



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2444/P4
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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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, providing an

violations of extended
supervision, parole, or probation
related to the use of drugs or
alcohol or other drugs or to
substance abuse treatments

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

Analysis by the Legislative Reference Bureau

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A  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:

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

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

13 SECTION 2. 46.03 (18) (fm) of the statutes is repealed.

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

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

1 **(1m) COUNTY RESPONSIBILITY.** (a) The county department of community
2 programs shall provide substance abuse assessments that are ordered by the circuit
3 court under s. 302.113 (9) (ar) 2., 971.41 (2), or 973.10 (2e) (a) 3. or by the reviewing
4 authority under s. 302.113 (9) (am) 2., 304.06 (3b) (b), or 973.10 (2) (bm). The
5 assessments shall comply with standards established by the department of health
6 and family services under sub. (2). The assessor shall report the results of each
7 assessment to the court or the reviewing authority.

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

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

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

22 (a) The services that county departments of community programs must make
23 available to persons under s. 302.113 (9) (am) 2. or 3. or (ar) 2. or 3., 304.06 (3b) (b)
24 or (c), 971.41 (2), (3), or (6), or 973.10 (2) (bm) or (c) or (2e) (a) 3. or 4. The rules shall
25 require that the services include, at the least, treatment for substance abuse,

1 education concerning the effects of substance abuse, tests to determine if a person
2 has used alcohol or other drugs, and employment support.

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

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

5 (d) Qualifications ~~for~~^{of} providers of the services required under par. (a) and for
6 the providers of assessments ordered under s. 961.41 (2).

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

8 301.08 (1) (c) 1. In this paragraph, “probationer” includes a person subject to
9 a conditional discharge order or on probation under s. 971.41 if so determined by the
10 department under s. 971.41 (10m).

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

13 302.113 (7) Any inmate released to extended supervision under this section is
14 subject to all conditions and rules of extended supervision until the expiration of the
15 term of extended supervision portion of the bifurcated sentence. The department
16 may set conditions of extended supervision in addition to any conditions of extended
17 supervision required under s. 302.116, if applicable, or set by the court under sub.
18 (7m) or (9) (am) 2. or 3. or s. 973.01 (5) if the conditions set by the department do not
19 conflict with the court’s conditions. The reviewing authority, as defined in sub. (9)
20 (ag), may set or modify conditions under sub. (9) (am) 2. or 3.

21 **SECTION 6.** 302.113 (9) (am) of the statutes, as affected by 2001 Wisconsin Act
22 109, is renumbered 302.113 (9) (am) (intro.) and amended to read:

23 302.113 (9) (am) (intro.) If a person released to extended supervision under this
24 section violates a condition of extended supervision, the reviewing authority may
25 revoke do one of the following:

1 1. Revoke the extended supervision of the person.

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

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

17 302.113 (9) (am) 2. If the violation relates to the person's use of alcohol or other
18 drugs and subd. 3. does not apply, order the person to submit to a substance abuse
19 assessment or substance abuse treatment or both under s. 51.49 in the person's
20 county of residence as a condition of extended supervision.

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

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

1 conditions of extended supervision relating to the person's participation in the
2 program.

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

4 302.113 (9) (ar) If a person is returned to court under par. (ap) after revocation
5 of extended supervision, the court shall do one of the following:

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

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

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

22 **SECTION 10.** 302.113 (9) (at) of the statutes, as created by 2001 Wisconsin Act
23 109, is repealed.

24 **SECTION 11.** 302.113 (9) (b) of the statutes, as affected by 2001 Wisconsin Act
25 109, is amended to read:

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

9 **SECTION 12.** 302.113 (9) (c) of the statutes, as affected by 2001 Wisconsin Act
10 109, is amended to read:

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

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

21 304.06 (3b) (a) In this subsection, “reviewing authority” means the division of
22 hearings and appeals in the department of administration or, if the parolee waives
23 the final administrative hearing, the secretary of corrections.

24 (b) If a parolee violates a condition of parole, the violation relates to the
25 parolee’s use of alcohol or other drugs, and par. (c) does not apply, the reviewing

1 authority may, in lieu of revoking parole, order the parolee to submit to a substance
2 abuse assessment or substance abuse treatment or both under s. 51.49 in the
3 person's county of residence as a condition of parole.

