waives the final
3 administrative hearing, the secretary of corrections may, in lieu of revoking parole,
4 establish, maintain, or modify conditions of parole relating to the parolee's
5 participation in the program.

6 **SECTION 14.** 304.074 (1d) of the statutes is created to read:

7 304.074 **(1d)** In this section:

8 1. "Discharge," with respect to a person subject to a conditional discharge order
9 or on probation under s. 971.41, means a discharge and dismissal under s. 971.41 (4)
10 or an order vacating a judgment of conviction under s. 971.41 (6) (b).

11 2. "Probationer" includes a person subject to a conditional discharge order or
12 on probation under s. 971.41 if so determined by the department under s. 971.41
13 (10m).

14 **SECTION 15.** 808.075 (4) (g) 3. of the statutes is amended to read:

15 808.075 **(4)** (g) 3. Imposition of sentence upon revocation of probation under s.
16 973.10 ~~(2) (2b) (c) 1. or (2e) (a)~~.

17 **SECTION 16.** 961.47 (title) of the statutes is renumbered 971.41 (title) and
18 amended to read:

19 **971.41** (title) ~~Conditional discharge for possession or attempted~~
20 ~~possession as first offense~~ **Alternatives to incarceration for drug offenders.**

21 **SECTION 17.** 961.47 (1) of the statutes is renumbered 971.41 (2) (a) (intro.) and
22 amended to read:

23 971.41 **(2)** (a) (intro.) Whenever any person who ~~has not previously been~~
24 ~~convicted of any offense under this chapter, or of any offense under any statute of the~~
25 ~~United States or of any state or of any county ordinance relating to controlled~~

SENATE BILL 550

1 ~~substances or controlled substance analogs, narcotic drugs, marijuana or stimulant,~~
2 ~~depressant or hallucinogenic drugs, is a resident of this state pleads guilty or no~~
3 ~~contest to or is found guilty of possession or attempted possession of a controlled~~
4 ~~substance or controlled substance analog under s. 961.41 (3g) (b) one or more offenses~~
5 ~~in a simple drug offense case and there are no other charges against the person~~
6 ~~pending in that case,~~ the court, without entering a judgment of guilt and with the
7 consent of the accused, may shall defer further proceedings and place him or her on
8 probation upon terms and conditions. Upon violation of a term or condition, the court
9 may enter an adjudication of guilt and proceed as otherwise provided. order the
10 person to submit to a substance abuse assessment. Upon receipt of the assessment
11 report, the court shall, with the consent of the accused, enter a conditional discharge
12 order under sub. (3), unless the assessment report indicates that the person is not
13 amenable to treatment or all of the following apply:

14 **(4) COMPLIANCE WITH CONDITIONAL DISCHARGE ORDER.** Upon fulfillment of the
15 terms and conditions of a conditional discharge order entered under sub. (2), the
16 court shall discharge the person and dismiss the proceedings against him or her.
17 Discharge and dismissal under this section shall be without adjudication of guilt and
18 is not a conviction for purposes of prohibitions, disqualifications or disabilities,
19 increased penalties, or other adverse or unfavorable treatment imposed by law upon
20 conviction of a crime, including the additional penalties imposed for 2nd or
21 subsequent convictions under s. 961.48. ~~There may be only one discharge and~~
22 ~~dismissal under this section with respect to any person.~~

23 **SECTION 18.** 961.47 (2) of the statutes is renumbered 971.41 (2) (c) and
24 amended to read:

SENATE BILL 550

1 971.41 (2) (c) Within 20 days after ~~probation is granted~~ a conditional discharge
2 order is entered under this section ~~subsection~~, the clerk of court shall notify the
3 department of justice of the name of the individual ~~granted probation~~ who is subject
4 to the order and any other information required by the department under rules
5 promulgated by the department. This report shall be upon forms provided by the
6 department.

7 **SECTION 19.** 961.472 of the statutes, as affected by 2003 Wisconsin Act 49, is
8 repealed.

