



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

THURS
9AM

alternatives to prosecution and
incarceration

, and making an
appropriation

Gen. Cat.

1 AN ACT to repeal 46.03 (18) (fm) and 961.472; to renumber and amend 961.47
 2 (title), 961.47 (1) and 961.47 (2); to amend 961.475 and 973.10 (2) (intro.); and
 3 to create 51.49, 971.41 (1), 971.41 (2) (title) and (a) 1. to 3., 971.41 (2) (b), 971.41
 4 (3), 971.41 (5), 971.41 (6), 971.41 (7) to (12) and 973.09 (4) (d) of the statutes;
 5 relating to: conditional discharge, probation, and treatment for persons who
 6 committed certain drug-related offenses, providing an exemption from emergency
 7 rule procedures, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

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8 SECTION 1. 46.03 (18) (fm) of the statutes is repealed.

9 SECTION 2. 51.49 of the statutes is created to read:

10 51.49 Treatment Intervention Program. (1) COUNTY RESPONSIBILITY. (a)

11 The county department of community programs shall provide substance abuse

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INS 2/11

1 assessments that are ordered by the circuit court under s. ~~971.41~~. The
2 assessments shall comply with standards established by the department of health
3 and family services under sub. (2). ~~INS 2/13~~

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, to persons who
8 are subject to a conditional discharge order under s. 971.41 (3) or placed on probation
9 under ~~s. 971.41~~. ^{INS 2/9} The services shall include different options for substance abuse
10 treatment, be consistent with the best practices in substance abuse treatment, and
11 be evaluated for the purpose of determining their effectiveness. ~~The county~~
12 department of community services shall give first priority for services under this
13 paragraph to ~~the~~ persons who are subject to the longest terms of incarceration if their
14 probation is revoked. ~~INS 2/13~~

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

18 ~~(2)~~ ⁽²⁾ RULES. The department of health and family services shall promulgate
19 rules specifying all of the following: ^{INS 2/21}

20 (a) The services that county departments of community programs must make
21 available to ~~the circuit court~~ persons who are subject to a conditional discharge
22 order under s. 971.41 (3) or placed on probation under s. 971.41 (6). The rules shall
23 require that the services include at ^{the} least treatment for substance abuse, education
24 concerning the effects of substance abuse, substance abuse tests, and employment
25 support.

to determine if a
person has used alcohol
or other drugs

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

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

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

5 SECTION 3. 961.47 (title) of the statutes is renumbered 971.41 (title) and
6 amended to read:

7 971.41 (title) ~~Conditional discharge for possession or attempted~~
8 ~~possession as first offense~~ Alternatives to incarceration for drug offenders.

9 SECTION 4. 961.47 (1) of the statutes is renumbered 971.41 (2) (a) (intro.) and
10 amended to read:

11 971.41 (2) (a) (intro.) Whenever any person who has ~~not~~ previously been
12 ~~convicted of any offense under this chapter, or of any offense under any statute of the~~
13 ~~United States or of any state or of any county ordinance relating to controlled~~
14 ~~substances or controlled substance analogs, narcotic drugs, marijuana or stimulant,~~
15 ~~depressant or hallucinogenic drugs, is a resident of this state pleads guilty or no~~
16 contest to or is found guilty of possession or attempted possession of a controlled
17 substance or controlled substance analog under s. 961.41 (3g) (b) one or more offenses
18 in a simple drug offense case and there are no other charges against the person
19 pending in that case, the court, without entering a judgment of guilt and with the
20 consent of the accused, may ~~shall~~ defer further proceedings, order the person to
21 submit to a substance abuse assessment and place him or her on probation upon
22 terms and conditions. ~~Upon violation of a term or condition, the court may enter an~~
23 ~~adjudication of guilt and proceed as otherwise provided.~~ enter a conditional
24 discharge order under sub. (3), unless all of the following apply:

INS 3/24

INS 3/23

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

10 SECTION 5. 961.47 (2) of the statutes is renumbered 971.41 (2) (c) and amended
11 to read:

12 971.41 (2) (c) Within 20 days after ~~probation is granted~~ a conditional discharge
13 order is entered under this section ~~subsection~~, the clerk of court shall notify the
14 department of justice of the name of the individual ~~granted probation~~ who is subject
15 to the order and any other information required by the department under rules
16 promulgated by the department. This report shall be upon forms provided by the
17 department.

18 SECTION 6. 961.472 of the statutes, as affected by 2003 Wisconsin Act 49, is
19 repealed.

20 SECTION 7. 961.475 of the statutes is amended to read:

21 **961.475 Treatment option.** Whenever any person pleads guilty to or is found
22 guilty of possession or attempted possession of a controlled substance or controlled
23 substance analog under s. 961.41 (3g), the court may, upon request of the person and
24 with the consent of a treatment facility with special inpatient or outpatient programs
25 for the treatment of drug dependent persons, allow the person to enter the treatment

1 programs voluntarily for purposes of treatment and rehabilitation. Treatment shall
 2 be for the period the treatment facility feels is necessary and required, but shall not
 3 exceed the maximum sentence allowable unless the person consents to the continued
 4 treatment. At the end of the necessary and required treatment, with the consent of
 5 the court, the person may be released from sentence. If treatment efforts are
 6 ineffective or the person ceases to cooperate with treatment rehabilitation efforts,
 7 the person may be remanded to the court for completion of sentencing, ~~which~~ ^{INS 5/7}
 8 include placing the person on probation in the manner described in, and subject to
 9 the requirements of, s. 971.41 (6). ^{under} This section does not apply if the court is required
 10 to enter a conditional discharge order under s. 971.41 (2). ^{INS 5/9}

11 SECTION 8. 971.41 (1) of the statutes is created to read:

12 971.41 (1) DEFINITIONS.

13 (a) "Disqualifying offense" means any of the following:

- 14 1. A Class A, B, C, D, or E felony.
- 15 2. An offense under s. 941.20, 941.21, 941.23, 941.235, 941.237, or 941.29.
- 16 3. An offense under s. 346.63, 350.101, or 940.25

(23.33 (4c), 30.68),

17 (b) "Drug" means a controlled substance, as defined in s. 961.01 (4), or a
 18 controlled substance analog, as defined in s. 961.01 (4m).

19 (c) "Simple drug offense" means an ^{offense} offense or an attempt to commit an ~~offense~~
 20 under s. 961.41 (3g), 961.42, 961.43 (1) (a), or 961.573 (1), but does not include
 21 conduct that constitutes a violation of s. 961.573 (3).

****NOTE: I believe that this draft's treatment of methamphetamine-related drug paraphernalia is more consistent with your response to Item 5 of the drafter's note dated August 27, 2003.

