



2005 ASSEMBLY BILL 275

March 28, 2005 - Introduced by Representatives BIES, NISCHKE, VOS, KRAWCZYK, SHILLING, GRONEMUS, HAHN, JESKEWITZ, OTT, MUSSER, BERCEAU, BLACK, GRIGSBY, STASKUNAS, SEIDEL, PETROWSKI, POCAN and ALBERS, cosponsored by Senators ROESSLER, ZIEN, STEPP, S. FITZGERALD, HARSDORF, DARLING, MILLER, HANSEN and COGGS. Referred to Committee on Corrections and the Courts.

1 **AN ACT to renumber and amend** 961.41 (5) (c); **to amend** 20.435 (6) (gb), 46.07,
2 301.32 (1), 302.12 (2), 302.13, 302.43, 303.01 (8) (b), 961.41 (5) (a), 973.032 (6),
3 973.05 (2m), 973.155 (1) (b) and 973.155 (3); **to repeal and recreate** 961.472
4 (5); and **to create** 16.964 (10), 20.505 (6) (e), 20.505 (6) (kv), 303.01 (8) (c) 8.,
5 303.065 (5) (cm), 814.75 (11), 814.76 (9), 961.41 (5) (c) 2., 967.11, 973.043 and
6 973.155 (1m) of the statutes; **relating to:** grants to counties for providing
7 alternatives to prosecution and incarceration for persons who abuse alcohol or
8 other drugs and making appropriations.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) funds and oversees the Treatment Alternative Program. Through this program, DHFS is required to make grants to enable grantees (who may be county, tribal, or nonprofit agencies) to provide assessments of and treatment for alcohol and other drug abuse, as an alternative to incarceration, to a person who: 1) is involved with the criminal justice system, either as a defendant or as a party to a diversion agreement; or 2) is currently or has previously been determined drug dependent. Current law requires DHFS to distribute the grants so that the program serves people in a variety of geographic locations. Current law also imposes certain

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requirements regarding: 1) communication between grantees and actors in the criminal justice system; 2) early identification of eligible participants; 3) assessment, referral, treatment, and monitoring procedures; and 4) data collection for program management and evaluation.

This bill establishes a new grant program, administered by the Office of Justice Assistance (OJA) in collaboration with DHFS and the Department of Corrections (DOC), for counties that provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs. In order for a county (or a group of counties applying jointly) to be eligible for a grant, its (or their) program must: 1) meet the needs of people who abuse alcohol or other drugs and who may be or have been charged with or who have been convicted of a crime related to the use or abuse of alcohol or other drugs; 2) be designed to promote public safety, reduce prison and jail populations, reduce prosecution and incarceration costs, reduce recidivism, and improve the welfare of participants' families by meeting the comprehensive needs of participants (including needs relating to mental health, employment, stable housing, and family reunification); 3) establish eligibility criteria for participants (which must exclude persons charged with or convicted of a violent offense); 4) provide services that are consistent with evidence-based practices in substance abuse and mental health treatment and provide intensive case management through DHFS-certified providers; 5) use graduated sanctions and incentives; 6) integrate all mental health services provided to participants by state and local government agencies and other organizations; 7) require participants to pay a reasonable amount for their treatment, based on their income and available assets, and use all available private and public resources; and 8) be developed with input from a variety of specified individuals and agencies. The bill also specifies that a program that meets these requirements (regardless of whether it receives a grant) may entail participants being required to submit to monitoring technology or a day reporting program as a condition of participation and may entail the county contracting with or awarding grants to religious organizations.

A county that receives a grant under the bill must create an oversight committee to advise the county in administering and evaluating its program. It must also comply with state audits and submit an annual report to OJA and the oversight committee regarding the progress of the program in attaining its goals.