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

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

12 304.074 (1d) In this section:

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

16 2. "Probationer" includes a person subject to a conditional discharge order or
17 on probation under s. 971.41 if so determined by the department under s. 971.41
18 (10m).

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

20 808.075 (4) (g) 3. Imposition of sentence upon revocation of probation under s.
21 973.10 ~~(2) (2b) (c) 1. or (2e) (a) 1.~~

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

24 **971.41 (title) ~~Conditional discharge for possession or attempted~~**
25 **~~possession as first offense~~ Alternatives to incarceration for drug offenders.**

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

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

19 ^{INS}
^{9/18} (4) COMPLIANCE WITH CONDITIONAL DISCHARGE ORDER. Upon fulfillment of the
20 terms and conditions of a conditional discharge order entered under sub. (2), the
21 court shall discharge the person and dismiss the proceedings against him or her.
22 Discharge and dismissal under this section shall be without adjudication of guilt and
23 is not a conviction for purposes of prohibitions, disqualifications or, disabilities,
24 increased penalties, or other adverse or unfavorable treatment imposed by law upon
25 conviction of a crime, including the additional penalties imposed for 2nd or

1 subsequent convictions under s. 961.48. ~~There may be only one discharge and~~
2 ~~dismissal under this section with respect to any person.~~

3 SECTION 18. 961.47 (2) of the statutes is renumbered 971.41 (2) (c) and
4 amended to read:

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

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

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

14 **961.475 Treatment option.** Whenever any person pleads guilty to or is found
15 guilty of possession or attempted possession of a controlled substance or controlled
16 substance analog under s. 961.41 (3g), the court may, upon request of the person and
17 with the consent of a treatment facility with special inpatient or outpatient programs
18 for the treatment of drug dependent persons, allow the person to enter the treatment
19 programs voluntarily for purposes of treatment and rehabilitation. Treatment shall
20 be for the period the treatment facility feels is necessary and required, but shall not
21 exceed the maximum sentence allowable unless the person consents to the continued
22 treatment. At the end of the necessary and required treatment, with the consent of
23 the court, the person may be released from sentence. If treatment efforts are
24 ineffective or the person ceases to cooperate with treatment rehabilitation efforts,
25 the person may be remanded to the court ~~for completion of sentencing.~~ The court may

1 then enter a conditional discharge order under s. 971.41 (2) with respect to the person
2 if he or she meets the requirements under sub. (2) (b) 2. a. to d. and is not a violent
3 offender. Otherwise, the court shall sentence the person. Sentencing may include
4 placing the person on probation under s. 971.41 (6) if the person is not a violent
5 offender. This section does not apply if the court is required to enter a conditional
6 discharge order under s. 971.41 (2).

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

8 971.41 (1) DEFINITIONS.

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

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

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

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

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

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

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

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

4 **SECTION 22.** 971.41 (2) (title) and (a) 1. to 3. of the statutes are created to read:
5 971.41 (2) (title) CONDITIONAL DISCHARGE.

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

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

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

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

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

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

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1 the court shall enter a conditional discharge order or enter a judgment of conviction
2 and place the person on probation under sub. (6):

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

4 b. Neither the victim of the offense nor the public will be harmed by the entry
5 of a conditional discharge order ^{or by placing} ^{the person on probation}

6 c. Entering a conditional discharge order ^{or placing} in the best interests of the public.

7 d. Entering a conditional discharge order will not unduly depreciate the
8 seriousness of the offense.

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

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

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

14 971.41 (3) REQUIREMENTS OF ORDER; MONITORING COMPLIANCE. A court that
15 enters a conditional discharge order under sub. (2) shall require, as condition of its
16 order, that the person participate in specified substance abuse treatment and
17 rehabilitation services that are included in the plan of services developed by the
18 county department of community programs under s. 51.49 (1). Unless the order is
19 revoked, the person shall remain subject to the conditional discharge order until ^{at}

20 least 6 months after the court determines that the person has successfully completed
21 his or her substance abuse treatment. ^{and for at least 6 months thereafter} The court shall monitor the person's
22 compliance with the court's order ^{and} may modify its order at any time. ^{Subject to sub. (5) (b), the court}

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

24 971.41 (5) VIOLATION OF CONDITIONAL DISCHARGE ORDER; GRADUATED SANCTIONS;
25 REVOCATION. (a) If the person violates a condition of a conditional discharge order,

and, except as provided in
sub. (10), the department

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13/22

1 the person's probation agent or probation supervisor selected under sub. (10),
2 whichever is applicable, shall notify the court.

