

CHAPTER 959.

JUDGMENT AND EXECUTION.

959.01	Conviction; judgment thereon.	959.055	Imprisonment for nonpayment of fines; costs; execution.
959.02	Certificate of conviction.	959.06	Jail sentence.
959.03	Form of certificate of conviction.	959.07	Sentence, terms, escapes.
959.04	Crimes, how stated in certificate.	959.08	Time out.
959.044	Place of imprisonment when none expressed.	959.10	Judgment against corporation.
959.05	Indeterminate sentence, Wisconsin state prisons.	959.11	Collection of judgment against corporation.
959.052	Trial and commitment records; execution.	959.12	Sentence of repeater.
		959.15	Sex crimes.

Cross Reference: For probation, see ch. 57. For judgments in juvenile cases, see 48.34.

959.01 Conviction; judgment thereon. (1) A person may be convicted only upon a verdict of guilty by the jury, a finding of guilty by the court in cases where a jury is waived, or a plea of guilty or nolo contendere.

(2) Upon conviction the court has a duty to pronounce judgment and may adjourn the case from time to time for that purpose. In cases where s. 959.15 is applicable that section is controlling, but in all other cases the court must either impose or withhold sentence and, if the defendant is not fined or imprisoned, he must be placed on probation as provided in ch. 57. Execution of sentence may not be stayed except as provided in ch. 57 and ss. 958.14 and 959.055 (1).

History: 1963 c. 124.

Certiorari lies to review questions of the jurisdiction of a trial court to revise, modify, and correct its judgment or sentence. Wisconsin adheres to the common-law principle that a trial court has no power to revise its judgment and sentence in a criminal case after the expiration of the term or after the execution of the sentence has commenced. *State ex rel. Reynolds v. County Court*, 11 W (2d) 512, 106 NW (2d) 812.

Until execution (providing the term of court has not expired), there is no prohibition under (2) which precludes a trial court from deferring execution or even imposing a sentence in order to consolidate other matters before the court affecting the same defendant. *Weston v. State*, 28 W (2d) 136, 135 NW (2d) 820.

A review of Wisconsin criminal procedure. 1966 WLR 430.

959.02 Certificate of conviction. When a defendant is sentenced to imprisonment or to pay a fine, the clerk of the court shall make a certificate of conviction and sentence citing the statute which he violated and the statute under which he was sentenced and showing his name, the crime which he committed, the date of conviction and a copy of the sentence, and deliver such certificate to the sheriff to be retained by him if the defendant is sentenced to the county jail or to be transmitted with the defendant in case of sentence to some other prison.

History: 1967 c. 226.

959.03 Form of certificate of conviction. The certificate of conviction mentioned in s. 959.02 may be substantially in the following form:

CERTIFICATE OF CONVICTION

STATE OF WISCONSIN,
 County, Court. }
 The State of Wisconsin,
 v.

Name of defendant.

As the clerk of said court, I hereby certify that at a term of said court, held at the courthouse in the city of, on the day of, 19.., was convicted of the crime of (here give a brief description of the crime) in violation of section of the statutes, and upon said conviction the court did, on the day of, 19.., sentence him under section of the statutes as follows: (here give the sentence in full, as pronounced by the court).

Given under my hand and the seal of said court, this day of, 19...

[Seal] , Clerk

959.04 Crimes, how stated in certificate. It shall be sufficient in describing the crime in the certificate of conviction to set it out in the language of the statute.

959.044 Place of imprisonment when none expressed. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, (a) a sentence of less than one year shall be to the county jail, (b) a sentence of more than one year shall be to the Wisconsin state prisons and the minimum under the indeterminate sentence law shall be one year, and (c) a sentence of one year may be to either the Wisconsin state prisons or the county jail. But in any proper case sentence and commitment may nevertheless be to the Wisconsin home for women, the state department of public welfare or any house of correction or other institution, as provided by law.

History: 1965 c. 520.

