

CHAPTER 57.

PROBATION, PAROLES AND PARDONS.

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57.01 Probation of felons. (1) When a person is convicted of a felony (convictions under s. 52.05 excepted) and it appears to the court from his character and the circumstances of the case that he is not likely again to commit crime and that the public welfare does not require that he shall suffer the penalty of the law, the court may, by order, withhold sentence or impose sentence and stay its execution and in either case place him on probation to the department for a stated period, stating in the order the reasons therefor, and may impose as a condition of such order or of continuing it in effect that he shall make restitution or pay the costs of prosecution or do both. The period of probation may be made consecutive to a sentence of imprisonment on a different charge, whether imposed at the same time or previously. Consecutive periods of probation may be imposed. In case the conditions of probation are violated, the current probation and all subsequent consecutive probations shall be revoked.

(2) Prior to the expiration of any probation period the court may by order extend his probation for a stated period.

(3) The original term of probation shall not be less than one year nor more than either the statutory maximum term of imprisonment for the crime or 3 years, whichever is greater.

(4) If the defendant is a minor at the time of conviction, the court may, in lieu of placing him in the custody of the department, order that he be in the custody of a juvenile probation officer of the county, on the same conditions as though he were in the custody of the department. Such probation officer shall report to the court at such times as the court orders and if the probationer violates the conditions of his probation shall bring him before the court for revocation thereof. The court may at any time transfer the custody of the probationer to the department and may extend the period of probation as provided in subsection (2).

(5) The department shall furnish to the several courts forms setting forth the requirements and conditions applicable to probation.

(6) The court may also require as a condition of probation that the probationer be confined in the county jail between the hours or periods of his employment during such portion of his term of probation as the court specifies, but not to exceed one year and the court shall require him to pay the cost of his board as provided in s. 56.08 (4).

History: 1965 c. 394.

57.01 (1), authorizing the court as a condition of probation to impose the costs of prosecution against a person convicted of a felony, was not affected by later-enacted 959.055, authorizing the court to sentence a defendant to pay the costs of prosecution when a fine is imposed, and limiting the items of costs taxable to certain specific items, so that there existed no statutory bar to the trial court's requiring the defendant in an embezzlement (felony) case to pay as costs of prosecution the expense of the special prosecutor's fees and the costs of an audit as a condition to the defendant's probation. *State v. Welkos*, 14 W (2d) 186, 109 NW (2d) 889.

Costs of prosecution and restitution as conditions of probation. 1962 WLR 672.

57.02 Control of probationer. Except as provided otherwise in section 57.025, every probationer in the custody of the department shall be subject to the control of the department under regulations applicable to paroled persons. Upon the entry of the order of probation the court or the clerk of the court shall deliver a certified copy of the record in the case to the department, whereupon the custody of the probationer vests in the department.

57.025 Probation in Milwaukee county. (1) **SCOPE OF SECTION.** This section applies only to counties having a population of over 500,000.

(2) JURISDICTION OF CRIMINAL BRANCHES OF CIRCUIT COURT AND MISDEMEANOR AND TRAFFIC BRANCHES OF COUNTY COURT. The criminal branches of the circuit court and the misdemeanor and traffic branches of the county court, respectively, shall have charge of persons on probation from each such court under this section and under ss. 57.01 and 57.04.

(3) DISCRETIONAL CONDITIONS. The judges of the criminal branches of the circuit court and the misdemeanor and traffic branches of the county court shall have authority to impose any conditions which may in their discretion appear to be reasonable and appropriate in granting probation as provided in ss. 57.01 and 57.04.

(4) PROBATION OFFICERS; APPOINTMENT; POWERS; COMPENSATION. The senior judge of the criminal branches of the circuit court shall appoint a chief probation officer for said courts. The chief and additional probation officers shall receive such salaries and necessary expenses as determined by the county board. They shall be officers of all such courts but subject to the control of the senior judge of the criminal branches of the circuit court, except as to matters pertaining exclusively to the probationers of the misdemeanor and traffic branches of the county court, as to which such courts shall have control. The chief shall have power to arrest and shall execute the orders of such courts affecting their probationers.