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

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

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

15 971.41 (6) PROBATION. (a) If a court revokes a conditional discharge order under
16 sub. (5) (b) or if the court makes all of the findings listed in sub. (2) (b) 2. a. to d. but
17 does not enter a conditional discharge order, the court shall enter the judgment of
18 conviction but withhold sentence and place the person on probation. The court shall
19 require, as a condition of probation, that the person participate in specified
20 substance abuse treatment program and rehabilitative services that are included in
21 the plan of services developed by the county department of community programs
22 under s. 51.49 (1). Notwithstanding s. 973.09 (2), unless the order is revoked under
23 par. (c) or (e), the person shall remain subject to probation until the court determines
24 that the person has successfully completed his or her substance abuse treatment and

*and, except as provided
in sub. (10), the department*

1 for at least 6 months thereafter. The court shall monitor the person's compliance
2 with the court's order and may modify its order at any time. *Subject to
par. (d), the court*

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

11 (bm) If the person violates a condition of probation imposed under this
12 subsection, the person's probation agent or ^{the} probation supervisor ~~selected~~ under sub.
13 (10), whichever is applicable, shall notify the court.

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

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

24 (e) The court may revoke a person's probation imposed under this subsection
25 for violating a condition of probation that is related to the person's substance abuse

1 treatment or the person's use of alcohol or other drugs only if, after providing the
2 person an opportunity for a hearing, the court finds all of the following:

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

5 2. That one of the following applies:

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

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

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

12 (f) If the court revokes a person's probation under par. (c) or (e), the court shall
13 sentence the person. *A sentence under this paragraph may be*

14 *a sentence of probation under s. 973.09.* ✓

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

16 971.41 (7) EXPUNGEMENT. (a) A person whose case is dismissed under sub. (4)
17 or whose conviction is vacated under sub. (6) (b) may petition the court to expunge
18 the record of the case. The court may expunge the record if the court determines that
19 the person will benefit and society will not be harmed by the expungement. ✓

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

25 (8) OFFENSES COMMITTED OUTSIDE OF A PERSON'S COUNTY OF RESIDENCE. (a) If a
person becomes subject to a conditional discharge order in a county other than his

1 or her county of residence, the court that enters the order shall transfer the case to
2 the court for the person's county of residence, which shall monitor the person's
3 compliance with the order under sub. (3). If the court for the person's county of
4 residence determines that the person has successfully complied with the order, the
5 court shall discharge the person and dismiss the proceedings under sub. (4). If the
6 court for the person's county of residence revokes the order for a violation unrelated
7 to the person's substance abuse treatment or the person's use of alcohol or other
8 drugs, the court may transfer the case to the court that entered the order, which shall
9 enter the judgment of conviction and sentence the person. If the court for the person's
10 county of residence revokes the order based on the person violating a condition of
11 probation that is related to the person's substance abuse treatment or the person's
12 use of alcohol or other drugs, the court for the person's county of residence shall
13 proceed under sub. (5) (b).

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

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

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

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

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

22 **(10g) RULES REGARDING FEES.** The department shall promulgate rules
23 specifying whether and under what circumstances persons subject to a conditional
24 discharge order under sub. (3) or placed on probation under sub. (6) may be subject
25 to supervision or charged a fee under s. 301.08 (1) (c) or shall be charged a fee under

1 s. 304.074. The department shall base its decision on the cost of assessing and
2 collecting the fee, the amount that it anticipates collecting if a fee is imposed, the cost
3 of supervising such persons, the resources that are otherwise available to the
4 department to pay for those costs, and the effect that imposing the fee is likely to have
5 on the success of the program established under this section.

6 (10s) INELIGIBILITY OF VIOLENT OFFENDERS. This section does not apply to a
7 violent offender.

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

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

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

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

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

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

1 973.09 (4) (a) The court may also require as a condition of probation that the
2 probationer be confined during such period of the term of probation as the court
3 prescribes, but not to exceed one year. This paragraph does not apply to a person
4 placed on probation under s. 971.41 (6).

