

1977 Senate Bill 159

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CHAPTER 353, Laws of 1977

AN ACT to amend 53.11 (2a) and (7) (a), 53.43, 56.18 (4), 57.06 (1) (a), 227.026 (1) (a), 971.17 (4), 972.13 (3) and 975.12 (1); to repeal and recreate 57.072 and 973.15; and to create 973.155 of the statutes, relating to the computation of criminal sentences and granting rule-making authority.

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

SECTION 1. 53.11 (2a) and (7) (a) of the statutes are amended to read:

53.11 (2a) A parolee ~~earns~~, other than a parolee eligible for release under sub. (7) (a), is eligible to earn good time at the rate prescribed in this section and in s. 53.12 (1). The department may upon proper notice and hearing forfeit all or part of the good time previously earned under this chapter, for violation of the conditions of parole, whether or not the parole is revoked for such misconduct.

(7) (a) An inmate or parolee having served the term for which he or she has been sentenced for a crime committed after May 27, 1951, less good time earned under this chapter and not forfeited as ~~herein provided in this section~~, shall be released on parole or continued on parole, subject to all provisions of law and department regulations relating to paroled prisoners, until the expiration of the maximum term for which he or she was sentenced without deduction of such good time, or until discharged from parole by the department, whichever is sooner. An inmate or parolee shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4).

SECTION 2. 53.43 of the statutes is amended to read:

53.43 Good time. Every inmate of a county jail is ~~entitled to a diminution of his sentence~~ eligible to earn good time in the amount of one-fourth of his or her term for good behavior if sentenced to at least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects or refuses to perform any duty lawfully required of him or her, may be deprived by the sheriff of ~~such~~ good time under this section, except that the sheriff shall not deprive ~~him~~ the inmate of more than 2 days good time for any one offense without the approval of the court.

SECTION 3. 56.18 (4) of the statutes is amended to read:

56.18 (4) Whenever it appears that any person convicted of a felony and committed to the house of correction and whose continued presence is detrimental to ~~himself~~ the person

or other inmates or to the discipline of such house the superintendent may ~~forthwith~~ immediately return him the person to the committing court and the court shall sentence ~~said the~~ the person to the state prison for the remainder of the term for which originally sentenced, less any credits for good behavior accumulated under s. 56.19. The person shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4).

SECTION 4. 57.06 (1) (a) of the statutes is amended to read:

57.06 (1) (a) The department may parole an inmate of the Wisconsin state prisons or any felon or any person serving at least one year or more in the Milwaukee county house of correction or a county reforestation camp organized under s. 56.07, when he or she has served one-half of the minimum term prescribed by statute for the offense, or when he or she has served 20 years of a life term, less the deduction earned for good conduct as provided in s. 53.11. The person serving the life term shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). The department shall not provide any convicted offender or other person sentenced to its custody any parole eligibility or evaluation until the person has been confined at least 60 days following sentencing. Parole eligibility shall be computed according to this paragraph for all persons incarcerated on or after June 29, 1974, except that parole eligibility for all persons serving a life term shall be determined under this paragraph. The district attorney and judge who tried the inmate shall be notified in writing at least 10 days before the first application for parole is acted upon and if they so request be given like notice of each subsequent application.

SECTION 5. 57.072 of the statutes is repealed and recreated to read:

57.072 Period of probation or parole tolled. (1) The period of probation or parole ceases running upon the date the offender absconds, commits a crime or otherwise violates the terms of his or her probation or parole which is sufficient, as determined by the department, to warrant revocation of probation or parole. If the probationer or parolee is reinstated rather than revoked, the period between the alleged violation and the reinstatement shall be treated as service of the probationary or parole period, unless the reinstatement order concludes that the probationer or parolee did in fact violate the terms of his or her probation or parole, in which case the reinstatement order shall credit days spent in a jail, correctional institution or other detention facility as service of the probationary or parole period.

(2) The sentence of a revoked parolee resumes running on the day a final revocation order is entered by the department, subject to sentence credit for the period of custody in a jail, correctional institution or any other detention facility pending revocation according to the terms of s. 973.155.

(3) The sentence of a revoked probationer shall be credited with the period of custody in a jail, correctional institution or any other detention facility pending revocation and commencement of sentence according to the terms of s. 973.155.

SECTION 5m. 227.026 (1) (a) of the statutes, as affected by chapter 84, laws of 1977, is amended to read:

227.026 (1) (a) The statute pursuant to which the rule was ~~created~~ adopted, amended or repealed provides for an effective date subsequent to legislative review of the proposed action or otherwise prescribes a different effective date; or

SECTION 6. 971.17 (4) of the statutes is amended to read:

971.17 (4) When the maximum period for which a defendant could have been imprisoned if convicted of the offense charged has elapsed, subject to s. 53.11 and the credit provisions of s. 973.155, the court shall order the defendant discharged subject to the right of the department to proceed against the defendant under ch. 51. If the department does not so proceed, the court may order such proceeding.

