

1981 Assembly Bill 341

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CHAPTER 50 , Laws of 1981

AN ACT to amend 973.09 (1) (a), 973.10 (2) (a) and 973.15 (2) of the statutes, relating to imposition of consecutive sentences.

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

SECTION 1. 973.09 (1) (a) of the statutes is amended to read:

973.09 (1) (a) Except as provided in par. (b) or if probation is prohibited for a particular offense by statute, if a person is convicted of a crime, the court, by order, may withhold sentence or impose sentence under s. 973.15 and stay its execution, and in either case place the person on probation to the department for a stated period, stating in the order the reasons therefor, and may impose any conditions which appear to be reasonable and appropriate. If the court places the person on probation, the court shall require restitution designed to compensate the victim's pecuniary loss resulting from the crime to the extent possible, unless the court finds there is substantial reason not to order restitution as a condition of probation. If the court does not require restitution to be paid to a victim, the court shall state its reason on the record. A court may require that restitution be paid to an insurer or surety which has paid any claims or benefits to or on behalf of the victim. If the court does require restitution, it shall specify the amount consistent with sub. (1m) and shall notify the department of justice of its decision if the victim may be eligible for

compensation under ch. 949. If the court does require restitution, it shall require the probationer to pay a surcharge equal to 10% of the amount of restitution to the clerk of circuit court or the department of health and social services, as applicable under sub. (1m), for administrative expenses under this section. The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously.

NOTE: A cross-reference to s. 973.15 has been inserted in sub. (1) (a) to clarify that the provisions of that statute govern the imposition of sentence even though the court stays execution of the sentence under this statute.

SECTION 2. 973.10 (2) (a) of the statutes is amended to read:

973.10 (2) (a) If the probationer has not already been sentenced, order the probationer brought before the court for sentence which shall then be imposed without further stay, ~~and the sentence may be concurrent with or consecutive to any sentence imposed subsequent to the imposition of the original probation under s. 973.15; or~~

NOTE: Subsection (2) (a) has been amended to clarify that, upon revocation of probation of an offender from whom sentence was originally withheld, the court must impose sentence in accordance with s. 973.15. That section now permits the court to order that any sentence be concurrent with or consecutive to any sentence imposed at the same time or previously.

SECTION 3. 973.15 (2) of the statutes is amended to read:

973.15 (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 or is subject to parole revocation proceedings, the present sentence may provide that it shall commence at the expiration of the previous sentence or any sentence resulting from a revocation of parole~~ with or consecutive to any other sentence imposed at the same time or previously.

NOTE: Subsection (2) has been simplified to allow a court, in imposing a criminal sentence, to order that it be concurrent with or consecutive to any other sentence imposed at the same time or previously. The prior statute, although lengthier and more complicated, failed to achieve its apparent purpose of allowing consecutive sentencing in situations involving probation and parole revocations, escapes, etc. See *Drinkwater v. State*, 69 Wis. 2d 663 (1975); *Guyton v. State*, 69 Wis. 2d 663 (1975); *Bruneau v. State*, 77 Wis. 2d 166 (1977); *Smith v. State*, 85 Wis. 2d 650 (1978); and *Donaldson v. State*, 93 Wis. 2d 306 (1980).

This revision allows sentences to be made consecutive to any previously or simultaneously imposed sentence, without regard to whether the offender is "then serving" such sentence, is subject to parole revocation proceedings, or has received a new sentence between the time of an escape and a return to a state facility. The revised statute also governs the sentencing of probationers by virtue of the cross-references in ss. 973.09 (1) (a) and 973.10 (2) (a).

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