The creation of this section did not convert an offense formerly a misdemeanor (one year imprisonment with no provision as to the place) into a felony. State ex rel. Gaynon v. Krueger, 31 W (2d) 609, 143 NW (2d) 437.

959.05 Indeterminate sentence, Wisconsin state prisons. (1) (a) If imprisonment in the Wisconsin state prisons for a term of years is imposed, the court may fix a term less than the prescribed maximum. The form of such sentence shall be substantially as follows:

"You are hereby sentenced to the Wisconsin state prisons at hard labor for an indeterminate term of not more than . . . (the maximum as fixed by the court) years."

(b) The sentence shall have the effect of a sentence for the maximum term fixed by the court, subject to the power of actual release from confinement by parole by the state department of public welfare, or by pardon as provided by law. If a person is sentenced for a definite time for an offense for which he may be sentenced under this section, he is in legal effect sentenced as required by this section, said definite time being the maximum period. A defendant convicted of a crime for which the minimum penalty is life shall be sentenced for life.

(2) Upon the recommendation of the state department of public welfare, the governor may, without the procedure required by ch. 57, discharge absolutely, or upon such conditions and restrictions and under such limitation as he thinks proper, any inmate committed to the Wisconsin state prisons after he has served the minimum term of punishment prescribed by law for the offense for which he was sentenced, except that if the term was life imprisonment, 5 years must elapse after parole before such a recommendation can be made to the governor. Such discharge shall have the effect of an absolute or conditional pardon, respectively.

(3) Female persons convicted of a felony may be committed to the Wisconsin home for women.

(4) A female person over 18 years of age convicted of a misdemeanor for which the maximum penalty is imprisonment for 6 months or more may be sentenced to a term not less than 6 months in the Wisconsin home for women instead of the county jail if the department certifies to the court that it has adequate facilities at said home and is willing to accept such commitment.

(5) Male persons not less than 16 nor more than 30 years of age may be sentenced to the Wisconsin state prisons if convicted of a felony or a misdemeanor punishable by imprisonment in the county jail or house of correction for one year or more.

History: 1965 c. 520, 650; 1967 c. 127.

959.052 Trial and commitment records; execution. (1) When any offender is sentenced to the Wisconsin state prisons, the commitment papers shall consist of the certificate of conviction, and certified copies of the information, indictment or complaint, the plea of the accused, the verdict and the judgment and sentence, which copies shall be delivered with the certificate of conviction to the officer executing it, and by him to the superintendent of the institution when the convict is delivered. The copy of the transcript of testimony when filed at the institution shall become a part of the commitment papers.

(2) In case no testimony is taken, a statement of the prosecuting attorney, giving the facts in the case, and the statement of the defendant in court, shall be delivered in lieu thereof.

(3) The clerk's fees for furnishing such copies shall be fixed by the trial judge, and shall be paid by the county in which trial is had as part of the court expenses.

(4) Whenever any woman is sentenced to the home for women the sheriff shall assign a woman deputy to execute the commitment. She shall receive the same fee as is provided for the sheriff.

History: 1965 c. 520.

959.055 Imprisonment for nonpayment of fines; costs; execution. (1) When a fine is imposed, the court shall also sentence the defendant to pay the costs of the prosecution

and the costs incurred by the county at his request and to be committed to the county jail until the fine and costs are paid or discharged, except that the court may grant a reasonable time, not exceeding one stay of 30 days based on the defendant's circumstances, in which to make such payment before committing him to the county jail; but the time of imprisonment, in addition to any other imprisonment, shall not exceed 6 months; and a property execution may issue against the defendant for said fine and costs. When the costs cannot be so collected from the defendant or when the defendant is acquitted the county shall pay the costs.

(2) The costs taxable against the defendant shall consist of the following items and no other:

(a) The necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed by the governor or peace officer in returning the defendant from another state or country.

(b) Fees and travel allowance of witnesses for the state at the preliminary examination and the trial.

(c) Fees and disbursements allowed by the court to expert witnesses appointed under s. 957.27.