9 **SECTION 20.** 961.475 of the statutes is amended to read:

10 **961.475 Treatment option.** Whenever any person pleads guilty to or is found
11 guilty of possession or attempted possession of a controlled substance or controlled
12 substance analog under s. 961.41 (3g), the court may, upon request of the person and
13 with the consent of a treatment facility with special inpatient or outpatient programs
14 for the treatment of drug dependent persons, allow the person to enter the treatment
15 programs voluntarily for purposes of treatment and rehabilitation. Treatment shall
16 be for the period the treatment facility feels is necessary and required, but shall not
17 exceed the maximum sentence allowable unless the person consents to the continued
18 treatment. At the end of the necessary and required treatment, with the consent of
19 the court, the person may be released from sentence. If treatment efforts are
20 ineffective or the person ceases to cooperate with treatment rehabilitation efforts,
21 the person may be remanded to the court ~~for completion of sentencing~~. The court may
22 then enter a conditional discharge order under s. 971.41 (2) with respect to the person
23 if he or she meets the requirements under sub. (2) (b) 2. a. to d. and is not a violent
24 offender. Otherwise, the court shall sentence the person. Sentencing may include
25 placing the person on probation under s. 971.41 (6) if the person is not a violent

SENATE BILL 550

1 offender. This section does not apply if the court is required to enter a conditional
2 discharge order under s. 971.41 (2).

3 **SECTION 21.** 971.41 (1) of the statutes is created to read:

4 971.41 (1) DEFINITIONS.

5 (a) “Disqualifying offense” means any of the following:

- 6 1. A Class A, B, C, D, or E felony.
- 7 2. An offense under s. 941.20, 941.21, 941.23, 941.235, 941.237, or 941.29.
- 8 3. An offense under s. 23.33 (4c), 30.681, 346.63, 350.101, or 940.25.

9 (b) “Drug” means a controlled substance, as defined in s. 961.01 (4), or a
10 controlled substance analog, as defined in s. 961.01 (4m).

11 (c) “Simple drug offense” means an offense or an attempt to commit an offense
12 under s. 961.41 (3g), 961.42, 961.43 (1) (a), or 961.573 (1), but does not include
13 conduct that constitutes a violation of s. 961.573 (3).

14 (d) “Simple drug offense case” means a case in which a person is charged with
15 one or more simple drug offenses but not with any other offense.

16 (e) “Violent offender” means a person to whom one of the following applies:

17 1. The person has been charged with or convicted of an offense in a pending case
18 and, during the course of the offense, the person carried, possessed, or used a
19 dangerous weapon, the person used force against another person, or a person died
20 or suffered serious bodily harm.

21 2. The person has one or more prior convictions for a felony involving the use
22 or attempted use of force against another person with the intent to cause death or
23 serious bodily harm.

24 **SECTION 22.** 971.41 (2) (title) and (a) 1. to 3. of the statutes are created to read:

25 971.41 (2) (title) CONDITIONAL DISCHARGE.

SENATE BILL 550

1 (a) 1. The person has 2 or more prior convictions for a simple drug offense or
2 for an offense committed in another jurisdiction that would be a simple drug offense
3 if committed in this state.

4 2. At least one of the offenses under subd. 1. was committed in the 10-year
5 period immediately before the person committed the current offense.

6 3. The person was offered an opportunity to receive substance abuse treatment
7 and rehabilitation services under this section in connection with one of the offenses
8 under subd. 1.

9 **SECTION 23.** 971.41 (2) (b) of the statutes is created to read:

10 971.41 (2) (b) 1. Whenever any person who is a resident of this state pleads
11 guilty or no contest to or is found guilty of a crime other than a disqualifying offense
12 and there are no other charges against the person pending in that case, the court,
13 without entering a judgment of guilt, shall order the person to submit to a substance
14 abuse assessment by the county department of community programs if the person
15 or the district attorney requests a hearing, or the court on its own motion orders a
16 hearing, on whether subd. 2. a. to d. applies. This subdivision does not apply if the
17 court is required to enter a conditional discharge order under par. (a) or if an
18 assessment conducted under par. (a) indicates that the person is not amenable to
19 treatment.