22 (d) "Simple drug offense case" means a case in which a person is charged with
 23 one or more simple drug offenses but not with any other offense.

INS 5/23

SECTION 9

1 SECTION 9. 971.41 (2) (title) and (a) 1. to 3. of the statutes are created to read:
2 971.41 (2) (title) CONDITIONAL DISCHARGE.

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

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

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

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11 SECTION 10. 971.41 (2) (b) of the statutes is created to read:

12 971.41 (2) (b) 1. Whenever any person who is a resident of this state pleads
13 guilty or no contest to or is found guilty of a crime other than a disqualifying offense
14 and there are no other charges against the person pending in that case, the court,
15 without entering a judgment of guilt, shall order the person to submit to a substance
16 abuse assessment by the county department of community programs if the person
17 or the district attorney requests a hearing, or the court on its own motion orders a
18 hearing, on whether subd. 2. a. to d. applies.

19 2. If the court orders an assessment under subd. 1., the assessor shall report
20 the results of the assessment to the court. Upon receipt of the assessment results,
21 the court shall hold a hearing on the person's eligibility for conditional discharge
22 under this paragraph. If the person agrees to participate in substance abuse
23 treatment and rehabilitation services and if the court finds by clear and convincing
24 evidence that all of the following are true, the court shall enter a conditional
25 discharge order:

enter a judgment of conviction and
or place the person
on probation under sub. (b)

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- 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.
- 4 c. Entering a conditional discharge order is in the best interests of the public.
- 5 d. Entering a conditional discharge order will not unduly depreciate the
- 6 seriousness of the offense.

7 SECTION 11. 971.41 (3) of the statutes is created to read:

8 971.41 (3) REQUIREMENTS OF ORDER; MONITORING COMPLIANCE. A court that

9 enters a conditional discharge order under sub. (2) or places a person on probation

10 under sub. (6) shall require, as condition of its order, that the person participate in

11 specified substance abuse treatment and rehabilitation services that are included in

12 the plan of services developed by the county department of community programs

13 under s. 51.49 (1). ^{INS 7/13} The court shall monitor the person's compliance with the court's

14 order and may modify its order at any time.

15 SECTION 12. 971.41 (5) of the statutes is created to read:

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16 971.41 (5) VIOLATION OF CONDITIONAL DISCHARGE ORDER; GRADUATED SANCTIONS;

17 REVOCATION. (a) If a person violates a term or condition of a conditional discharge

18 order that is unrelated to the person's substance abuse treatment, ^{or the person's use of alcohol or other} the court may ^{drugs}

19 revoke the order, enter the judgment of conviction, and sentence the person.

20 (b) ~~If a person violates a requirement, the court may impose~~ ^{shall be} graduated

21 sanctions, which may include modifying the treatment requirements or the

22 conditional discharge order. The court may revoke the conditional discharge order

23 based on such a violation only if the court has previously imposed a different sanctions

24 on the person ^{for other violations} under this paragraph.

25 SECTION 13. 971.41 (6) of the statutes is created to read:

Make sure it's powers/duties here only apply to people placed on prob. under this §

1 971.41 (6) PROBATION. (a) If a court revokes a conditional discharge order under
2 sub. (5) (b), ^{INS 8/2} the court shall enter the judgment of conviction but withhold sentence
3 and place the person on probation. The court shall require, as a condition of
4 probation, that the person participate in specified substance abuse treatment
5 program and rehabilitative services that are included in the plan of services
6 developed by the county department of community programs under s. 51.49 (1). INS ✓
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7 (b) If a person ~~abstains from the use of an unauthorized controlled substance~~
8 ~~for 9 months after being placed on probation and~~ ^{under this subsection} completes his or her term of
9 probation without revocation, ^{under par. (c) or (e)} the court shall vacate the judgment of conviction for
10 the offense for which the person was placed on probation. If the court vacates a
11 judgment of conviction under this paragraph, the person shall not be subject to any
12 prohibition, disqualification, disability, increased penalty, or other adverse or
13 unfavorable treatment that would otherwise result from the person having been
14 convicted of the offense, including the additional penalties imposed for 2nd or
15 subsequent convictions under s. 961.48. ^{(d) is} ~~If the person violates a condition of~~

16 ~~probation, the court may impose~~ ^{(d) is} graduated sanctions, ^{which may} including incarceration in a
17 jail, house of corrections, or probation and parole holding facility. ^{INS 8/16} The first
18 incarceration sanction may not exceed 2 weeks and the 2nd incarceration sanction
19 may not exceed 30 days. ^{(b)m} The person's probation agent or probation supervisor

20 selected under sub. (10), whichever is applicable, shall notify the court ^{(b)m} if the person
21 violates a condition of probation. ^{imposed under this subsection}

22 (c) If the court finds, after providing the person an opportunity for a hearing,
23 that a person violated a condition of probation imposed ~~by the court~~ under ~~par. (a)~~
24 that is unrelated to the person's substance abuse treatment, the court may revoke
25 the person's probation. *this subsection*

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(d) The court may revoke a person's probation for failing to participate in drug treatment and rehabilitation services ordered under this ^{sub} section only if, after providing the person an opportunity for a hearing, the court finds all of the following:

1. That the person violated a condition that he or she participate in drug treatment and rehabilitation services.

2. That one of the following applies:

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

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

3. That there is no reasonable likelihood that the person will abstain from drug use for the remainder of the term of probation.

(e) If the court revokes a person's probation under par. (c) or (d), the court shall sentence the person.

enter the judgment of conviction and

SECTION 14. 971.41 (7) to (12) of the statutes are created to read:

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

(b) The clerk of court shall notify the department of justice of any expungement ordered under par. (a). Notwithstanding SCR 72.06 (3), the existence and contents of a court record that is expunged under par. (a) may be disclosed to the defendant or, if authorized by the defendant, to his or her attorney. Otherwise, neither the existence nor the contents of the record may be disclosed to any person.