(d) Fees and travel allowance of witnesses for the defense incurred by the county at the request of the defendant, at the preliminary hearing and the trial.

(e) Attorney fees paid to the defense attorney by the county.

(f) A \$12 fee for a 6-man jury in county court.

(3) The court may remit the taxable costs, in whole or in part.

History: 1961 c. 561; 1963 c. 124.

959.06 Jail sentence. If at the time of passing sentence upon a defendant who is to be imprisoned in a county jail there is no jail in the county suitable for said defendant, the court may sentence him to any suitable county jail. The expenses of supporting him there shall be borne by the county in which the crime was committed.

Cross Reference: See 53.34 for similar provision.

959.07 Sentence, terms, escapes. (1) All sentences to the Wisconsin state prisons shall be for one year or more, except as provided in s. 959.05 (4). 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 defendant is in the county jail or is at large on bail shall not be computed as any part of his term of imprisonment. The court may impose as many sentences as there are convictions and may provide that any such sentence shall commence at the expiration of any other sentence; and if the defendant is then serving a sentence, the present sentence may provide that it shall commence at the expiration of the previous sentence. If a convict escapes, the time during which he is unlawfully absent from the prison after such escape shall not be computed as part of his term. If the defendant is sentenced to the Wisconsin state prisons and to a county jail on separate counts, both sentences shall be served concurrently at a state prison unless otherwise ordered by the court. Courts may impose sentences to be served in whole or in part concurrently with a sentence being served in a federal institution or an institution of another state.

(2) 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 in a federal institution or an institution of another state, the trial and commitment records required under s. 959.052 (1) and (2) shall be delivered immediately to the warden or superintendent of the Wisconsin institution designated as the reception center to receive the prisoner when he becomes available to Wisconsin authorities.

(3) 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.

History: 1965 c. 520; 1967 c. 248.

Where defendant is convicted on 2 counts excess of the statutory maximum for any and the court imposed one sentence, defend- one conviction. State v. Christopherson, 36 ant cannot object if the sentence is not in W (2d) 574, 153 NW (2d) 631.

959.08 Time out. If an order or judgment releasing a prisoner on habeas corpus is reversed, the time during which he was at liberty thereunder shall not be reckoned as part of his term.

959.10 Judgment against corporation. If a corporation fails to appear within 20 days after an indictment or information is served by leaving a copy thereof with the

persons upon whom a circuit court summons in a civil action against the corporation may be served, the default of such corporation may be recorded and the charges against it taken as true, and judgment shall be rendered accordingly.

Cross Reference: For judgment against a corporation where action is begun by summons, see 954.017.

959.11 Collection of judgment against corporation. The judgment against a corporation shall be collected in the same manner as judgments in civil actions against it.

959.12 Sentence of repeater. (1) **HOW PRIOR CONVICTION CHARGED AND DETERMINED.** Whenever a person charged with a crime will be a repeater as defined in s. 939.62 if convicted, any prior convictions may be alleged in the complaint, indictment or information or amendments so alleging at any time before or at arraignment, and before acceptance of any plea. The court may, upon motion of the district attorney, grant a reasonable time to investigate possible prior convictions before accepting a plea. If such prior convictions are admitted by the defendant or proved by the state he shall be subject to be sentenced under s. 939.62 unless he establishes that he was pardoned on grounds of innocence for any crime necessary to constitute him a repeater. An official report of the federal bureau of investigation or of any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any conviction or sentence therein reported. Any sentence so reported shall be deemed prima facie to have been fully served in actual confinement or to have been so served for such period of time as is shown by or is consistent with the report. The court shall take judicial notice of United States and foreign statutes in determining whether the prior conviction was for a felony or a misdemeanor.