20 2. Upon receipt of the assessment results, the court shall hold a hearing on the
21 person's eligibility for conditional discharge under this paragraph. If the person
22 agrees to participate in substance abuse treatment and rehabilitation services and
23 if the court finds by clear and convincing evidence that all of the following are true,
24 the court shall enter a conditional discharge order or enter a judgment of conviction
25 and place the person on probation under sub. (6):

SENATE BILL 550

1 a. The offense was significantly motivated by the person's substance abuse.

2 b. Neither the victim of the offense nor the public will be harmed by the entry
3 of a conditional discharge order or by placing the person on probation.

4 c. Entering a conditional discharge order or placing the person on probation is
5 in the best interests of the public.

6 d. Entering a conditional discharge order or placing the person on probation
7 will not unduly depreciate the seriousness of the offense.

8 **SECTION 24.** 971.41 (2) (c) of the statutes is created to read:

9 971.41 (2) (c) If the court does not enter a conditional discharge order or place
10 a person on probation under this subsection, the court shall proceed as otherwise
11 provided in this chapter.

12 **SECTION 25.** 971.41 (3) of the statutes is created to read:

13 971.41 (3) REQUIREMENTS OF ORDER; MONITORING COMPLIANCE. A court that
14 enters a conditional discharge order under sub. (2) shall require, as condition of its
15 order, that the person participate in specified substance abuse treatment and
16 rehabilitation services that are included in the plan of services developed by the
17 county department of community programs under s. 51.49 (1). Unless the order is
18 revoked, the person shall remain subject to the conditional discharge order until the
19 court determines that the person has successfully completed his or her substance
20 abuse treatment and for at least 6 months thereafter. The court and, except as
21 provided in sub. (10), the department shall monitor the person's compliance with the
22 court's order. Subject to sub. (5) (b), the court may modify its order at any time. If
23 the person violates the conditional discharge order, the department or a contractor
24 under sub. (10), whichever is applicable, shall notify the court.

25 **SECTION 26.** 971.41 (5) of the statutes is created to read:

SENATE BILL 550

1 971.41 (5) VIOLATION OF CONDITIONAL DISCHARGE ORDER; GRADUATED SANCTIONS;
2 REVOCATION. (a) If the person violates a condition of a conditional discharge order,
3 the person's probation agent or probation supervisor selected under sub. (10),
4 whichever is applicable, shall notify the court.

5 (am) If a person violates a term or condition of a conditional discharge order
6 that is unrelated to the person's substance abuse treatment or the person's use of
7 alcohol or other drugs, the court may revoke the order, enter the judgment of
8 conviction, and sentence the person.

9 (b) For violations of terms or conditions of a conditional discharge order that
10 are related to the person's substance abuse treatment or the person's use of alcohol
11 or other drugs, any sanctions that the court imposes shall be graduated sanctions,
12 which may include modifying the treatment requirements or the conditional
13 discharge order. The court may revoke the conditional discharge order based on such
14 a violation only if the court has previously imposed sanctions on the person for other
15 violations under this paragraph.

16 **SECTION 27.** 971.41 (6) of the statutes is created to read:

17 971.41 (6) PROBATION. (a) If a court revokes a conditional discharge order under
18 sub. (5) (b) or if the court makes all of the findings listed in sub. (2) (b) 2. a. to d. but
19 does not enter a conditional discharge order, the court shall enter the judgment of
20 conviction but withhold sentence and place the person on probation. The court shall
21 require, as a condition of probation, that the person participate in specified
22 substance abuse treatment program and rehabilitative services that are included in
23 the plan of services developed by the county department of community programs
24 under s. 51.49 (1). Notwithstanding s. 973.09 (2), unless the order is revoked under
25 par. (c) or (e), the person shall remain subject to probation until the court determines

SENATE BILL 550

1 that the person has successfully completed his or her substance abuse treatment and
2 for at least 6 months thereafter. The court and, except as provided in sub. (10), the
3 department shall monitor the person's compliance with the court's order. Subject to
4 par. (d), the court may modify its order at any time.