SECTION 7. 972.13 (3) of the statutes is amended to read:

972.13 (3) A judgment of conviction shall set forth the plea, the verdict or finding, ~~and the adjudication and sentence, and a finding as to the specific number of days for which sentence credit is to be granted under s. 973.155.~~ If the defendant is acquitted, judgment shall be entered accordingly.

SECTION 8. 973.15 of the statutes is repealed and recreated to read:

973.15 Sentence, terms, escapes. (1) All sentences to the Wisconsin state prisons shall be for one year or more. Except as otherwise provided in this section, all sentences commence at noon on the day of sentence, but time which elapses after sentence while the convicted offender is at large on bail shall not be computed as any part of the term of imprisonment.

(2) The court may impose as many sentences as there are convictions and may provide that any such sentence be concurrent or that it shall commence at the expiration of any other sentence. If the convicted offender is then serving a sentence, the present sentence may provide that it shall commence at the expiration of the previous sentence.

(3) Courts may impose sentences to be served in whole or in part concurrently with a sentence being served or to be served in a federal institution or an institution of another state.

(4) When a court orders a sentence to the Wisconsin state prisons to be served in whole or in part concurrently with a sentence being served or to be served in a federal institution or an institution of another state:

(a) The court shall order the department to immediately inform the appropriate authorities in the jurisdiction where the prior sentence is to be served that the convicted offender is presently available to commence or resume serving that sentence; and

(b) The trial and commitment records required under s. 973.08 shall be delivered immediately to the warden or superintendent of the Wisconsin institution designated as the reception center to receive the convicted offender when he or she becomes available to Wisconsin authorities.

(5) A convicted offender who is made available to another jurisdiction under ch. 976 or in any other lawful manner shall be credited with service of his or her Wisconsin sentence or commitment under the terms of s. 973.155 for the duration of custody in the other jurisdiction.

(6) Sections 53.11 and 57.06 are applicable to an inmate serving a sentence to the Wisconsin state prisons but confined in a federal institution or an institution in another state. Section 53.12 applies only during that portion of the sentence served in actual residence in a Wisconsin institution.

(7) If a convicted offender escapes, the time during which he or she is unlawfully at large after escape shall not be computed as service of the sentence.

SECTION 9. 973.155 of the statutes is created to read:

973.155 Sentence credit. (1) (a) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:

1. While the offender is awaiting trial;
2. While the offender is being tried; and
3. While the offender is awaiting imposition of sentence after trial.

(b) The categories in par. (a) include custody of the convicted offender which is in whole or in part the result of a probation or parole hold under s. 57.06 (3) or 973.10 (2) placed upon the person for the same course of conduct as that resulting in the new conviction.

(2) After the imposition of sentence, the court shall make and enter a specific finding of the number of days for which sentence credit is to be granted, which finding shall be included in the judgment of conviction. In the case of revocation of probation or parole, the department shall make such a finding which shall be included in the revocation order.

(3) The credit provided in sub. (1) shall be computed as if the convicted offender had served such time in the institution to which he or she has been sentenced.

(4) The credit provided in sub. (1) shall include good time earned under ss. 53.11, 53.43, 56.07 (3) and 56.19 (3), whichever are applicable. The department may promulgate rules under ch. 227 to provide criteria for the awarding of good time allowed under this subsection. Written notice of any proposed action by the department to adopt, amend or repeal a rule under this subsection after notice, hearing and publication as provided under ss. 227.02 to 227.026, shall be forwarded to the speaker of the assembly and the president of the senate for referral to and review by the appropriate standing committee of each house as determined by the presiding officer of each. For the purpose of reviewing the proposed action on the rule, the standing committee may be convened upon call of its chairperson or of a majority of its members. Each standing committee may, within 40 days from receipt of notice of the proposed action, approve or disapprove the proposed action, but failure of a standing committee to disapprove the proposed action within the review time shall constitute approval thereof. The proposed action shall become effective only upon the approval of both committees. This subsection does not apply to emergency rules adopted under s. 227.027.

(5) If this section has not been applied at sentencing to any person who is in custody or to any person who is on probation or parole, the person may petition the department to be given credit under this section. Upon proper verification of the facts alleged in the petition, this section shall be applied retroactively to the person. If the department is unable to determine whether credit should be given, or otherwise refuses to award retroactive credit, the person may petition the sentencing court for relief. This subsection applies to any person, regardless of the date he or she was sentenced.

SECTION 10. 975.12 (1) of the statutes is amended to read:

975.12 (1) Every person committed to the department under this chapter who has not been discharged as provided ~~herein in this chapter~~ shall be discharged at the expiration of one year or the expiration of the maximum term prescribed by the law for the offense for which he or she was committed subject to sub. (2) and the credit provisions of s. 973.155, whichever period of time is greater, unless the department shall have acted under s. 975.13 to continue him or her subject to its control. For the purpose of this subsection, sentence shall begin at noon of the day of the commitment by the court to the department.