Part of the funding for the grants is provided through an increase in the amount assessed under the drug abuse program improvement surcharge program. Under current law, if a court imposes a fine for a violation of the Uniform Controlled Substances Act (ch. 961 of the statutes), the court must also impose a penalty surcharge, which is set at 24 percent of the amount of the fine, and a drug abuse program improvement surcharge, which is set at 50 percent of the sum of the fine and penalty surcharge. Money generated from drug abuse program improvement surcharges is used by DHFS on programs providing prevention, intervention, and treatment for alcohol and other drug abuse problems. This bill increases the amount assessed for each drug abuse program improvement surcharge, setting it at 75 percent of the sum of the fine and penalty surcharge. In addition, under the bill,

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one-third of the money generated by the drug abuse program improvement surcharge is to be used to fund the grant program created under the bill.

The bill also funds the grant program with money generated from drug offender diversion surcharges. Under the bill, the court must impose this new surcharge whenever a person is convicted of a property crime (that is, a crime under ch. 943 of the statutes). The surcharge is \$10 for each such conviction.

Finally, the bill creates certain evaluation and reporting requirements. First, under the bill, OJA must enter into one or more contracts with another person for the purpose of evaluating the grant program. Second, DHFS must submit a report to the legislature by December 31, 2006, specifying how it determined, for the purpose of the grant program, what are evidence-based practices in substance abuse and mental health treatment. Third, OJA, in collaboration with DHFS and DOC, must submit a report to the legislature by December 31, 2011, regarding savings that have been generated through the implementation of the grant program. The report must also include recommendations regarding how the grant program should be structured in the future.

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

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

1 **SECTION 1.** 16.964 (10) of the statutes is created to read:

2 16.964 (10) (a) In this subsection, “violent offender” means a person to whom
3 one of the following applies:

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

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

11 (b) The office shall make grants to counties to enable them to establish and
12 operate programs, including suspended and deferred prosecution programs and

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1 programs based on principles of restorative justice, that provide alternatives to
2 prosecution and incarceration for criminal offenders who abuse alcohol or other
3 drugs. The office shall make the grants from the appropriations under s. 20.505 (6)
4 (e) and (kv). The office shall collaborate with the departments of corrections and
5 health and family services in establishing this grant program.

6 (c) A county shall be eligible for a grant under par. (b) if all of the following
7 apply:

8 1. The county's program is designed to meet the needs of a person who abuses
9 alcohol or other drugs and who may be or has been charged with or who has been
10 convicted of a crime in that county related to the person's use or abuse of alcohol or
11 other drugs.

12 2. The program is designed to promote public safety, reduce prison and jail
13 populations, reduce prosecution and incarceration costs, reduce recidivism, and
14 improve the welfare of participants' families by meeting the comprehensive needs of
15 participants.

16 3. The program establishes eligibility criteria for a person's participation. The
17 criteria shall specify that a violent offender is not eligible to participate in the
18 program.

19 4. Services provided under the program are consistent with evidence-based
20 practices in substance abuse and mental health treatment, as determined by the
21 department of health and family services, and the program provides intensive case
22 management.

23 5. The program uses graduated sanctions and incentives to promote successful
24 substance abuse treatment.

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1 6. The program provides holistic treatment to its participants and provides
2 them services that may be needed, as determined under the program, to eliminate
3 or reduce their use of alcohol or other drugs, improve their mental health, facilitate
4 their gainful employment or enhanced education or training, provide them stable
5 housing, facilitate family reunification, ensure payment of child support, and
6 increase the payment of other court-ordered obligations.

7 7. The program is designed to integrate all mental health services provided to
8 program participants by state and local government agencies and other
9 organizations. The program shall require regular communication among a
10 participant's substance abuse treatment providers, other service providers, the case
11 manager, and any person designated under the program to monitor the person's
12 compliance with his or her obligations under the program and any probation,
13 extended supervision, and parole agent assigned to the participant.

14 8. The program provides substance abuse and mental health treatment
15 services through providers that are certified by the department of health and family
16 services.

17 9. The program requires participants to pay a reasonable amount for their
18 treatment, based on their income and available assets, and pursues and uses all
19 possible resources available through insurance and federal, state, and local aid
20 programs, including cash, vouchers, and direct services.