(5) ADDITIONAL PROBATION OFFICERS. Additional probation officers may be appointed by the senior judge of the criminal branches of the circuit court. They shall be subordinate to the chief and shall have power to arrest. Such judge may appoint one of them as deputy chief probation officer to perform the duties of the chief during his absence or inability to perform them.

(6) DUTIES OF OFFICERS. Probation officers shall make presentence and preprobation investigations and report thereon as required by any such court. To prevent absconding, to enforce discipline and for violation of probation, an officer may arrest any probationer and hold him in the county jail for a reasonable time.

(7) OFFICE AND SUPPLIES. The county board shall provide quarters and supplies for the adequate administration of probation under this section.

(8) DUTIES OF CLERK OF COURT. The clerk of court shall transmit to the department a copy of the reports required by section 57.04 (4).

(9) PROBATION OF MISDEMEANANTS. When a person is convicted of a misdemeanor or violation of a county or city ordinance, the misdemeanor or traffic branch of the county court or the criminal branches of the circuit court may place him on probation as prescribed by s. 57.04 (1) for not to exceed 2 years and upon such conditions as the court determines, including the payment of a fine. He may be returned to the court for sentence at any time within the probation period. Upon the expiration of such period or before, he may be sentenced or discharged or continued under probation subject to like sentence or discharge or probation.

(10) CONTINUANCE OF PROBATION OFFICERS IN SERVICE. Municipal and district court probation officers having civil service status in such counties on December 31, 1961, shall continue in such status for the criminal branches of the circuit court and the misdemeanor and traffic branches of the county court on and after January 1, 1962.

History: 1961 c. 495; 1967 c. 275.

57.03 Return to court; discharge. (1) If a probationer in its charge violates the conditions of his probation, the department may order him brought before the court for sentence which shall then be imposed without further stay or if already sentenced may order him to prison; and the term of sentence shall begin on the date he enters the prison. A copy of the order of the department shall be sufficient authority for the officer executing it to take the probationer to court or to prison.

(2) When in the judgment of the department the probationer has satisfied the conditions of his probation, he shall be discharged and the department shall issue to him a certificate of final discharge.

57.04 Probation of misdemeanants. (1) When a person is convicted of a misdemeanor or of a violation of s. 52.05 or 52.055 the court having jurisdiction (whether a court of record or otherwise) may, by order, withhold sentence or impose sentence and stay its execution and in either case place him on probation for a period not less than one year nor more than 2 years (except that in counties having a population of over 500,000 a shorter minimum period of probation may be ordered) and may, as a condition of such order or continuing it, require him to pay the costs of prosecution, to pay a fine and costs, to make restitution, or any combination, as the court determines, and the court may authorize the probation officer to accept payments in instalments. The court may also

require that the probationer be confined in the county jail between the hours or periods of his employment during such portion of his term of probation as the court specifies, not to exceed the maximum time for which he might have been sentenced. The court may also require the payment of support by persons convicted under s. 52.05 or 52.055, and may require a recognizance, as provided in s. 52.05 (4). The period of probation may be made consecutive to a sentence of imprisonment on a different charge, whether imposed at the same time or previously. Consecutive periods of probation may be imposed. In case the conditions of probation are violated, the current probation and all subsequent consecutive probations shall be revoked.

(2) The order shall place the probationer in charge of the department or shall designate some person as probation officer, who shall be entitled to necessary expenses in the performance of his duties, to be paid by the county. If the probationer is a minor, the order may place him in charge of a juvenile probation officer. The department or officer may, at any time, take the probationer into physical custody to prevent his escape, to enforce discipline for violation of probation and may take the probationer into court and in the latter case, if the court has reason to believe that he has violated the conditions of his probation or is engaging in criminal practices or has formed improper associations or is leading a vicious life, it may revoke his probation and pronounce sentence, or if sentence has been pronounced, order its execution, without deduction of the period of probation. A defendant on probation to a probation officer shall be subject to the probation conditions prescribed by the department so far as applicable. If such a probation officer has been appointed in any case, the court may transfer the custody of the probationer to the department.