INS 9/4

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SECTION 14

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1 (8) OFFENSES COMMITTED OUTSIDE OF A PERSON'S COUNTY OF RESIDENCE. (a) If a
 2 person becomes subject to a conditional discharge order ^{again} in a county other than his
 3 or her county of residence, the court that enters the order shall transfer the case to
 4 ^{court for the} the person's county of residence, which shall monitor the person's compliance with
 5 the order under sub. (3). If the court ^{for} in the person's county of residence determines
 6 that the person has successfully complied with the order, the court shall discharge
 7 the person and dismiss the proceedings under sub. (4). If the court ^{for} in the person's
 8 county of residence revokes the order for a ^{violation} reason unrelated to the person's substance
 9 abuse treatment, ^{INS 10/9} the court may transfer the case to the court that entered the order,
 10 which shall enter the judgment of conviction and sentence the person. If the court
 11 ^{for} in the person's county of residence revokes the order based on the person violating
 12 a treatment requirement, the court ^{for} in the person's county of residence shall proceed
 13 under sub. (5) (b). ^{INS 10/15}

14 (b) If ^{for} the court ^{for} in the person's county of residence ^{is placed} places the person on
 15 probation under sub. (5) (b), ^{for} that court shall monitor the person's compliance with
 16 the conditions of probation under sub. (3) ^{(6)(a)} and shall proceed under sub. (6) (a) ^{except that} if the
 17 ~~person meets the requirements of that paragraph. If the court revokes the person's~~
 18 ~~probation for a reason ^{violation} unrelated to the person's substance abuse treatment, the court~~
 19 ~~shall transfer the case to the county in which the person pled guilty or no contest or~~
 20 ~~was found guilty, and the court for that county shall sentence the person. The court~~
 21 ~~of the person's county of residence may impose graduated sanctions under sub. (6)~~
 22 ~~(b) for other violations.~~ If the court ^{for} in the person's county of residence revokes the
 23 person's probation under sub. (6) ^{(c) or (e)}, the court shall transfer the case to the county
 24 in which the person pled guilty or no contest or was found guilty, and the court for
 25 that county shall sentence the person.

notwithstanding sub. (6) (f),

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INS 20/18

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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 for the county in which the person pled guilty or no contest or was convicted
4 and the court for the person's county of residence.

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

9 (10) SUPERVISION OF PERSONS IN 1ST CLASS CITIES. (a) Notwithstanding s. 973.10
10 (1), a person who resides in a 1st class city and who is placed on probation under sub.
11 (5) (b) is not under the care or control of the department. *INS 11/11*

12 (b) The department shall contract with a person to supervise persons who
13 reside in a 1st class city and who are placed on probation under sub. (5) (b). The
14 department shall issue a request for proposals to provide probation supervision
15 services in a 1st class city. *subject to a conditional discharge order under sub. (3) or INS 11/13*

INS 11/16

16 (11) EXISTING DRUG COURT PROGRAMS. (a) In this subsection, "drug court
17 program" means a program operated by a county and a circuit court, to which all of
18 the following apply: *that is*

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

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

24 (b) This section does not apply to a defendant with respect to a specific offense
25 if the defendant is given the opportunity with respect to that offense to participate

Inapplicability to (c)

1 in a drug court program that existed on the effective date of this paragraph
2 [revisor inserts date].

3 (12) REPORT TO THE LEGISLATURE. By the first day of the 18th month beginning
4 after the effective date of this subsection [revisor inserts date], and every 12
5 months thereafter, the department of corrections and the department of health and
6 family services shall submit to the legislature under s. 13.172 (2) a report on the
7 effectiveness of the conditional discharge and probation program under this section.

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8 SECTION 15. 973.09 (4) (d) of the statutes is created to read:

9 973.09 (4) (d) This subsection does not apply to a person placed on probation
10 under s. 971.41 (6) unless the court orders that

11 ****NOTE: Please review the above incomplete statute.

12 SECTION 16. 973.10 (2) (intro.) of the statutes is amended to read:

13 973.10 (2) (intro.) If a probationer violates the conditions of probation, other
14 than probation imposed under s. 971.41 (6), the department of corrections may
15 initiate a proceeding before the division of hearings and appeals in the department
16 of administration. Unless waived by the probationer, a hearing examiner for the
17 division shall conduct an administrative hearing and enter an order either revoking
18 or not revoking probation. Upon request of either party, the administrator of the
19 division shall review the order. If the probationer waives the final administrative
20 hearing, the secretary of corrections shall enter an order either revoking or not
21 revoking probation. ~~If probation is revoked, the department shall:~~

22 SECTION 17. Nonstatutory provisions.

23 (1) (a) By the first day of the 10th month beginning after the effective date of
24 this subsection, each county department of community programs shall submit a plan
of services to the department of health and family services specifying who shall

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1 provide the assessments and services required under section 51.49 of the statutes,
2 as created by this act, and describing how and where they shall be provided.

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

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

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

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

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

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

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

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

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

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

24 (2) The department of health and family services shall submit in proposed form
25 the rules required under section 51.49 (2) of the statutes, as created by this act, to

*cert
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1 the legislative council staff under section 227.15 (1) of the statutes no later than the
2 first day of the 4th month beginning after the effective date of this subsection.

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

13 **SECTION 18. Initial applicability.**

14 (1) The treatment of sections 961.472, 961.475, and 973.105 of the statutes first
15 applies to offenses committed on the effective date of this subsection.

16 **SECTION 19. Effective dates.** This act takes effect on the day after publication.

17 except as follows:

18 (1) The treatment of sections ~~961.472, 961.475, and 973.105 (2), (3), (4), (5), (6),~~
19 ~~(7), (8) (a), (9), and (10)~~ of the statutes and SECTION 18 ~~(1)~~ of this act take effect on
20 the first day of the 12th month beginning after publication.

21 (END)

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2003-2004 DRAFTING INSERT
FROM THE
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1 **INSERT 1/8** ✓

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

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

History: 1989 a. 31 ss. 340, 361 to 380, 382 to 392; 1989 a. 107, 122, 359; 1991 a. 39; 1993 a. 16, 98, 377, 437, 490; 1995 a. 27, 77, 416, 440; 1997 a. 4, 27, 35, 237, 252, 275, 283, 284; 1999 a. 9, 89; 2001 a. 16; 2003 a. 33.

12 **INSERT 1/10** ✓

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

17 **INSERT 2/1** ✓

18 302.113 (9) (ar) 2., ✓ 971.41 (2), ✓ or 973.10 (2e) (a) 3. ✓ or by the reviewing authority
19 under s. 302.113 (9) (am) 2., 304.06 (3b) (b), or 973.10 (2) (bm)

20 **INSERT 2/3** ✓

21 The assessor shall report the results of each assessment to the court or the
22 reviewing authority.

23 **INSERT 2/9** ✓

1 302.113 (9) (ar) 2. or 3., 971.41 (3), or 973.10 (2e) (a) 3. or 4. or by the reviewing
2 authority under s. 302.113 (9) (am) 2. or 3., 304.06 (3b) (b) or (c), or 973.10 (2) (bm)
3 or (c)

4 INSERT 2/21 ✓ *under 5.*

5 302.113 (9) (am) 2. or 3. or (ar) 2. or 3., 304.06 (3b) (b) or (c), 971.41 (2), (3), or
6 (6), or 973.10 (2) (bm) or (c) or (2e) (a) 3. or 4.