(2) **FORM OF SENTENCE; ERRORS CURED.** In every case of a sentence under s. 939.62, the sentence shall be imposed for the present conviction, but if the court indicates in passing sentence how much thereof is imposed because the defendant is a repeater, it shall not constitute reversible error but the combined terms shall be construed as a single sentence for the present conviction; and if in any case the court shall impose a maximum penalty in excess of that authorized by s. 939.62, such excess shall be void and the sentence shall be valid only to the extent authorized by that section and shall stand automatically commuted to that extent without any further proceedings.

History: 1965 c. 422.

959.15 Sex crimes. (1) **RAPE AND RELATED CRIMES; COMMITMENT FOR PRESENTENCE EXAMINATION.** If a person is convicted under s. 944.01, 944.02 or 944.11 or under s. 939.32 for attempting to violate s. 944.01 or 944.02, the court shall commit him to the state department of public welfare for a presentence social, physical and mental examination. The court and all public officials shall make available to the department upon its request all pertinent data in their possession in respect to the case.

(2) **OTHER SEX CRIMES.** If a person is convicted of any sex crime other than those specified in sub. (1), the court may commit him to the department for such a presentence examination, if the department certifies that it has adequate facilities for making such examination and is willing to accept such commitment. The court and all public officials shall make available to the department upon its request all pertinent data in their possession in respect to the case. "Sex crime" as used in this subsection includes any crime except homicide or attempted homicide if the court finds that the defendant was probably directly motivated by a desire for sexual excitement in the commission of the crime; and for that purpose the court may in its discretion take testimony after conviction if necessary to determine that issue.

(3) **TRANSPORTATION.** When the court commits a person to the department in accordance with sub. (1) or (2) for presentence examination, the court shall order him conveyed by the proper county authorities at the sole expense of the county, to some place of detention approved or established by the department.

(4) **REPORT OF EXAMINATION.** Upon completion of the examination, but not later than 60 days after the date of the commitment order, a report of the results of the examination and the recommendations of the department shall be sent to the court.

(5) **SENTENCE IMPOSED.** If it appears from such report that the department does not recommend specialized treatment for his mental and physical aberrations, the court shall order the proper county authorities to bring him before the court at county expense and shall sentence him in the manner provided by law.

(6) **COMMITMENT TO THE DEPARTMENT.** If it appears from said report that the department recommends specialized treatment for his mental or physical aberrations, the court shall order the proper county authorities to bring him before the court at county expense and shall either place him on probation under ch. 57 with the requirement as a

condition of such probation, that he receive outpatient or inpatient treatment in such manner as the court prescribes, or commit him to the department under this section. If he is committed to the department the court shall order him conveyed by proper county authorities, at the expense of the county to the sex deviate facility, established by the department.

(7) THE EFFECT OF APPEAL FROM A JUDGMENT OF CONVICTION. (a) The right of a convict to appeal from the judgment of conviction is not affected by this section.

(b) If a person who has been convicted and committed to the department appeals from a conviction, the execution of the commitment to the department shall not be stayed by the appeal except as provided in par. (c).

(c) If the committing court is of the opinion that the appeal was taken in good faith and that the question raised merits review by the appellate court, or when there has been filed with the court a certificate that a judge of an appellate court is of the opinion that questions have been raised that merit review, the judge of the court in which the person was convicted, or in the case of his incapacity to act, the judge by whom the certificate was filed, may direct that such person be left at liberty under such conditions as in the judge's opinion will insure his submission to the control of the department at the proper time if it is determined on the appeal that the department is entitled to custody.

(8) NOTICE OF COMMITMENTS; TREATMENT, TRANSFER, USE OF OTHER FACILITIES. (a) If a court commits a person to the department it shall at once notify the department of such action in writing.

(b) The department shall then arrange for his treatment in the institution best suited in its judgment to care for him. It may transfer him to or from any institution to provide for him according to his needs and to protect the public. The department may irrespective of his consent require participation by him in vocational, physical, educational and correctional training and activities; may require such modes of life and conduct as seem best adapted to fit him for return to full liberty without danger to the public; and may make use of other methods of treatment and any treatment conducive to the correction of the person and to the prevention of future violations of law by him.