(3) After revocation the court may again stay further execution on any conditions which it could have imposed originally. If justice is served and the good conduct and the reform of the probationer warrants it, the court may terminate the probation and discharge him.

(4) The probation officer shall report to the court, at such times as the court designates, concerning the conduct of the probationer. Blanks for such reports shall be supplied by the department, upon request.

(5) When a person is placed on probation to the department, the clerk of the court or the court shall mail to the department certified copies of the complaint, information or indictment, the plea, the sentence, if any, and the probation order. The clerk or court shall receive for such services the compensation provided for certifying copies of papers, which compensation shall be paid by the county.

History: 1961 c. 505.

Where probation was revoked after probationer pleaded guilty to 2 misdemeanors but the revocation was based on general violations of the terms of probation including other acts than the misdemeanors, the revocation will stand even though the conviction on the misdemeanors is set aside and a new trial ordered. *Hughes v. State*, 28 W (2d) 665, 137 NW (2d) 439.

57.06 Paroles from state prisons and house of correction. (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 has served the minimum term prescribed by statute for the offense (which shall be one year unless a greater minimum is prescribed by the statute defining the crime) or one-half of the maximum of an indeterminate term or 2 years, whichever is least, or when he has served 20 years of a life term, less the deduction earned for good conduct as provided in s. 53.11. 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 shall be given like notice of each subsequent application.

(2) No such prisoner shall be paroled until the department is satisfied that suitable employment has been secured for him, unless otherwise provided for by the department. The paroled prisoner shall report to the department in such manner and at such times as it requires.

(3) Every paroled prisoner remains in the legal custody of the department unless otherwise provided by the department. All prisoners under its custody may be returned to prison at any time, on the order of the department, and shall be returned whenever found exhibited in any show. A certified copy of the order shall be sufficient authority for any officer to take the prisoner to the prison designated by the department. The officer shall execute such order as a warrant for arrest but any officer may, without order or warrant, take the prisoner into custody whenever necessary in order to prevent escape or enforce discipline or for violation of parole.

(4) (a) Any person convicted in the misdemeanor and traffic branches of the county court and any person convicted in the criminal branches of the circuit court in counties having a population of 500,000 or more and sentenced to 2 years or less in the house of correction and any person committed to said house of correction for treatment and rehabilitation for alcoholism or narcotic addiction, who during the period of confinement or treatment appears to have been rehabilitated or cured to the extent, in the opinion of the superintendent of said house of correction or the person in charge of treatment and rehabilitation of a prisoner at said institution, that the prisoner may be released, said prisoner may be released upon conditional parole.

(b) Application for such conditional parole shall be made in writing by the superintendent of the house of correction. Application for such conditional parole shall be made to the judge of such misdemeanor and traffic branches of the county court or criminal branches of the circuit court, as the commitment may require, stating the facts justifying the application. Said misdemeanor and traffic branches of the county court or criminal branches of the circuit court shall proceed to take testimony in support of the application. If the judge is satisfied from the evidence that there is good reason to believe that the prisoner has been rehabilitated or cured to the extent that he may be released and that proper provision for employment and residence has been made for the prisoner, the judge may order his release on parole to the superintendent of said house of correction or the probation department of the criminal branches of the circuit or misdemeanor and traffic branches of the county court on such conditions to be stated in the order of release as the judge determines. In the event of violation of any such conditions by the prisoner, he shall be returned to the misdemeanor and traffic branches of the county or criminal branches of the circuit court and may be recommitted to the house of correction to serve the remainder of his sentence or for further treatment, as the case may be.

History: 1961 c. 637; 1965 c. 520.

57.07 Paroles from home for women. (1) Without regard to the minimum terms prescribed by s. 57.06 (1) (a), the department may parole prisoners in the home for women whenever suitable employment has been secured for them, unless otherwise provided by the department, and their conduct for a reasonable time has satisfied the department that they will be law-abiding, temperate, honest and industrious. But persons serving life sentences shall be subject to s. 57.06 (1) (a).

(2) Such paroled persons remain in the legal custody of the department, and may be returned to the institution from which paroled, in the manner prescribed in section 57.06.

History: 1961 c. 110; 1965 c. 520.