7 INSERT 3/4 ✓

8 **SECTION 2.** 301.08 (1) (c) 1. of the statutes is created to read:

9 301.08 (1) (c) 1. In this paragraph, "probationer" includes a person subject to
10 a conditional discharge order or on probation under s. 971.41 if so determined by the
11 department under s. 971.41 (10m).

12 **SECTION 3.** 302.113 (7) of the statutes, as affected by 2001 Wisconsin Act 109, ✓
13 is amended to read:

14 302.113 (7) Any inmate released to extended supervision under this section is
15 subject to all conditions and rules of extended supervision until the expiration of the
16 term of extended supervision portion of the bifurcated sentence. The department
17 may set conditions of extended supervision in addition to any conditions of extended
18 supervision required under s. 302.116, if applicable, or set by the court under sub.
19 (7m) or (9) (ar) 2. or 3. or s. 973.01 (5) if the conditions set by the department do not
20 conflict with the court's conditions. The reviewing authority, as defined in sub. (9)
21 (ag), may set or modify conditions under sub. (9) (am) 2. or 3.

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33.

22 **SECTION 4.** 302.113 (9) (am) of the statutes, as affected by 2001 Wisconsin Act
23 109, is renumbered 302.113 (9) (am) (intro.) and amended to read:

1 302.113 (9) (am) (intro.) If a person released to extended supervision under this
2 section violates a condition of extended supervision, the reviewing authority may
3 ~~revoke~~ do one of the following:

4 1. Revoke the extended supervision of the person.

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

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33.

19 **SECTION 5.** 302.113 (9) (am) 2. of the statutes is created to read:

20 302.113 (9) (am) 2. If the violation relates to the person's use of alcohol or other
21 drugs and subd. 3. does not apply, order the person to submit to a substance abuse
22 assessment or substance abuse treatment or both under s. 51.49 in the person's
23 county of residence as a condition of extended supervision.

24 **SECTION 6.** 302.113 (9) (am) 3. of the statutes is created to read:

1 302.113 (9) (am) 3. If the person is required to participate in a substance abuse
2 treatment program as a condition of extended supervision and the violation relates
3 to the person's participation in the program, establish, maintain, or modify
4 conditions of extended supervision relating to the person's participation in the
5 program.

6 **SECTION 7.** 302.113 (9) (ar) of the statutes is created to read:

7 302.113 (9) (ar) If a person is returned to court under par. (ap) after revocation
8 of extended supervision, the court shall do one of the following:

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

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

19 3. If the person is required to participate in a substance abuse treatment
20 program as a condition of extended supervision and the violation relates to the
21 person's participation in the program, vacate the reviewing authority's decision to
22 revoke the person's extended supervision and establish, maintain, or modify
23 conditions of extended supervision relating to the person's participation in the
24 program.

1 SECTION 8. 302.113 (9) (at) of the statutes, as created by 2001 Wisconsin Act
2 109, is repealed.

3 SECTION 9. 302.113 (9) (b) of the statutes, as affected by 2001 Wisconsin Act 109,
4 is amended to read:

5 302.113 (9) (b) A person who is returned to prison after revocation of extended
6 supervision shall be incarcerated for the entire period of time specified by the court
7 under par. ~~(am)~~ (ar) 1. The period of time specified under par. ~~(am)~~ (ar) 1. may be
8 extended in accordance with sub. (3). If a person is returned to prison under par. ~~(am)~~
9 (ar) 1. for a period of time that is less than the time remaining on the bifurcated
10 sentence, the person shall be released to extended supervision after he or she has
11 served the period of time specified by the court under par. ~~(am)~~ (ar) 1. and any periods
12 of extension imposed in accordance with sub. (3).

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33.

13 SECTION 10. 302.113 (9) (c) of the statutes, as affected by 2001 Wisconsin Act
14 109, is amended to read:

15 302.113 (9) (c) A person who is subsequently released to extended supervision
16 after service of the period of time specified by the court under par. ~~(am)~~ (ar) 1. is
17 subject to all conditions and rules under subs. (7) and, if applicable, (7m) until the
18 expiration of the remaining extended supervision portion of the bifurcated sentence.
19 The remaining extended supervision portion of the bifurcated sentence is the total
20 length of the bifurcated sentence, less the time served by the person in confinement
21 under the bifurcated sentence before release to extended supervision under sub. (2)
22 and less all time served in confinement for previous revocations of extended
23 supervision under the bifurcated sentence.

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33.

24 SECTION 11. 304.06 (3b) of the statutes is created to read:

1 304.06 (3b) (a) In this subsection, “reviewing authority” means the division of
2 hearings and appeals in the department of administration or, if the parolee waives
3 the final administrative hearing, the secretary of corrections.

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

9 (c) If a parolee is required to participate in a substance abuse treatment
10 program as a condition of parole and the parolee violates a condition of parole that
11 relates to the parolee’s participation in the program, the division of hearings and
12 appeals in the department of administration or, if the parolee waives the final
13 administrative hearing, the secretary of corrections may, in lieu of revoking parole,
14 establish, maintain, or modify conditions of parole relating to the parolee’s
15 participation in the program.

16 **SECTION 12.** 304.074 (1d) of the statutes is created to read:

17 304.074 (1d) In this section:

18 1. “Discharge,” with respect to a person subject to a conditional discharge order
19 or on probation under s. 971.41, means a discharge and dismissal under s. 971.41 (4)
20 or an order vacating a judgment of conviction under s. 971.41 (6) (b).

21 2. “Probationer” includes a person subject to a conditional discharge order or
22 on probation under s. 971.41 if so determined by the department under s. 971.41
23 (10m).

24 **SECTION 13.** 808.075 (4) (g) 3. of the statutes is amended to read:

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

History: Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1989 a. 86; 1993 a. 16, 446, 479, 481; 1995 a. 38, 73, 77, 275; 1997 a. 35, 191, 292, 296, 334; 1999 a. 9; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16.

3 **INSERT 3/23** ✓

4 Upon receipt of the assessment report, the court shall, with the consent of the
5 accused,

6 **INSERT 3/24** ✓

7 the assessment report indicates that the person is not amenable to treatment
8 or

9 **INSERT 5/7** ✓

10 The court may then enter a conditional discharge order under s. 971.41 (2)
11 with respect to the person if he or she meets the requirements under sub. (2) (b) 2.
12 a. to d. and is not a violent offender. Otherwise, the court shall sentence the person.