(c) The department may make use of law enforcement, detention, parole, medical psychiatry, educational, correctional, segregative and other facilities, institutions and agencies, public or private, within the state. The department may enter into agreements with public officials for separate care and special treatment (in existing institutions) of persons subject to the control of the department under this section. Nothing herein contained shall give the department control over existing institutions or agencies not already under its control, or give it power to make use of any private agency or institution without its consent.

(d) Placement of a person by the department in any institution or agency not operated by the department, or his discharge by such institution or agency, shall not terminate the control of the department over him. No person placed in such institution or agency may be released therefrom except to the department or after approval of such release by the department.

(9) PERIODIC EXAMINATION. The department shall make periodic examinations of all persons within its control under this section for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These examinations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding one year. The department shall keep written records of all examinations and of conclusions predicated thereon, and of all orders concerning the disposition or treatment of every person under its control. Failure of the department to examine a person committed to it or to make periodic examination shall not entitle him to a discharge from the control of the department, but shall entitle him to petition the committing court for an order of discharge, and the court shall discharge him unless it appears in accordance with sub. (13) that there is necessity for further control.

(10) PAROLE. Any person committed as provided in this section may be paroled if it appears to the satisfaction of the department after recommendation by a special review board, appointed by the department (a majority of whose members shall not be connected with the department) that he is capable of making an acceptable adjustment in society. The department may promulgate regulations for parole, revocation of parole, and the supervision of parolees.

(11) DURATION OF CONTROL. The department shall keep every person committed to it under this section under its control and shall retain him, subject to the limitations of sub. (12), under supervision and control, so long as in its judgment such control is necessary for the protection of the public. The department shall discharge any such person as soon as in its opinion there is reasonable probability that he can be given full liberty without

danger to the public, but no person convicted of a felony shall, without the written approval of the committing court, be discharged prior to 2 years after the date of his commitment.

(12) **TERMINATION OF CONTROL.** Every person committed to the department who has not been discharged from its control as provided in sub. (11) unless the department has previously thereunto made an order directing that he remain subject to its control for a longer period and has applied to the committing court for a review of said order as provided in sub. (13) shall be discharged at the expiration of the maximum term prescribed by law for the offense for which he was convicted, subject to the provisions of s. 53.11, or at the expiration of one year, whichever is the greater. For the purposes of this subsection, sentence shall begin at noon of the day of commitment by the court to the department.

(13) **CONTINUANCE OF CONTROL; ORDER AND APPLICATION FOR REVIEW BY THE COMMITTING COURT.** If the department is of the opinion that discharge of a person from its control at the time provided in sub. (12) would be dangerous to the public for reasons set forth in sub. (14), it shall make an order directing that he remain subject to its control beyond that period; and shall make application to the committing court for a review of that order at least 90 days before the time of discharge stated.

(14) **ACTION OF COMMITTING COURT UPON APPLICATION FOR REVIEW; REASONS FOR CONTINUANCE OF CONTROL BY THE DEPARTMENT.** (a) If the department applies to the committing court for the review of an order as provided in sub. (13), the court shall notify the person whose liberty is involved, and, if he be not sui juris, his parent or guardian as practicable, of the application, and shall afford him opportunity to appear in court with counsel and of process to compel the attendance of witnesses and the production of evidence. He may have a doctor or psychiatrist of his own choosing examine him in the institution to which he is confined or at some suitable place designated by the department. If he is unable to provide his own counsel, the court shall appoint counsel to represent him. He shall not be entitled to a trial by jury.

(b) If, after a hearing, the court finds that discharge from the control of the department of the person to whom the order applies would be dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality the court shall confirm the order. If the court finds that discharge from the control of the department would not be dangerous to the public for the causes stated, the court shall order that he be discharged from the control of the department at the time stated in the original commitment.