21 10. The program is developed with input from, and implemented in
22 collaboration with, one or more circuit court judges, the district attorney, the state
23 public defender, local law enforcement officials, county agencies responsible for
24 providing social services, including services relating to alcohol and other drug
25 addiction, child welfare, mental health, and the Wisconsin works program, the

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1 departments of corrections and health and family services, private social services
2 agencies, and substance abuse treatment providers.

3 11. The county complies with other eligibility requirements established by the
4 office to promote the objectives listed in subds. 1. and 2.

5 (d) In implementing a program that meets the requirements of par. (c), a county
6 department may contract with or award grants to a religious organization under s.
7 59.54 (27).

8 (e) 1. A county that receives a grant under this subsection shall create an
9 oversight committee to advise the county in administering and evaluating its
10 program. Each committee shall consist of a circuit court judge, the district attorney
11 or his or her designee, the state public defender or his or her designee, a local law
12 enforcement official, a representative of the county, a representative of each other
13 county agency responsible for providing social services, including services relating
14 to child welfare, mental health, and the Wisconsin Works program, representatives
15 of the departments of corrections and health and family services, a representative
16 from private social services agencies, a representative of substance abuse treatment
17 providers, and other members to be determined by the county.

18 2. A county that receives a grant under this subsection shall comply with state
19 audits and shall submit an annual report to the office and to the oversight committee
20 created under subd. 1. regarding the impact of the program on jail and prison
21 populations and its progress in attaining the goals specified in par. (c) 2. and 6.

22 (f) Two or more counties may jointly apply for and receive a grant under this
23 subsection. If counties submit a joint application, they shall include with their
24 application a written agreement specifying each county department's role in

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1 developing, administering, and evaluating the program. The oversight committee
2 established under par. (e) 1. shall consist of representatives from each county.

3 (g) Grants provided under this subsection shall be provided on a calendar year
4 basis beginning on January 1, 2007. If the office decides to make a grant to a county
5 under this subsection, the office shall notify the county of its decision and the amount
6 of the grant no later than September 1 of the year preceding the year for which the
7 grant will be made.

8 (h) The office shall assist a county receiving a grant under this subsection in
9 obtaining funding from other sources for its program.

10 (i) The office shall inform any county that is applying for a grant under this
11 subsection whether the county meets the requirements established under par. (c),
12 regardless of whether the county receives a grant.

13 (j) The office shall enter into one or more contracts with another person for the
14 purpose of evaluating the grant program established under this subsection. The
15 office shall fund such contracts from moneys appropriated under s. 20.505 (6) (e) and
16 (kv) with 1 percent of the amount awarded as grants under par. (b).

17 (k) By December 31, 2011, the office, in collaboration with the departments of
18 corrections and health and family services, shall submit a report to the chief clerk
19 of each house of the legislature, for distribution to the appropriate standing
20 committees under section 13.172 (3), regarding savings that have been generated
21 through the implementation of the grant program. The report shall also include
22 recommendations regarding how the grant program should be structured in the
23 future.

24 **SECTION 2.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
25 the following amounts for the purposes indicated:

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2005-06

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20.505 Administration, department of

(6) OFFICE OF JUSTICE ASSISTANCE

(e) Alternatives to prosecution and
incarceration for persons who
use alcohol or other drugs

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SECTION 3. 20.435 (6) (gb) of the statutes is amended to read:

20.435 (6) (gb) *Alcohol and drug abuse initiatives.* All moneys received under s. 961.41 (5) (c) 1., to be expended on programs providing prevention, intervention, and treatment for alcohol and other drug abuse problems.

SECTION 4. 20.505 (6) (e) of the statutes is created to read:

20.505 (6) (e) *Alternatives to prosecution and incarceration for persons who use alcohol or other drugs.* The amounts in the schedule for making grants to counties under s. 16.964 (10) (b) and entering into contracts under s. 16.964 (10) (j).