13 Sentencing

14 **INSERT 5/9** ✓

15 if the person is not a violent offender

16 **INSERT 5/23** ✓

17 (e) "Violent offender" means a person to whom one of the following applies:

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

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

INSERT 7/6 ✓

SECTION 14. 971.41 (2) (c) of the statutes is created to read:

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

INSERT 7/13 ✓

Unless the order is revoked, the person shall remain subject to the conditional discharge order until at least ~~60~~ months after the court determines that the person has successfully completed his or her substance abuse treatment.

INSERT 7/17 ✓

Not If the person violates a condition of a conditional discharge order, the person's probation agent or probation supervisor selected under sub. (10), whichever is applicable, shall notify the court.

(am)

INSERT 7/20 ✓

For violations of terms or conditions of a conditional discharge order that are related to the person's substance abuse treatment or the person's use of alcohol or other drugs, any sanctions that the court imposes

INSERT 8/2 ✓

or if the court makes all of the findings listed in sub. (2) (b) 2. a. to d. but does not enter a conditional discharge order

INSERT 8/6 ✓

Not Notwithstanding s. 973.09 (2), unless the order is revoked under par. (c) or (e), the person shall remain subject to probation until the court determines that the person has successfully completed his or her substance abuse treatment and for at

1 least ~~6~~⁶ months thereafter. The court shall monitor the person's compliance with the
2 court's order and may modify its order at any time.

3 INSERT 8/16 ✓

4 For violations of conditions of probation that are imposed under this subsection
5 and that are related to the person's substance abuse treatment or the person's use
6 of alcohol or other drugs, any sanctions that the court imposes shall be

7 INSERT 8/24 ✓

8 or the person's use of alcohol or other drugs

9 INSERT 9/1 ✓

10 violating a condition of probation that is related to the person's substance abuse
11 treatment or the person's use of alcohol or other drugs

12 INSERT 9/4 ✓

13 of probation that is related to the person's substance abuse treatment or the
14 person's use of alcohol or other drugs

15 INSERT 10/2

16 or is placed on probation under sub. (6)

17 INSERT 10/9 ✓

18 or the person's use of alcohol or other drugs

19 INSERT 10/12 ✓

20 condition of probation that is related to the person's substance abuse treatment
21 or the person's use of alcohol or other drugs

22 INSERT 10/15 ✓

23 (6) in a case commenced in a court other than the court for the person's county
24 of residence

25 INSERT 11/11 ✓

No 9

1 unless the department takes physical custody of the person or the court imposes
2 incarceration as a sanction for a violation of probation

3 **INSERT 11/13** ✓

No 11

4 Any person who is supervised by the contractor and who is subject to a
5 conditional discharge order or on probation under this section shall be subject to any
6 rules or conditions established by the department that apply to all persons who
7 reside in other counties and who are subject to a conditional discharge order or on
8 probation under this section. The contractor shall have the same rights regarding
9 access to information about individuals whom it supervises, including under ss.
10 48.78 (2) (d) 4. and 938.78 (2) (d) 4., and be subject to the same restrictions regarding
11 use and redisclosure of that information as the department. The contract shall
12 require the contractor to notify a designated probation supervisor of a violation of a
13 condition of conditional discharge or probation.

14 **INSERT 11/16**

15 (10g) RULES REGARDING FEES. The department shall promulgate rules
16 specifying whether and under what circumstances persons subject to a conditional
17 discharge order under sub. (3) or placed on probation under sub. (6) may be subject
18 to supervision or charged a fee under s. 301.08 (1) (c) or shall be charged a fee under
19 s. 304.074. The department shall base its decision on the cost of assessing and
20 collecting the fee, the amount that it anticipates collecting if a fee is imposed, the cost
21 of supervising such persons, the resources that are otherwise available to the
22 department to pay for those costs, and the ^{fe}ffect that imposing the fee is likely to
23 have on the success of the program established under this section.

24 (10s) INELIGIBILITY OF VIOLENT OFFENDERS. This section does not apply to a
25 violent offender.

7

INSERT 12/10

SECTION 15. 973.09 (4) (a) of the statutes is amended to read:

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

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

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

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

History: 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989
a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289; 1999 a. 9, 58, 69, 186; 2001 a. 16, 104, 109; 2003 a. 33.

3 **SECTION 16.** 973.09 (4) (b) of the statutes is amended to read:

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

History: 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989
a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289; 1999 a. 9, 58, 69, 186; 2001 a. 16, 104, 109; 2003 a. 33.

9 **INSERT 12/7** *12/7 Continue*

10 **SECTION 17.** 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.

History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283.

17 **INSERT 12/20**

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

20 973.10 (2) (a) If a probationer violates the conditions of probation, other than
21 probation imposed under s. 971.41 (6), the department of corrections may initiate a
22 proceeding before the division of hearings and appeals in the department of
23 administration. Unless waived by the probationer, a hearing examiner for the

1 division shall conduct an administrative hearing and enter an order either revoking
2 or not revoking probation. Upon request of either party, the administrator of the
3 division shall review the order. If the probationer waives the final administrative
4 hearing, the secretary of corrections shall enter an order either revoking or not
5 revoking probation. ~~If probation is revoked, the department shall:~~

History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283.

SECTION 19. 973.10 (2) (a) of the statutes is renumbered 973.10 (2b) (1) a.

****NOTE: Should the new stat. number be "(2b)(b) 1.,"?*

History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283.

SECTION 20. 973.10 (2) (b) of the statutes is renumbered 973.10 (2b) (c) 2. b.

****NOTE: Should the new stat. number be "(2b)(b) 2.,"?*

History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283.

SECTION 21. 973.10 (2) (bm) of the statutes is created to read:

9 973.10 (2) (bm) If the violation of probation relates to the probationer's use of
10 alcohol or other drugs, the reviewing authority determines that the probationer can
11 receive a prompt substance abuse assessment, if necessary, and prompt and
12 appropriate substance abuse treatment under s. 51.49 (1) from the county
13 department of community programs for the probationer's county of residence, and
14 subd. 3. does not apply, the reviewing authority may, in lieu of revoking probation,
15 order the probationer to submit to the assessment or participate in treatment or both
16 as a condition of probation.

SECTION 22. 973.10 (2) (c) of the statutes is created to read:

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

stet
2.

✓
par. (c)

(a)

1 SECTION 23. 973.10 (2b) of the statutes is created to read:

2 973.10 (2b) If a person's probation is revoked, the department shall proceed
3 under par. (c) if any of the following applies:

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

7 2. (b) The person is required to participate in a substance abuse treatment
8 program as a condition of probation but the violation does not relate to his or her
9 participation in the program.