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

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

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

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

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

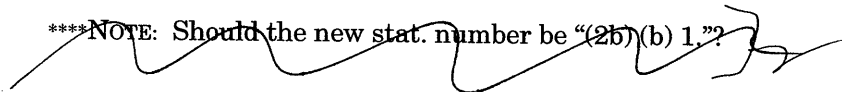
7 973.10 (1) Imposition of probation shall have the effect of placing the defendant
8 in the custody of the department and shall subject the defendant to the control of the
9 department under conditions set by the court or, under sub. (2), by the department
10 or the division of hearings and appeals in the department of administration and
11 under rules and regulations established by the department for the supervision of
12 probationers, parolees and persons on extended supervision.

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

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

24 **SECTION 33.** 973.10 (2) (a) of the statutes is renumbered 973.10 (2b) (a). ^{(c) 2. a.}

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



a
b
1.

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

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

b

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

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

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

12 973.10 (2) (c) If the probationer is required to participate in an approved
13 substance abuse treatment program as a condition of probation and he or she violates
14 a condition of probation that relates to his or her participation in the program, the
15 division of hearings and appeals in the department of administration or, if the
16 probationer waives the final administrative hearing, the secretary of corrections
17 may, in lieu of revoking probation, establish, maintain, or modify conditions of
18 probation relating to the person's participation in the program.

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

20 973.10 (2b) (a) If a person's probation is revoked, the department shall proceed
21 under par. (c) if ^{all} any of the following applies:

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

***NOTE: I need to add "assessment" to ~~add this and~~
~~process the~~ this subdivision and similar provisions elsewhere in the bill.

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

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

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

6 973.10 (2e) (a) If a person's probation is revoked but ~~neither~~ sub. (2b) (a) 1. ~~or~~
7 ~~sub. (2b) (a) 2.~~ applies, the department shall order that the person be brought before
8 the court. The court shall then do one of the following:

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

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

14 3. If the violation relates to the person's use of alcohol or other drugs, the court
15 determines that the person can receive a prompt substance abuse assessment, if
16 necessary, and prompt and appropriate substance abuse treatment under s. 51.49 (1)
17 from the county department of community programs for the person's county of
18 residence, and subd. 4. does not apply, vacate the reviewing authority's decision to
19 revoke the person's probation and order the person to submit to the assessment or
20 participate in treatment or both as a condition of probation.

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

****NOTE: ~~2ev needs a par. (b), or the first text needs to be renumbered since~~ ^{This will need} there is ~~(b)~~ _{no par.}

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

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

9 SECTION 40. 973.15 (2m) (e) of the statutes ^{as created by 2001 Wisconsin Act 109} is amended to read:

10 973.15 (2m) (e) *Revocation in multiple sentence cases.* If a person is serving
11 concurrent determinate sentences and extended supervision is revoked in each case,
12 or if a person is serving a determinate sentence concurrent with an indeterminate
13 sentence and both extended supervision and parole are revoked, the person shall
14 concurrently serve any periods of confinement in prison required under those
15 sentences under s. 302.113 (9) (am), 2001 stats., or s. 302.11 (7) (am), 302.113 (9) (am)
16 (ar) 1., or 302.114 (9) (am).

17 SECTION 41. Nonstatutory provisions.

October 15, 2004

18 (1) (a) By ~~the first day of the 10th month beginning after the effective date of~~
19 ~~this subsection,~~ each county department of community programs shall submit a plan
20 of services to the department of health and family services specifying who shall
21 provide the assessments and services required under section 51.49 of the statutes,
22 as created by this act, and describing how and where they shall be provided.

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

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

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

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

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

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

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

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

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

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

22 (2) 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.

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↑

1 (3) 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 ~~(4) CERTIFICATION REGARDING AVAILABILITY OF FUNDING. Upon making a~~
 12 ~~determination that [funding is available]~~
 13 ~~under section~~
 14 ~~of the statutes, as created by this act, the governor shall provide notice of~~
 15 ~~making that determination to the revisor of statutes, who shall publish the notice in~~
 16 ~~the Wisconsin Administrative Register.~~

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

17 (5) REQUEST FOR PROPOSALS FOR SUPERVISION OF PERSONS IN 1ST CLASS CITIES. ~~By~~
 18 ~~later than 60 days after the effective date of this subsection,~~ the department of
 19 ~~By November 1, 2004~~ corrections shall issue a request for proposals to provide probation supervision
 20 services under section 971.41 (10) (a) of the statutes, as created by this act.