57.071 Military parole. The department may at any time grant a parole to or suspend the parole of any prisoner in any penal institution of this state, or suspend the supervision of any person who is on probation to the state department of public welfare, who is eligible for induction into the armed forces of the United States. Such suspension of parole or probation shall be for the duration of his service in the armed forces; and said parole or probation shall again become effective upon his discharge from the armed forces in accordance with regulations prescribed by the department. If he receives an honorable discharge from the armed forces, the governor may discharge him and such discharge shall have the effect of a pardon. Upon such suspension of parole or probation by the department, an order shall be issued by the director of the department setting forth the conditions under which the parole or probation is suspended, including instructions as to where and when and to whom such paroled person shall report upon his discharge from the armed forces.

57.072 Period of probation or parole tolled. The period of probation or parole ceases running upon the offender's absconding or committing a crime or some other violation of the terms of his probation or parole which is sufficient in the opinion of the court or the department to warrant revocation of probation or parole. It remains tolled until the happening of one of the following events: Receipt of the offender at the penal institution to which he has been sentenced or from which he has been paroled; in cases supervised by the department, reinstatement of the offender's parole or probation by order of the department; in cases of misdemeanants and in cases under section 57.025, reinstatement of probation by order of the court. The date of the order of reinstatement is the date on which the period of probation or parole again begins to run.

Defendant, detained in the county jail as a parole violator, while not entitled to bail, was entitled to complain of the place of his custody, for while so held, he was not serv-

57.075 Absconding probationers' and parolees' fund. The department shall create a revolving fund out of any moneys in its hands belonging to probationers and parolees

who absconded, or whose whereabouts are unknown. Said funds shall be used to defray the expenses of clothing and other necessities and for transporting probationers and parolees who are without means to secure the same. All payments made from such funds shall be repaid by probationers or parolees for whose benefit they are made whenever possible; and any moneys belonging to them so paid into the revolving fund shall be repaid to them in accordance with law, in case a claim therefor is filed with the department upon showing the legal right of the claimant to such money.

57.078 Civil rights restored to convicted persons satisfying sentence. Every person who is convicted of crime obtains a restoration of his civil rights by serving out his term of imprisonment or otherwise satisfying his sentence. The certificate of the department or other responsible supervising agency that a convicted person has served his sentence or otherwise satisfied the judgment against him is evidence of that fact and that he is restored to his civil rights. Persons who served out their terms of imprisonment or otherwise satisfied their sentences prior to August 14, 1947, are likewise restored to their civil rights from and after September 25, 1959.

57.08 Applications for pardon; regulations. All applications for pardon of any convict serving sentence of one year or more, except for pardons to be granted within 10 days next before the time when the convict would be otherwise entitled to discharge pursuant to law, shall be made and conducted in the manner hereinafter prescribed, and according to such additional regulations as may from time to time be prescribed by the governor.

57.09 Notice of application. Notice of such application shall state the name of the convict, the crime of which he was convicted, the date and term of his sentence and the date, if known, when the application will be heard by the governor. Such notice shall be served on the judge and the district attorney, if they can be found, who participated in the trial of the convict, at least 3 weeks before the hearing of the application. The notice shall be published at least once each week for 2 successive weeks before such hearing in a newspaper of general circulation in the county where the offense was committed. If there is no such newspaper, the notice shall be posted in a conspicuous place on the door of the courthouse of such county for 3 weeks before such hearing and published once each week for 2 consecutive weeks before the hearing in a newspaper published in an adjoining county. Publication as required in this section shall be completed by a date designated by the governor, such date to be a reasonable time prior to the hearing date.

Note: Section 57.09 is printed as amended by Chapter 431, Laws 1965. An earlier amendment by Chapter 252, Laws 1965, is not mentioned in Chapter 431. See section 6 of the Preface as to the printing rule in such case.

History: 1965 c. 252, 431.