SECTION 5. 20.505 (6) (kv) of the statutes is created to read:

20.505 (6) (kv) *Grants for substance abuse treatment programs for criminal offenders.* All moneys received under s. 961.41 (5) (c) 2. or 973.043 for the purpose of making grants to counties under s. 16.964 (10) (b) and entering into contracts under s. 16.964 (10) (j).

SECTION 6. 46.07 of the statutes is amended to read:

46.07 Property of patients or residents. All money including wages and other property delivered to an officer or employee of any institution for the benefit of a patient or resident shall forthwith be delivered to the steward, who shall enter the same upon the steward's books to the credit of the patient or resident. The

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1 property shall be used only under the direction and with the approval of the
2 superintendent and for the crime victim and witness assistance surcharge under s.
3 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34
4 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046, the drug
5 offender diversion surcharge under s. 973.043, or the benefit of the patient or
6 resident. If the money remains uncalled for for one year after the patient's or
7 resident's death or departure from the institution, the superintendent shall deposit
8 the same in the general fund. If any patient or resident leaves property, other than
9 money, uncalled for at an institution for one year, the superintendent shall sell the
10 property, and the proceeds shall be deposited in the general fund. If any person
11 satisfies the department, within 5 years after the deposit, of his or her right to the
12 deposit, the department shall direct the department of administration to draw its
13 warrant in favor of the claimant and it shall charge the same to the appropriation
14 made by s. 20.913 (3) (c).

15 **SECTION 7.** 301.32 (1) of the statutes is amended to read:

16 301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT.

17 All money and other property delivered to an employee of any state correctional
18 institution for the benefit of a prisoner or resident shall be delivered to the warden
19 or superintendent, who shall enter the property upon his or her accounts to the credit
20 of the prisoner or resident. The property may be used only under the direction and
21 with the approval of the superintendent or warden and for the crime victim and
22 witness assistance surcharge under s. 973.045 (4), the delinquency victim and
23 witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid
24 analysis surcharge under s. 973.046, the drug offender diversion surcharge under s.
25 973.043, or the benefit of the prisoner or resident. If the money remains uncalled for

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1 for one year after the prisoner's or resident's death or departure from the state
2 correctional institution, the superintendent shall deposit it in the general fund. If
3 any prisoner or resident leaves property, other than money, uncalled for at a state
4 correctional institution for one year, the superintendent shall sell the property and
5 deposit the proceeds in the general fund, donate the property to a public agency or
6 private, nonprofit organization or destroy the property. If any person satisfies the
7 department, within 5 years after the deposit, of his or her right to the deposit, the
8 department shall direct the department of administration to draw its warrant in
9 favor of the claimant and it shall charge the same to the appropriation made by s.
10 20.913 (3) (bm).

11 **SECTION 8.** 302.12 (2) of the statutes is amended to read:

12 302.12 (2) Money accruing under this section remains under the control of the
13 department, to be used for the crime victim and witness assistance surcharge under
14 s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046, the
15 drug offender diversion surcharge under s. 973.043, and the benefit of the inmate or
16 the inmate's family or dependents, under rules promulgated by the department as
17 to time, manner and amount of disbursements. The rules shall provide that the
18 money be used for the reasonable support of the inmate's family or dependents before
19 it is allocated for the drug offender diversion surcharge.

20 **SECTION 9.** 302.13 of the statutes is amended to read:

21 **302.13 Preservation of property an inmate brings to prison.** The
22 department shall preserve money and effects, except clothes, in the possession of an
23 inmate when admitted to the prison and, subject to the crime victim and witness
24 assistance surcharge under s. 973.045 (4) ~~and~~, the deoxyribonucleic acid analysis

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1 surcharge under s. 973.046, and the drug offender diversion surcharge under s.
2 973.043, shall restore the money and effects to the inmate when discharged.