21 **SECTION 42. Initial applicability.**

This act

22 (1) ~~The treatment of sections 961.472, 961.475, and 973.105 of the statutes~~ first
 23 applies to prosecutions and proceedings to revoke probation, extended supervision,
 24 or parole that are commenced on the effective date of this subsection.

1/15
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1

analysis INSERT A

This bill permits, and in some cases requires, a non-violent 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 non-narcotic 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 non-narcotic 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 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 of 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 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.

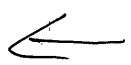
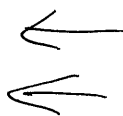
6. *Miscellaneous provisions.* The bill also: a) requires DOC to contract for the supervision of persons who reside in a first class city and who are subject to a conditional discharge or probation order; b) specifies that the provisions relating to conditional discharge and probation do not apply if a person is given the opportunity to participate in certain county drug court programs in existence when the bill takes effect; and c) 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.



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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 ~~of community programs~~ 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 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

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 transmit those estimates and a similar estimate for state agencies 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 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 need not rely on them.) The governor must then submit a proposal for funding the implementation of the bill as part of the 2005-07 biennial budget.

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.

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

1

INSERT 9/18

***NOTE: I need to clarify that the court is not required to order an assessment under this paragraph if par. (a) 1. to 3. apply.

2

INSERT 12/21

no 9

This subdivision does not apply if the court is required to enter a conditional discharge order under par. (a) or if an assessment conducted under par. (a) indicates that the person is not amenable to treatment.

INSERT 13/22

no 9

If the person violates the conditional discharge order, the department or a contractor under sub. (10), whichever is applicable, shall notify the court.

INSERT 26/20

#

~~(c) PROVISION OF STATE AND COUNTY FUNDING~~ (a) By November 15, 2004, each county shall submit an estimate, and documentation supporting the estimate, to the department of administration of the costs that it will incur and the money that it will save in implementing this act during the 3¹/₂ year period beginning on September 1, 2005. The county shall also include a detailed estimate of the amount of money that it anticipates receiving from federal, state, local, and private sources, other than money that may be provided through the funding proposal under paragraph (d), to pay for the costs of implementing this act.

NO
ON
STATES

(b) By December 1, 2004, the department of administration shall submit to the governor the estimates and supporting documentation that it receives under paragraph (a) and an estimate, and documentation supporting the estimate, of the costs that the state will incur, other than through the funding proposal under paragraph (b), and the money that the state will save in implementing this act during the 3¹/₂ year period beginning on September 1, 2005.

(c) In consultation with the attorney general and the secretaries of administration, corrections, and health and family services, the governor shall determine the amount of funding for state and county agencies that is needed to

1 **implement this act. The governor must consider counties' and DOA's estimates in**
2 **making this determination.**

3 **(d) The governor shall submit a proposal for funding the implementation of this**
4 **act as part of the 2005-07 biennial budget.** *bill*

Dsida, Michael

From: Roller, Rachel
Sent: Tuesday, March 09, 2004 1:01 PM
To: Dsida, Michael
Subject: RE: funding trigger

Why not make it more general (assessment of available resources, including looking at fed. funding)

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

From: Dsida, Michael
Sent: Tuesday, March 09, 2004 12:10 PM
To: Roller, Rachel
Subject: funding trigger

We had originally talked about the governor assessing whether the state has adequate resources to implement the program. Do you want to keep that more general term or stick with what we talked about yesterday -- federal funding? (If you want, I can specify that assessment of available "resources" includes looking at federal funding.)

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

Dsida, Michael

From: Roller, Rachel
Sent: Monday, March 08, 2004 4:46 PM
To: Dsida, Michael
Subject: RE: description of funding trigger for TIP bill

Sounds good (upon the set dollar amount estimated by DOA).

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

From: Dsida, Michael
Sent: Monday, March 08, 2004 4:36 PM
To: Roller, Rachel
Subject: RE: description of funding trigger for TIP bill

another option would be to make it contingent upon the state getting \$X in grants from the feds. maybe you could set the dollar amount at the level determined by DOA

-----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 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?