10 (c) If par. (a) or (b) applies, the department shall do one of the following:

11 (b) SECTION 24. 973.10 (2e) of the statutes is created to read:

1. ✓

12 973.10 (2e) (a) If a person's probation is revoked but neither sub. (2b) (a) nor
13 sub. (2b) (b) applies, the department shall order that the person be brought before
14 the court. The court shall then do one of the following:

15 1. If the person has not already been sentenced, impose sentence without
16 further stay under s. 973.15.

17 2. If the person has already been sentenced, vacate the stay of the sentence.
18 The term of a sentence under this subdivision shall begin on the date on which the
19 person enters the prison.

20 3. If the violation relates to the person's use of alcohol or other drugs, the court
21 determines that the person can receive a prompt substance abuse assessment, if
22 necessary, and prompt and appropriate substance abuse treatment under s. 51.49 (1)
23 from the county department of community programs for the person's county of
24 residence, and subd. 4. does not apply, vacate the reviewing authority's decision to

1 revoke the person's probation and order the person to submit to the assessment or
2 participate in treatment or both as a condition of probation.

3 4. If the person is required to participate in a substance abuse treatment
4 program as a condition of probation and the violation relates to the person's
5 participation in the program, vacate the reviewing authority's decision to revoke the
6 person's probation and establish, maintain, or modify conditions of probation
7 relating to the person's participation in the program.

8 ~~SECTION 25.~~ **SECTION 25.** 973.15 (2m) (a) 3. of the statutes, as created by 2001 Wisconsin Act

9 109, is amended to read:

10 973.15 (2m) (a) 3. "Period of confinement in prison," with respect to any
11 sentence to the Wisconsin state prisons, means any time during which a person is
12 incarcerated under that sentence, including any extensions imposed under s. 302.11
13 (3), 302.113 (3), or 302.114 (3) and any period of confinement in prison required to
14 be served under s. 302.113 (9) (am), 2001 stats., or s. 302.11 (7) (am), 302.113 (9) (am)
15 (ar) 1., or 302.114 (9) (am).

16 History: 1973 c. 90; 1977 c. 347, 353, 447; 1981 c. 50, 292; 1983 a. 528; 1989 a. 31, 85; 1991 a. 39; 1993 a. 79; 1995 a. 390; 1997 a. 283; 2001 a. 109.

16 **SECTION 26.** 973.15 (2m) (e) of the statutes is amended to read:

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

24 **INSERT 14/12**

text needs to be removed so that (b) is here

No changes here

1 #
 (0) CERTIFICATION REGARDING AVAILABILITY OF FUNDING. Upon making a
 2 determination that [funding is available]
 3 under section ✓
 4 of the statutes, as created by this act, the governor shall provide notice of
 5 making that determination to the revisor of statutes, who shall publish the notice in
 6 the Wisconsin Administrative Register.

1st A

***NOTE: Eds -- I will fix this in the next draft.

7 #
 (1) REQUEST FOR PROPOSALS FOR SUPERVISION OF PERSONS IN ~~1st A~~ CLASS CITIES.
 8 No later than 60 days after the effective date of this subsection, the department of
 9 corrections shall issue a request for proposals to provide probation supervision
 10 services under section 971.41 (10) (a), as created by this act. *of the statutes*

INSERT 14/15 ✓

12 *No 11* prosecutions and proceedings to revoke probation, extended supervision, or
 13 parole that are commenced

INSERT 14/16 ✓

15 *No 11* This act takes effect on the first day of the 5th month beginning after
 16 publication of the notice described in SECTION ~~autoref to first nonstat in this~~

17 *insert* of this act *11*

autoref. ref. "KA"

autoref. ref. "KB"

(1)

Dsida, Michael

From: Roller, Rachel
Sent: Tuesday, March 02, 2004 3:59 PM
To: Dsida, Michael
Subject: RE: TIP

sounds good.

On the first question, let's give the courts to make a determination...

Thanks!

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, March 02, 2004 12:01 PM
To: Roller, Rachel
Subject: RE: TIP

On second thought (re the one other note below), I'm just not going to specify who decides.

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, March 02, 2004 11:19 AM
To: Roller, Rachel
Subject: TIP

I'm sure you're busy, so I'll just email the question I had.

If a person's probation is revoked, the court sentences the person. Can the court sentence the person to regular probation, or does it have to be jail or prison time?

One other note -- Current law gives the sheriff the authority to decide where to confine someone who has Huber privileges if the person is confined as a condition of probation. It probably makes more sense to give the court that discretion for cases under your bill, but in the interest of getting it done more quickly, I'll just leave that decision with the sheriff. If you want to revisit this issue later, you can.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Dsida, Michael

From: Roller, Rachel
Sent: Wednesday, March 03, 2004 9:52 AM
To: Dsida, Michael
Subject: RE: Funding trigger for TIP bill

Yes, this is ok. And you are right in your assumptions. Do you think I can still get the draft in time for the 10AM SCAODA meeting this Friday?

THANK YOU!!!

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, March 02, 2004 2:49 PM
To: Roller, Rachel
Subject: Funding trigger for TIP bill

After thinking about this some more and talking with Jere Bauer about it, I'm not sure this is the best way to go after all. I have already drafted the provisions covering the estimates, but given the number of appropriations that may be affected by this, the complexity of the appropriations scheme, and the amount of time that it will take me to draft this, I think the best thing to do is have the governor, after getting the estimates, submit a bill to the legislature asking for the funding. That means that I can give the changes relating to conditional discharge, probation, and ATRs a specific effective date (such as September 1, 2005) -- which gives the legislature time to figure out how to fund it and gives the counties time to set up their programs. Is that okay?

Also, I assume that when you said "no" for the three questions below, you meant, with respect to the second question, that it's okay for me not to refer to those savings.....right?

-----Original Message-----

From: Dsida, Michael
Sent: Monday, March 01, 2004 9:01 AM
To: Roller, Rachel
Subject: FW: description of funding trigger for TIP bill

Please let me know if this seems ok.

The changes made by the bill regarding alternatives to prosecution and incarceration and regarding grants to counties are contingent upon the state obtaining and providing funding for counties and certain state agencies to facilitate the implementation of those changes. Under the bill, each county must submit an estimate to the Department of Administration (DOA) of the amount of additional money that it would need (for example, for its county department of community programs and its court system) and the amount of money that it would save in incarceration costs if the bill were to take effect. At the same time, DOA must estimate the amount of money that various state agencies (such as DOC, DHFS, the Department of Justice, the State Public Defender, the Director of State Courts, and DOA itself (for district attorneys)) would need and the amount of money that DOC would save in incarceration costs if the bill were to take effect. DOA must then provide those estimates to the governor. In consultation with the attorney general and the secretaries of administration, corrections, and health and family services, the governor must then determine the amount of

03/04/2004

funding that the state and counties would need to implement the bill. The governor must consider counties' and DOA's estimates in making that determination but may disagree with them. The governor must then periodically assess whether the state has adequate resources, for both its own agencies and for providing grants to counties, to implement the bill. If the governor determines that the state has adequate funding, the governor certifies that fact, and the provisions of the bill regarding alternatives to prosecution and incarceration and regarding grants to counties take effect on the first day of the fifth month beginning after that certification.