(15) **REVIEW BY COURT OF SUBSEQUENT ORDERS OF THE DEPARTMENT.** (a) When an order of the department is confirmed as provided in sub. (14), the control of the department over the person shall continue, but unless he is previously discharged, the department shall within 5 years after the date of such confirmation make a new order and a new application for review thereof in accordance with this section. Such orders and applications may be repeated as often as in the opinion of the department it may be necessary for the protection of the public.

(b) Every person shall be discharged from the control of the department at the termination of the periods stated in par. (a) of this subsection unless the department has previously acted therein as required, and shall be discharged if the court fails to confirm the order as provided in sub. (14).

(c) During any such period of extended control, but not oftener than semiannually, the person may apply to the court for a re-examination of his mental condition and the court shall fix a time for hearing the same. The proceeding shall be as provided in sub. (14).

(16) **APPEAL FROM JUDGMENT OF COMMITTING COURT.** (a) If under the provisions of this section the court affirms an order of the department, the person whose liberty is involved may appeal to the proper appellate court for a reversal or modification of the order. The appeal shall be taken in the manner provided by law for appeals to said court from the judgment of an inferior court.

(b) At the hearing of an appeal the appellate court may base its judgment upon the record, or it may upon its own motion or at the request of either the appellant or the department refer the matter back for the taking of additional evidence.

(c) The appellate court may confirm the order of the lower court, or modify it, or reverse it and order the appellant to be discharged.

(d) Pending appeal the appellant shall remain under the control of the department.

(17) **VOLUNTARY ADMISSION TO DIAGNOSTIC INSTITUTIONS; TREATMENT.** Any person believing himself to be afflicted by a physical or mental condition which may result in sexual action dangerous to the public may apply upon forms prescribed by the department for voluntary admission to some institution which provides diagnosis for such persons. If the application is approved and he is admitted by the department, he shall be

given a complete physical and mental examination. If it appears upon the examination that he is afflicted by a physical or mental condition that may prove dangerous to the public, such fact shall be certified to him and to the department. If he desires treatment, he may apply for admission to an institution designated by the department and upon approval of his application, he may be received in the designated institution and shall there receive the treatment indicated by his condition. If he is able to defray all or a part of the cost of his care and treatment, he shall be required to do that. If he desires to leave the institution he must give 5 days' written notice to the superintendent of the institution of his intention to leave. The department may provide outpatient treatment for him at his expense.

(18) CONFLICT OF PROVISIONS; EFFECT. All statutes conflicting with this section are superseded to the extent of the conflict and the provisions of this section shall prevail over conflicting provisions heretofore enacted.

History: 1961 c. 169.

Where the department made an order under (13) for continuance of control of a sex offender, but the reviewing court did not timely notify the prisoner of the hearing nor of his right to counsel, the order for continuance was only procedurally erroneous and could be cured by a later proper hearing. *State ex rel. Stroetz v. Burke*, 23 W (2d) 195, 136 NW (2d) 829.

When the department recommends specialized treatment, and the accused is committed to it, the court may not specify a period less than the maximum prescribed by the statute violated. *State v. Sorenson*, 31 W (2d) 368, 142 NW (2d) 785.

A defendant convicted of a sex crime and subjected to examination and as to whom the department recommends specialized treatment must be afforded a hearing on the need for such treatment unless he waives it. He is entitled to counsel and all the safeguards provided in (14). The department's

recommendation is not binding on the court. *Huebner v. State*, 33 W (2d) 505, 147 NW (2d) 646.

If the defendant is charged with a sex crime and another crime, unless the other crime is sexually motivated he can be sentenced for it to be served concurrently with his commitment on the sex offense. The court may take testimony after conviction to determine whether there was a sexual motivation, but this is discretionary with the court. *State v. Clarke*, 36 W (2d) 263, 153 NW (2d) 61.

Failure of the court to inform a prisoner of the possible effect of commitment under this section did not invalidate his voluntary plea of guilty and waiver of counsel. *Butler v. Burke*, 360 F (2d) 118.

Criteria for commitment under the sex crimes act. 1967 WLR 980.

Application of criminal due process safeguards. 1967 WLR 1011.