5 (b) If a person completes his or her term of probation without revocation under
6 par. (c) or (e), the court shall vacate the judgment of conviction for the offense for
7 which the person was placed on probation. If the court vacates a judgment of
8 conviction under this paragraph, the person shall not be subject to any prohibition,
9 disqualification, disability, increased penalty, or other adverse or unfavorable
10 treatment that would otherwise result from the person having been convicted of the
11 offense, including the additional penalties imposed for 2nd or subsequent
12 convictions under s. 961.48.

13 (bm) If the person violates a condition of probation imposed under this
14 subsection, the person's probation agent or the probation supervisor under sub. (10),
15 whichever is applicable, shall notify the court.

16 (c) If the court finds, after providing the person an opportunity for a hearing,
17 that a person violated a condition of probation imposed under this subsection that
18 is unrelated to the person's substance abuse treatment or the person's use of alcohol
19 or other drugs, the court may revoke the person's probation.

20 (d) For violations of conditions of probation that are imposed under this
21 subsection and that are related to the person's substance abuse treatment or the
22 person's use of alcohol or other drugs, any sanctions that the court imposes shall be
23 graduated sanctions, which may include incarceration in a jail, house of corrections,
24 or probation and parole holding facility. The first incarceration sanction may not
25 exceed 2 weeks and the 2nd incarceration sanction may not exceed 30 days.

SENATE BILL 550

1 (e) The court may revoke a person's probation imposed under this subsection
2 for violating a condition of probation that is related to the person's substance abuse
3 treatment or the person's use of alcohol or other drugs only if, after providing the
4 person an opportunity for a hearing, the court finds all of the following:

5 1. That the person violated a condition of probation that is related to the
6 person's substance abuse treatment or the person's use of alcohol or other drugs.

7 2. That one of the following applies:

8 a. The violation under subd. 1. occurred after the court modified the treatment
9 and rehabilitation conditions of the probation order or imposed graduated sanctions.

10 b. There are no reasonable treatment and rehabilitation services options other
11 than the services originally ordered by the court.

12 3. That there is no reasonable likelihood that the person will abstain from
13 illegal activity for the remainder of the term of probation.

14 (f) If the court revokes a person's probation under par. (c) or (e), the court shall
15 sentence the person. A sentence under this paragraph may be a sentence of
16 probation under s. 973.09.

17 **SECTION 28.** 971.41 (7) to (12) of the statutes are created to read:

18 971.41 (7) EXPUNGEMENT. (a) A person whose case is dismissed under sub. (4)
19 or whose conviction is vacated under sub. (6) (b) may petition the court to expunge
20 the record of the case. The court may expunge the record if it determines that the
21 person will benefit and society will not be harmed by the expungement.

22 (b) The clerk of court shall notify the department of justice of any expungement
23 ordered under par. (a). Notwithstanding SCR 72.06 (3), the existence and contents
24 of a court record that is expunged under par. (a) may be disclosed to the defendant

SENATE BILL 550

1 or, if authorized by the defendant, to his or her attorney. Otherwise, neither the
2 existence nor the contents of the record may be disclosed to any person.