Are there any agencies besides the county depts, courts, (at the county level), DAs, SPD, director of state courts, DHFS (for monitoring) DOC, (at the state level) that need to be covered?

Over the long term, if this program works, the state and counties will be saving money in places besides incarceration costs. For example, if recidivism rates drop, there should be savings for courts, DAs, PDs... But because there will not be any quick savings in areas other than incarceration (right?), I didn't refer to them in the context of these calculations. Is that ok?

Do you want the governor or DOA to report to the legislature regarding anything relating to this triggering process? For example, the governor may never make the necessary certification. Is there anything the legislature should know after a certain time if that happens?

Dsida, Michael

From: Roller, Rachel
Sent: Friday, January 09, 2004 9:55 AM
To: Dsida, Michael
Subject: RE: TIP

Great! I spoke with Sec. Frank late yesterday and he is very excited about adding discretionary eligibility for parole and probation revocations. Sorry to continue to spread on more work for you! Let me know if I haven't answered any other questions.

I'm still working on the timeline for treatment question (extending the 9 month timeline).

Thanks!

-----Original Message-----

From: Dsida, Michael
Sent: Friday, January 09, 2004 8:54 AM
To: Roller, Rachel
Subject: RE: TIP

not a problem

-----Original Message-----

From: Roller, Rachel
Sent: Thursday, January 08, 2004 4:44 PM
To: Dsida, Michael
Subject: TIP

Hi Mike:

Can we make the following addition to our TIP bill? We're looking for something very general...

...With regard to treatment - I think it makes sense to have DHFS promulgate rules about what specific treatment services should be provided by each county; however, in the actual bill, it might make sense to have some description of what that will mean. Maybe something simply describing a network of different options (so that it's clear that different types must be available - inpatient treatment as needed to address special detoxification or relapse situations or severe dependence, outpatient treatment, drug education and prevention courses, narcotic replacement therapy, etc.), that treatment services meet "best practices" standards and be evaluated, something like that.

Dsida, Michael

From: Roller, Rachel
Sent: Friday, February 20, 2004 4:55 PM
To: Dsida, Michael
Subject: RE: REVISED: Additional questions for Rachel regarding TIP draft

See the answers to your questions below, typed in red:

1) In "discretionary eligibility" cases, the court orders an assessment before entering its conditional discharge order. But the bill does not address the timing of the assessment in automatic eligibility cases. It probably makes sense to have the assessment precede any order, but that will require additional court appearances. In addition, you might then want an exception for out-of-home-county cases, so that the assessment can be done by the county in which the person will be treated. (On the other hand, in discretionary eligibility cases, the assessment is conducted in the county in which the offense occurred. In addition, the order is entered by the court from the offense county. Is that okay?)

Yes, let's have the assessment for automatic eligibility preceding the order and allow for an exception for out-of-home-county cases. The last question is ok by me.

2) Section 961.475 is not used much, as far as I know, but it probably makes sense to amend it (which Robin did in the "/P2") to make it consistent with what the rest of the bill is doing. But do you want to permit a court to subject a person whose treatment is ineffective to a conditional discharge order? Or would you want to start that person at probation, given that the person has already tried a treatment program?

I want the court to have the option to subject a person who has gone through a treatment program to enter into a conditional discharge order.

3) On a related note, one option that we've never discussed but that you may want to consider -- allowing the court to go straight to probation (*i.e.*, bypassing the conditional discharge step) in discretionary eligibility cases. You might prefer to have all cases begin with conditional discharge, but it might be easier to sell if people in discretionary eligibility cases (which may, in some cases, involve more serious offenses) are treated more severely.

Can we give the courts the discretion to either enter into conditional discharge or go straight to probation?

4) I just want to make sure on this: I know you told me that you don't want to cover drunk driving offenses, but I don't remember whether drunken ATV-ing, snowmobiling, or boating should also be treated as "ineligible offenses."

They should be considered ineligible offenses.

5) Are they (graduated sanctions) only required for treatment-related violations of the court's order? Or are they required for all violations?

They are required solely for treatment-related violations of the court order... but could we add language that allows for sanctions regarding violations that were committed due to the offender's dependency? Am I being redundant here?

6) Under the /P2, counties must give priority to persons who are subject to the longest term of incarceration if probation is revoked. I want to revise this to cover people who are subject to a conditional discharge order, but we won't know who would have the longest term of incarceration upon revocation, since there will be no sentence imposed and stayed. Do you just want to compare maximum terms of imprisonment for the charged offense(s)? Another alternative -- give priority to people on probation (since they are closest to jail) or under a conditional discharge order (since the resources will have their greatest impact if they are provided quickly).

I like the priority going to probation and conditional discharge order cases. Once those priorities are met, counties will look at the maximum terms of imprisonment for the charged offense (s).

7) Do you want the following fee requirement to apply to persons participating in the diversion program? If so, does it apply to conditional discharge people? To people in Milwaukee (since DOC will not be supervising them)? If it does apply in Milwaukee, do you want to earmark the fee for the payment of the contractor? (Your answer may require me to amend s. 304.074(4m)(a), but you don't need to look at that section.)

Can we add this section to be developed through DOC administrative rule?

304.074(2)

(2) The department shall charge a fee to probationers, parolees, and persons on extended supervision to partially reimburse the department for the costs of providing supervision and services. The department shall set varying rates for probationers, parolees, or persons on extended supervision based on ability to pay and with the goal of receiving at least \$1 per day, if appropriate, from each probationer, parolee, and person on extended supervision. The department shall not charge a fee while the probationer, parolee, or person on extended supervision is exempt under sub. (3). The department shall collect moneys for the fees charged under this subsection and credit those moneys to the appropriation account under s. 20.410 (1) (gf).

304.074(3)

(3) (intro.) The department may decide not to charge a fee under sub. (2) to any probationer, parolee or person on extended supervision while he or she meets any of the following conditions:

304.074(3)(a)

(a) Is unemployed.

304.074(3)(b)

(b) Is pursuing a full-time course of instruction approved by the department.

304.074(3)(c)

(c) Is undergoing treatment approved by the department and is unable to work.