57.10 Pardon application papers. An application for pardon shall be accompanied by the following papers:

(1) Notice of application and acknowledgments or affidavits showing due service and affidavits showing due publication and posting whenever required;

(2) A certified copy of the docket entries, the indictment or information, and such additional papers on file in the court, if obtainable, as the governor requires;

(3) A full sworn statement by the applicant of all facts and reasons upon which the application is based;

(4) Written statements by the judge and the district attorney who tried the case, if obtainable, indicating their views regarding the application and stating any circumstances within their knowledge in aggravation or extenuation of the applicant's guilt;

(5) A certificate of the keeper of the prison where he has been confined showing whether the applicant has conducted himself in a peaceful and obedient manner.

History: 1965 c. 431.

57.11 Conditional pardon; enforcement. (1) In case a pardon is granted upon conditions the governor may issue his warrant to carry the conditions into effect.

(2) If it appears to the governor during the term of the sentence that the convicted person violated or failed to comply with any such condition, he may issue his warrant to any sheriff commanding him to arrest the convicted person and bring him before the governor.

(3) If upon inquiry it further appears to the governor that the convicted person has violated or failed to comply with any of such conditions, he may issue his warrant remanding him to the institution from which he was discharged, and he shall thereupon be confined and treated as though no pardon had been granted except that he loses the good

time which he had earned; otherwise he shall be discharged subject to the conditional pardon.

57.115 Emergency removal. When an emergency exists which in the opinion of the director of the department makes it advisable he may permit the temporary removal of a convicted person for such period and upon such conditions as he determines. The director may delegate this authority to the deputy director, the director of corrections and the wardens and superintendents of the state prisons.

History: 1961 c. 637; 1965 c. 520.

57.12 Execution and record of warrants. When a convicted person is pardoned or his sentence commuted, or he is remanded to prison for the violation of any of the conditions of his pardon, the officer to whom the warrant is issued after executing it shall make return thereon to the governor forthwith and shall file with the clerk of the court in which the offender was convicted a certified copy of the warrant and return, and the clerk shall enter and file the same with the records of the case.

57.13 Out-of-state parolee supervision; state compacts. The governor of this state is authorized and directed to enter into a compact on behalf of this state with any state of the United States legally joining therein in the form substantially as follows:

A COMPACT

Entered into by and among the contracting states, signatories hereto, with the consent of the congress of the United States of America, granted by an act entitled "An act granting the consent of congress to any two or more states to enter into agreements or compacts for co-operative effort and mutual assistance in the prevention of crime and for other purposes".

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this contract (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there; or

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

(c) Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

(d) A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That the duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all such states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) That this compact shall continue in force and remain binding upon such ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal or until finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending 6 months' notice in writing of its intention to withdraw the compact to the other states party thereto.

(9) This section may be cited as the "Uniform Act for Out-of-State Parolee Supervision".

Cross Reference: See Appendix for a list of states which have ratified this compact.

57.135 Out-of-state parolee supervision without compact. The department is authorized to permit any person convicted of an offense within this state and placed on probation or released on parole to reside in any other state not a party to the compact authorized by section 57.13 whenever the authorities of the receiving state agree to assume the duties of visitation of and supervision over such probationer or parolee, governed by the same standards that prevail for its own probationers and parolees, on the same terms as are provided in section 57.13 (1) and (2) in the case of states signatory to said compact. But before permitting any probationer or parolee to leave this state pursuant to this section, the department shall obtain from him a signed agreement to return to this state upon demand of the department and an irrevocable waiver of all procedure incidental to extradition. The department may, in like manner, receive for supervision probationers and parolees convicted in states not signatory to said compact, and shall have the same custody and control of such persons as it has over probationers and parolees of this state.

57.14 Co-operative return of parole and probation violators. The director of the state department of public welfare is authorized and empowered to deputize any person regularly employed by another state to act as an officer and agent of this state in effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state. In any matter relating to the return of such person, any agent so deputized shall have all the powers of a police officer of this state. Any deputization pursuant to this statute shall be in writing and any person authorized to act as an agent of this state pursuant hereto shall carry formal evidence of his deputization and shall produce the same upon demand.

57.15 Department may take probations from Milwaukee county. The department may, upon request of any court or any branch thereof having jurisdiction under s. 57.025, receive for supervision outside of any county to which s. 57.025 is applicable, probationers convicted in such county and shall have the same custody and control of such persons as it has over other probationers in custody of the department.

History: 1963 c. 350.