3 **SECTION 10.** 302.43 of the statutes is amended to read:

4 **302.43 Good time.** Every inmate of a county jail is eligible to earn good time
5 in the amount of one-fourth of his or her term for good behavior if sentenced to at
6 least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit
7 for time served prior to sentencing under s. 973.155, including good time under s.
8 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects
9 or refuses to perform any duty lawfully required of him or her, may be deprived by
10 the sheriff of good time under this section, except that the sheriff shall not deprive
11 the inmate of more than 2 days good time for any one offense without the approval
12 of the court. An inmate who files an action or special proceeding, including a petition
13 for a common law writ of certiorari, to which s. 807.15 applies shall be deprived of
14 the number of days of good time specified in the court order prepared under s. 807.15
15 (3). This section does not apply to a person who is confined in the county jail in
16 connection with his or her participation in a substance abuse treatment program
17 that meets the requirements of s. 16.964 (10) (c), as determined by the office of justice
18 assistance under s. 16.964 (10) (j).

19 **SECTION 11.** 303.01 (8) (b) of the statutes is amended to read:

20 303.01 (8) (b) The department shall distribute earnings of an inmate or
21 resident, other than an inmate or resident employed under sub. (2) (em), for the crime
22 victim and witness assistance surcharge under s. 973.045 (4), for the delinquency
23 victim and witness assistance surcharge under s. 938.34 (8d) (c), for the
24 deoxyribonucleic acid analysis surcharge under s. 973.046 (4) and for compliance
25 with s. 303.06 (2) and may distribute earnings for the support of the inmate's or

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1 resident's dependents and for other obligations either acknowledged by the inmate
2 or resident in writing or which have been reduced to judgment that may be satisfied
3 according to law. The department may also distribute earnings for the drug offender
4 diversion surcharge under s. 973.043, but only if the inmate or resident has first
5 provided for the reasonable support of his or her dependents.

6 **SECTION 12.** 303.01 (8) (c) 8. of the statutes is created to read:

7 303.01 (8) (c) 8. Payment of the drug offender diversion surcharge under s.
8 973.043.

9 **SECTION 13.** 303.065 (5) (cm) of the statutes is created to read:

10 303.065 (5) (cm) Payment of the drug offender diversion surcharge under s.
11 973.043.

12 **SECTION 14.** 814.75 (11) of the statutes is created to read:

13 814.75 (11) The drug offender diversion surcharge under s. 973.043.

14 **SECTION 15.** 814.76 (9) of the statutes is created to read:

15 814.76 (9) The drug offender diversion surcharge under s. 973.043.

16 **SECTION 16.** 961.41 (5) (a) of the statutes is amended to read:

17 961.41 (5) (a) When a court imposes a fine for a violation of this section, it shall
18 also impose a drug abuse program improvement surcharge under ch. 814 in an
19 amount of ~~50%~~ 75 percent of the fine and penalty surcharge imposed.

20 **SECTION 17.** 961.41 (5) (c) of the statutes is renumbered 961.41 (5) (c) 1. and
21 amended to read:

22 961.41 (5) (c) 1. ~~All~~ Two-thirds of all moneys collected from drug surcharges
23 shall be deposited by the secretary of administration in and utilized in accordance
24 with s. 20.435 (6) (gb).

25 **SECTION 18.** 961.41 (5) (c) 2. of the statutes is created to read:

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1 961.41 (5) (c) 2. One-third of all moneys collected from drug surcharges shall
2 be deposited by the secretary of administration in and utilized in accordance with s.
3 20.505 (6) (kv).

4 **SECTION 19.** 961.472 (5) of the statutes is repealed and recreated to read:

5 961.472 (5) The court is not required to enter an order under sub. (2) if any of
6 the following applies:

7 (a) The court finds that the person is already covered by or has recently
8 completed an assessment under this section or a substantially similar assessment.

9 (b) The person is participating in a substance abuse treatment program that
10 meets the requirements of s. 16.964 (10) (c), as determined by the office of justice
11 assistance under s. 16.964 (10) (i).

12 **SECTION 20.** 967.11 of the statutes is created to read:

13 **967.11 Alternatives to prosecution and incarceration; monitoring**
14 **participants. (1)** In this section, “approved substance abuse treatment program”
15 means a substance abuse treatment program that meets the requirements of s.
16 16.964 (10) (c), as determined by the office of justice assistance under s. 16.964 (10)
17 (i).