3 **(8) OFFENSES COMMITTED OUTSIDE OF A PERSON'S COUNTY OF RESIDENCE.** (a) If a
4 person becomes subject to a conditional discharge order in a county other than his
5 or her county of residence, the court that enters the order shall transfer the case to
6 the court for the person's county of residence, which shall monitor the person's
7 compliance with the order under sub. (3). If the court for the person's county of
8 residence determines that the person has successfully complied with the order, the
9 court shall discharge the person and dismiss the proceedings under sub. (4). If the
10 court for the person's county of residence revokes the order for a violation unrelated
11 to the person's substance abuse treatment or the person's use of alcohol or other
12 drugs, the court may transfer the case to the court that entered the order, which shall
13 enter the judgment of conviction and sentence the person. If the court for the person's
14 county of residence revokes the order based on the person violating a condition of
15 probation that is related to the person's substance abuse treatment or the person's
16 use of alcohol or other drugs, the court for the person's county of residence shall
17 proceed under sub. (5) (b).

18 (b) If a person is placed on probation under sub. (6) in a case commenced in a
19 court other than the court for the person's county of residence, the court for the
20 person's county of residence shall monitor the person's compliance with the
21 conditions of probation under sub. (6) (a) and shall proceed under sub. (6), except
22 that, notwithstanding sub. (6) (f), if the court for the person's county of residence
23 revokes the person's probation under sub. (6) (c) or (e), the court shall transfer the
24 case to the county in which the person pled guilty or no contest or was found guilty,
25 and the court for that county shall sentence the person.

SENATE BILL 550

1 (c) The county department of community programs for the person's county of
2 residence shall provide the treatment and rehabilitation services ordered by the
3 court.

4 **(9) REIMBURSEMENT BY HEALTH INSURANCE PROVIDERS.** If the court orders the
5 person to participate in a service that is covered by the person's health insurance, the
6 health insurance provider shall provide the service or reimburse the county for
7 providing the service.

8 **(10) SUPERVISION OF PERSONS IN 1ST CLASS CITIES.** (a) The department shall
9 contract with a person to supervise persons who reside in a 1st class city and who are
10 subject to a conditional discharge order under sub. (3) or placed on probation under
11 sub. (6). Any person who is supervised by the contractor and who is subject to a
12 conditional discharge order or on probation under this section shall be subject to any
13 rules or conditions established by the department that apply to all persons who
14 reside in other counties and who are subject to a conditional discharge order or on
15 probation under this section. The contractor shall have the same rights regarding
16 access to information about individuals whom it supervises, including under ss.
17 48.78 (2) (d) 4. and 938.78 (2) (d) 4., and be subject to the same restrictions regarding
18 use and redisclosure of that information as the department. The contract shall
19 require the contractor to notify a designated probation supervisor of a violation of a
20 condition of conditional discharge or probation.

21 (b) Notwithstanding s. 973.10 (1), a person who resides in a 1st class city and
22 who is placed on probation under sub. (6) is not under the custody or control of the
23 department unless the department takes physical custody of the person or the court
24 imposes incarceration as a sanction for a violation of probation.

SENATE BILL 550

1 **(10g)** RULES REGARDING FEES. The department shall promulgate rules
2 specifying whether and under what circumstances persons subject to a conditional
3 discharge order under sub. (3) or placed on probation under sub. (6) may be subject
4 to supervision or charged a fee under s. 301.08 (1) (c) or shall be charged a fee under
5 s. 304.074. The department shall base its decision on the cost of assessing and
6 collecting the fee, the amount that it anticipates collecting if a fee is imposed, the cost
7 of supervising such persons, the resources that are otherwise available to the
8 department to pay for those costs, and the effect that imposing the fee is likely to have
9 on the success of the program established under this section.

10 **(10s)** INELIGIBILITY OF VIOLENT OFFENDERS. This section does not apply to a
11 violent offender.

12 **(11)** INAPPLICABILITY TO EXISTING DRUG COURT PROGRAMS. (a) In this subsection,
13 “drug court program” means a program that is operated by a county and a circuit
14 court to which all of the following apply:

15 1. Under the program, a defendant whom the court finds committed an offense
16 may agree to participate in drug treatment under the supervision of the court.

17 2. Under the program, if the defendant successfully completes the drug
18 treatment provided under subd. 1., the court does not enter a judgment of conviction
19 for the offense or enters a judgment of conviction for a lesser offense.

20 (b) This section does not apply to a defendant with respect to a specific offense
21 if the defendant is given the opportunity with respect to that offense to participate
22 in a drug court program that existed on the effective date of this paragraph
23 [revisor inserts date].

24 **(12)** REPORT TO THE LEGISLATURE. By the first day of the 18th month beginning
25 after the effective date of this subsection [revisor inserts date], and every 12

SENATE BILL 550

1 months thereafter, the department of corrections and the department of health and
2 family services shall submit to the legislature under s. 13.172 (2) a report on the
3 effectiveness of the conditional discharge and probation program under this section.

4 **SECTION 29.** 973.09 (4) (a) of the statutes is amended to read:

5 973.09 (4) (a) The court may also require as a condition of probation that the
6 probationer be confined during such period of the term of probation as the court
7 prescribes, but not to exceed one year. This paragraph does not apply to a person
8 placed on probation under s. 971.41 (6).

9 (am) The court may grant the privilege of leaving the county jail, Huber facility,
10 work camp, or tribal jail during the hours or periods of employment or other activity
11 under s. 303.08 (1) (a) to (e) while confined under this subsection or under s. 971.41
12 (6) (d). The court may specify the necessary and reasonable hours or periods during
13 which the probationer may leave the jail, Huber facility, work camp, or tribal jail or
14 the court may delegate that authority to the sheriff.

15 (ar) In those counties without a Huber facility under s. 303.09, a work camp
16 under s. 303.10, or an agreement under s. 302.445, ~~the a~~ probationer who is confined
17 under par. (a) shall be confined in the county jail. In those counties with a Huber
18 facility under s. 303.09, the sheriff shall determine whether confinement under ~~this~~
19 ~~subsection~~ par. (a) is to be in that facility or in the county jail. In those counties with
20 a work camp under s. 303.10, the sheriff shall determine whether confinement under
21 par. (a) is to be in the work camp or the county jail. The sheriff may transfer persons
22 confined under ~~this subsection~~ par. (a) between a Huber facility or a work camp and
23 the county jail. In those counties with an agreement under s. 302.445, the sheriff
24 shall determine whether a person who is confined under ~~this subsection~~ par. (a) but
25 who is not subject to an order under par. (b) is to be confined in the tribal jail or the

SENATE BILL 550

1 county jail, unless otherwise provided under the agreement. In those counties, the
2 sheriff may transfer persons confined under ~~this subsection par. (a)~~ between a tribal
3 jail and a county jail, unless otherwise provided under the agreement.

4 **SECTION 30.** 973.09 (4) (b) of the statutes is amended to read:

5 973.09 (4) (b) With the consent of the department and when recommended in
6 the presentence investigation, the court may order that a felony offender subject to
7 ~~this subsection par. (a)~~ be confined in a facility located in the city of Milwaukee under
8 s. 301.13 or 301.16 (1q), for the purpose of allowing the offender to complete an
9 alcohol and other drug abuse treatment program.

10 **SECTION 31.** 973.10 (1) of the statutes is amended to read:

11 973.10 (1) Imposition of probation shall have the effect of placing the defendant
12 in the custody of the department and shall subject the defendant to the control of the
13 department under conditions set by the court or, under sub. (2), by the department
14 or the division of hearings and appeals in the department of administration and
15 under rules and regulations established by the department for the supervision of
16 probationers, parolees and persons on extended supervision.

17 **SECTION 32.** 973.10 (2) (intro.) of the statutes is renumbered 973.10 (2) (a) and
18 amended to read:

19 973.10 (2) (a) If a probationer violates the conditions of probation, other than
20 probation imposed under s. 971.41 (6), the department of corrections may initiate a
21 proceeding before the division of hearings and appeals in the department of
22 administration. Unless waived by the probationer, a hearing examiner for the
23 division shall conduct an administrative hearing and enter an order either revoking
24 or not revoking probation. Upon request of either party, the administrator of the
25 division shall review the order. If the probationer waives the final administrative

SENATE BILL 550

1 hearing, the secretary of corrections shall enter an order either revoking or not
2 revoking probation. ~~If probation is revoked, the department shall:~~

3 **SECTION 33.** 973.10 (2) (a) of the statutes is renumbered 973.10 (2b) (b) 1.

4 **SECTION 34.** 973.10 (2) (b) of the statutes is renumbered 973.10 (2b) (b) 2.

5 **SECTION 35.** 973.10 (2) (bm) of the statutes is created to read:

6 973.10 (2) (bm) If the violation of probation relates to the probationer's use of
7 alcohol or other drugs, the reviewing authority determines that the probationer can
8 receive a prompt substance abuse assessment, if necessary, and prompt and
9 appropriate substance abuse treatment under s. 51.49 (1) from the county
10 department of community programs for the probationer's county of residence, and
11 par. (c) does not apply, the reviewing authority may, in lieu of revoking probation,
12 order the probationer to submit to the assessment or participate in treatment or both
13 as a condition of probation.

14 **SECTION 36.** 973.10 (2) (c) of the statutes is created to read:

15 973.10 (2) (c) If the probationer is required to participate in an approved
16 substance abuse treatment program as a condition of probation and he or she violates
17 a condition of probation that relates to his or her participation in the program, the
18 division of hearings and appeals in the department of administration or, if the
19 probationer waives the final administrative hearing, the secretary of corrections
20 may, in lieu of revoking probation, establish, maintain, or modify conditions of
21 probation relating to the person's participation in the program.

22 **SECTION 37.** 973.10 (2b) of the statutes is created to read:

23 973.10 (2b) (a) If a person's probation is revoked, the department shall proceed
24 under par. (b) if all of the following apply:

SENATE BILL 550

1 1. The person is not required to participate in an approved substance abuse
2 treatment program as a condition of probation and the violation does not relate to the
3 probationer's use of alcohol or other drugs.

4 2. The person is required to participate in a substance abuse treatment
5 program as a condition of probation but the violation does not relate to his or her
6 participation in the program.

7 (b) If par. (a) 1. or 2. applies, the department shall do one of the following:

8 **SECTION 38.** 973.10 (2e) of the statutes is created to read:

9 973.10 **(2e)** If a person's probation is revoked but sub. (2b) (a) 1. or 2. applies,
10 the department shall order that the person be brought before the court. The court
11 shall then do one of the following:

12 (a) If the person has not already been sentenced, impose sentence without
13 further stay under s. 973.15.

14 (b) If the person has already been sentenced, vacate the stay of the sentence.
15 The term of a sentence under this paragraph shall begin on the date on which the
16 person enters the prison.

17 (c) If the violation relates to the person's use of alcohol or other drugs, the court
18 determines that the person can receive a prompt substance abuse assessment, if
19 necessary, and prompt and appropriate substance abuse treatment under s. 51.49 (1)
20 from the county department of community programs for the person's county of
21 residence, and par. (d) does not apply, vacate the reviewing authority's decision to
22 revoke the person's probation and order the person to submit to the assessment or
23 participate in treatment or both as a condition of probation.

24 (d) If the person is required to participate in a substance abuse treatment
25 program as a condition of probation and the violation relates to the person's

SENATE BILL 550

1 participation in the program, vacate the reviewing authority's decision to revoke the
2 person's probation and establish, maintain, or modify conditions of probation
3 relating to the person's participation in the program.

4 **SECTION 39.** 973.15 (2m) (a) 3. of the statutes, as created by 2001 Wisconsin Act
5 109, is amended to read:

6 973.15 **(2m)** (a) 3. "Period of confinement in prison," with respect to any
7 sentence to the Wisconsin state prisons, means any time during which a person is
8 incarcerated under that sentence, including any extensions imposed under s. 302.11
9 (3), 302.113 (3), or 302.114 (3) and any period of confinement in prison required to
10 be served under s. 302.113 (9) (am), 2001 stats., or s. 302.11 (7) (am), 302.113 (9) ~~(am)~~
11 (ar) 1., or 302.114 (9) (am).

12 **SECTION 40.** 973.15 (2m) (e) of the statutes, as created by 2001 Wisconsin Act
13 109, is amended to read:

14 973.15 **(2m)** (e) *Revocation in multiple sentence cases.* If a person is serving
15 concurrent determinate sentences and extended supervision is revoked in each case,
16 or if a person is serving a determinate sentence concurrent with an indeterminate
17 sentence and both extended supervision and parole are revoked, the person shall
18 concurrently serve any periods of confinement in prison required under those
19 sentences under s. 302.113 (9) (am), 2001 stats., or s. 302.11 (7) (am), 302.113 (9) ~~(am)~~
20 (ar) 1., or 302.114 (9) (am).

21 **SECTION 41. Nonstatutory provisions.**

22 (1) The department of health and family services shall submit in proposed form
23 the rules required under section 51.49 (2) of the statutes, as created by this act, to
24 the legislative council staff under section 227.15 (1) of the statutes no later than the
25 first day of the 4th month beginning after the effective date of this subsection.

SENATE BILL 550

1 (2) Using the procedure under section 227.24 of the statutes, the department
2 of health and family services may promulgate the rules required under section 51.49
3 (2) of the statutes, as created by this act, for the period before the effective date of the
4 permanent rules required under section 51.49 (2) of the statutes, as created by this
5 act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the
6 statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the
7 department is not required to provide evidence that promulgating a rule under this
8 subsection as an emergency rule is necessary for the preservation of the public peace,
9 health, safety, or welfare and is not required to provide a finding of emergency for a
10 rule promulgated under this subsection.

11 (3) (a) By October 15, 2004, each county department of community programs
12 shall submit a plan of services to the department of health and family services
13 specifying who shall provide the assessments and services required under section
14 51.49 of the statutes, as created by this act, and describing how and where they shall
15 be provided.

16 (b) Each county shall create a community corrections committee to advise the
17 county department of community programs in developing the plan of services under
18 paragraph (a). The committee shall consist of the following members:

19 1. A circuit court judge for the county, appointed by the chief judge of the
20 judicial administrative district.

21 2. The district attorney for the county or his or her designee.

22 3. A chief of police for a municipality in the county, appointed by the county
23 executive.

24 4. The county sheriff or his or her designee.

SENATE BILL 550

1 5. A probation, extended supervision, and parole agent, appointed by the
2 secretary of corrections.

3 6. One assistant state public defender, appointed by the state public defender.

4 7. Four persons who are residents of the county and who are not public officials
5 or employees, including at least one person who is a recovered drug abuser who
6 successfully completed a drug treatment program.

7 (c) If a county department of community programs serves more than one
8 county, the counties may create a joint committee on community corrections. The
9 members may be from any of the participating counties.

10 (d) A community corrections committee created under this subsection shall
11 disband after the plan established under paragraph (a) is submitted to the
12 department of health and family services.

13 (4) By November 1, 2004, the department of corrections shall issue a request
14 for proposals to provide probation supervision services under section 971.41 (10) (a)
15 of the statutes, as created by this act.

16 (5) (a) By November 15, 2004, each county shall submit an estimate, and
17 documentation supporting the estimate, to the department of administration of the
18 costs that it will incur and the money that it will save in implementing this act during
19 the 3-year period beginning on September 1, 2005. The county shall also include a
20 detailed estimate of the amount of money that it anticipates receiving from federal,
21 state, local, and private sources to pay for the costs of implementing this act.

22 (b) By December 1, 2004, the department of administration shall prepare an
23 estimate of the costs that the state will incur, other than through the funding
24 proposal under paragraph (d), and the money that the state will save in
25 implementing this act during the 3-year period beginning on September 1, 2005.