304.074(3)(d)

(d) Has a statement from a physician certifying to the department that the probationer, parolee or person on extended supervision should be excused from working for medical reasons.

8) Should the contract agency have access to juvenile delinquency records, in the same way that DOC does under s. 48.78(2)(d)4. and 938.78(2)(d)4.?

Yes, they should have access to the records, but can they also be bound by confidentiality like DOC?

9) What happens if the contract agency determines that there has been a violation at the end of the term of probation? Does the term get extended, as in s. 304.072(3)? (We may need similar treatment for conditional discharge cases.)

Can't we use the graduated sanction language for the agency as we do for the county probation officers?

10) Is a person who is subject to a conditional discharge order in Milwaukee to be supervised by the contract agency?

Yes

11) Do DOC rules regarding probation apply to a person being supervised by the contract agency?

Yes

Dsida, Michael

From: Roller, Rachel
Sent: Thursday, March 04, 2004 12:52 PM
To: Dsida, Michael
Subject: RE: TIP

Yes, the first question is fine. You'll get the two other answers soon.

-----Original Message-----

From: Dsida, Michael
Sent: Thursday, March 04, 2004 9:33 AM
To: Roller, Rachel
Subject: TIP

Rachel--

Since the bill covers alcohol abuse, I changed the "drug use" to "illegal activity" at page 9, lines 11-12. (The page/line reference is for the "/P3" draft.) Is that okay?

For the next draft (don't bother answering today unless you need to for this version):

1. The bill specifies that probation revocation requires a hearing, but it does not specifically require a hearing before the court revokes a conditional discharge order? Should it? Arguably, a hearing is constitutionally required (although the existing conditional discharge statute does not specifically require a hearing).
2. The bill requires DOC to contract for monitoring in Milwaukee. Should it allow DOC to do so for other counties?

Mike Dsida
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Dsida, Michael

From: Roller, Rachel
Sent: Thursday, February 12, 2004 2:40 PM
To: Dsida, Michael
Subject: RE: Converting s. 961.47 into your drug court program statute

We've finally found some consensus on this mess we have created with our TIP proposal. We've decided to keep moving and if anything introduce legislation with the understanding that it is a "work in progress". With that said, please find below answers to the questions you have posed to me. Please let me know if you have any questions regarding my answers. Also, as our office's intent is to introduce this legislation prior to the end of session, so what is your timeline like?

-----Original Message-----

From: Dsida, Michael
Sent: Sunday, January 11, 2004 2:26 PM
To: Roller, Rachel
Subject: Converting s. 961.47 into your drug court program statute

1. I'm trying to preserve as much of s. 961.47 as possible, but it will be confusing to refer to a pre-conviction order as "probation." (It may not be a problem now because this section is not used frequently.) The current section title refers to "conditional discharge," so I propose referring to the pre-conviction order as a "conditional discharge order." Is that okay?

Go ahead and make the name change...

2. If a person is charged with more than one simple possession offense at the same time, can he or she get into the program by pleading guilty to just one offense? I'll assume that you want to require that all of the charges in a simple possession case first be disposed of in one way or another. Otherwise, you will have to specify what happens to the other offense(s) while the person is in treatment. More importantly, DAs will object to having proceedings with respect to the other charges suspended because of the difficulty in proving the case later. They will also want to maximize their leverage over the person by having as many guilty/no contest pleas or findings of guilt as possible.

We want to ensure that DAs have all avenues open to them when prosecuting multiple offense cases. With that in mind, all offenses must be dealt with prior to the offender being admitted into the TIP.

3. Because the bill will now cover alcohol abuse, is it okay if I change the criteria for probation revocation (your ninth bullet point under "SUSPENDED PROSECUTION AND PROBATION" in your October (or September?) summary to "there is no reasonable likelihood that the person will successfully complete his or her substance abuse treatment program"?)

We're comfortable with this change.

4. In the /P2 draft, the probation officer notifies the court directly of a probation violation. It probably makes more sense to have the PO notify the DA and let the DA bring the case back into court (after providing notice to the defendant's attorney). What do you think?

I agree with your observation. Make the change.

5. One concern that I have is how to distinguish a violation that is related to treatment to one that is not (which is relevant for the purpose of determining when revocation can occur). I suspect that some providers will require people to work, care for their children, not get arrested... as part of a treatment plan. I was thinking that unrelated requirements are those that are imposed by a court (regardless of whether the treatment provider imposes them as well). But I imagine that courts will impose detailed treatment requirements from time to time. ("The defendant shall submit to urinalysis at least X times per week.") Here's a thought -- just limit the quicker revocations to those for violating "conditions that are imposed by the court and that are unrelated to the person's substance abuse treatment." But no matter what, you may end up with a lot of litigation over what is "related to" substance abuse treatment. Any thoughts?

I recommend adding your solution for now (conditions that are imposed by the court and that are unrelated to the person's substance abuse treatment). I'll have a better sense of how large the "related to" litigation will be once I forward this bill to judges and DAs. They may have a better solution as well.

6. Do you want to require a hearing before the court incarcerates someone as a sanction? One option might be to require the defendant to waive the right to a hearing if he or she wants to stay in the program. If the defendant wants to contest anything, he or she can do so, but only if he or she is willing to run the risk of revocation. But that seems pretty coercive. (As an aside, s. 302.113 (8m) (b) appears to permit incarceration to be imposed without a hearing as a sanction for a violation of extended supervision -- in lieu of revocation -- based on a defendant's admitting to the violation.)

I'm a little confused by this question because I thought a hearing would be necessary, as the offenders status would need to be changed, or was it that the conviction would need to be entered?? I'd recommend requiring the court hearing prior to using incarceration as a sanction.

7. What do you think about having the bill require that, if a court is placing someone on probation, it withhold the sentence (as opposed to sentencing the person and staying the execution of the sentence)? That makes the bill simpler (because of cases in which a person enters the program outside of his or her county of residence), but it may be that judges want the power to impose and stay the sentence.

I like the idea of withholding the sentence. Make that change and we'll see what the judges say.

8. The previous draft of your bill applied only to Wisconsin residents, but current s. 961.47 applies to residents and non-residents alike. Converting that section into your drug court program statute (if you keep the residency requirement) will mean that non-residents are no longer eligible for conditional discharge. Is that okay? I assume that it is, given that the s. 961.47 currently applies only to a limited number of drugs and is subject to the judge's discretion.

Yes, it is ok to change the conditional discharge language so that non-WI residents are not included.

At this point, I'm not sure that I will be able to get this done by Wednesday. There may be too many issues outstanding (including the one left over from last week regarding the duration of the program). But I'll do what I can.

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