18 **(2)** If a county establishes an approved substance abuse treatment program
19 and the program authorizes the use of surveillance and monitoring technology or day
20 reporting programs, a court or a district attorney may require a person participating
21 in an approved substance abuse treatment program to submit to surveillance and
22 monitoring technology or a day reporting program as a condition of participation.

23 **SECTION 21.** 973.032 (6) of the statutes is amended to read:

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1 973.032 **(6)** CREDIT. Any sentence credit under s. 973.155 (1) or (1m) applies
2 toward service of the period under sub. (3) (a) but does not apply toward service of
3 the period under sub. (3) (b).

4 **SECTION 22.** 973.043 of the statutes is created to read:

5 **973.043 Drug offender diversion surcharge.** **(1)** If a court imposes a
6 sentence or places a person on probation for a crime under ch. 943, the court shall
7 impose a drug offender diversion surcharge of \$10 for each conviction.

8 **(2)** After determining the amount due, the clerk of court shall collect and
9 transmit the amount to the county treasurer under s. 59.40 (2) (m). The county
10 treasurer shall then make payment to the secretary of administration under s. 59.25
11 (3) (f) 2.

12 **(3)** All moneys collected from drug offender diversion surcharges shall be
13 credited to the appropriation account under s. 20.505 (6) (kv) and used for the
14 purpose of making grants to counties under s. 16.964 (10).

15 **(4)** If an inmate in a state prison or a person sentenced to a state prison has
16 not paid the drug offender diversion surcharge under this section, the department
17 shall assess and collect the amount owed from the inmate's wages or other moneys.
18 Any amount collected shall be transmitted to the secretary of administration.

19 **SECTION 23.** 973.05 (2m) of the statutes is amended to read:

20 973.05 **(2m)** Payments under this section shall be applied first to payment of
21 the penalty surcharge until paid in full, shall then be applied to the payment of the
22 jail surcharge until paid in full, shall then be applied to the payment of part A of the
23 crime victim and witness assistance surcharge until paid in full, shall then be
24 applied to part B of the crime victim and witness assistance surcharge until paid in
25 full, shall then be applied to the crime laboratories and drug law enforcement

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1 surcharge until paid in full, shall then be applied to the deoxyribonucleic acid
2 analysis surcharge until paid in full, shall then be applied to the drug abuse program
3 improvement surcharge until paid in full, shall then be applied to the drug offender
4 diversion surcharge until paid in full, shall then be applied to payment of the driver
5 improvement surcharge until paid in full, shall then be applied to the truck driver
6 education surcharge if applicable until paid in full, shall then be applied to payment
7 of the domestic abuse surcharge until paid in full, shall then be applied to payment
8 of the consumer protection surcharge until paid in full, shall then be applied to
9 payment of the natural resources surcharge if applicable until paid in full, shall then
10 be applied to payment of the natural resources restitution surcharge until paid in
11 full, shall then be applied to the payment of the environmental surcharge if
12 applicable until paid in full, shall then be applied to the payment of the wild animal
13 protection surcharge if applicable until paid in full, shall then be applied to payment
14 of the weapons surcharge until paid in full, shall then be applied to payment of the
15 uninsured employer surcharge until paid in full, shall then be applied to payment
16 of the enforcement surcharge under s. 253.06 (4) (c), if applicable, until paid in full,
17 and shall then be applied to payment of the fine and the costs and fees imposed under
18 ch. 814.

19 **SECTION 24.** 973.155 (1) (b) of the statutes is amended to read:

20 973.155 (1) (b) The categories in par. (a) and sub. (1m) include custody of the
21 convicted offender which is in whole or in part the result of a probation, extended
22 supervision or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10
23 (2) placed upon the person for the same course of conduct as that resulting in the new
24 conviction.

25 **SECTION 25.** 973.155 (1m) of the statutes is created to read:

