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ASSEMBLY SUBSTITUTE AMENDMENT 1, TO 2003 ASSEMBLY BILL 137

February 11, 2004 - Offered by Committee on Corrections and the Courts.

1 AN ACT to amend 972.13 (1) and 974.06 (1); and to create 971.41 and 973.115 2 of the statutes; relating to: community courts for youthful offenders.

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

Section 1. 971.41 of the statutes is created to read:

971.41 Suspended prosecution agreement; placement with community court program. The court, the district attorney, and the defendant may enter into a suspended prosecution agreement for the defendant to be placed with a community court program under s. 973.115. The agreement must include the requirement that the defendant comply with the court's order under s. 973.115 (2).

Section 2. 972.13 (1) of the statutes is amended to read:

972.13 (1) -A- Except as provided in s. 973.11 (1) or 973.115 (2), a judgment of conviction shall be entered 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 no contest.

- **Section 3.** 973.115 of the statutes is created to read:
- 973.115 Placements with community court program. (1) APPROVAL OF
 PROGRAMS. In each judicial administrative district under s. 757.60, the chief judge
 of the district may approve community court programs established in a county within
 the district for placements under this section.
 - (2) PLACEMENTS. (a) The court may withhold the judgment of conviction or the sentence and order that a person be placed in a community court program if all of the following apply:
 - 1. The person is convicted of or pleads guilty or no contest to one or more misdemeanors for which mandatory periods of imprisonment are not required.
 - 2. The person committed each offense under subd. 1. when he or she was under 25 years of age.
 - 3. If the court is to withhold the judgment of conviction, the court, the district attorney, and the defendant have entered into a suspended prosecution agreement under s. 971.41.
 - 4. The chief judge of the judicial administrative district has approved a community court program established in that county.
 - 5. The court decides that the community court program will likely benefit the person and the community.
 - (b) Except as provided in sub. (3), the court may establish reasonable and appropriate conditions on the defendant's placement and it shall include those conditions in its order. The court shall set the length of the order, which initially may not exceed 2 years.

- (c) When ordering that a defendant be placed in a community court program, the court may order that the record be expunged if the defendant satisfies the conditions of the order and any applicable suspended prosecution agreement.
- (3) Status of Defendant. A defendant who is placed with a community court program under sub. (2) is subject to conditions set by the court in the placement order and the conditions provided in any applicable suspended prosecution agreement. The defendant is not on probation under ss. 973.09 and 973.10 and the department is not responsible for supervising him or her. The court may not require the person to be confined as a condition of the placement order.
- (4) DISPOSITION. (a) If the defendant satisfies the conditions of the order and any applicable suspended prosecution agreement, the court shall do all of the following:
 - 1. Discharge the defendant.
- 2. Dismiss the charges against the defendant if a judgment of conviction was not previously entered.
- 3. Expunge the court record if the court authorized expungement under sub. (2) (c).
- (b) 1. If the defendant is alleged to have violated the conditions of the order or any applicable suspended prosecution agreement, the court may hold a hearing regarding the allegations. The court shall notify the defendant at least 7 days before holding any hearing and may extend the period of supervision for up to 45 days to accommodate the hearing. Failure of the defendant to appear at the hearing tolls the running of the period of supervision.

- 2. At the hearing, the defendant has the right to counsel, the right to remain silent, the right to present and cross-examine witnesses, and the right to have the hearing recorded by a court reporter.
- 3. If the court finds that the violation occurred, it may enter a judgment of conviction if it was not previously entered, impose a sentence, revise the conditions or the length of the order, or allow the order to continue.
- (5) OTHER MODIFICATIONS TO ORDER. At any time before an order entered under sub. (2) expires, the court may modify the conditions of the order or shorten its length. Upon request of the defendant or district attorney, the court shall hold a hearing regarding a determination under this subsection.

SECTION 4. 974.06 (1) of the statutes is amended to read:

974.06 (1) After the time for appeal or postconviction remedy provided in s. 974.02 has expired, a prisoner in custody under sentence of a court or a person convicted and placed with a volunteers in probation program under s. 973.11 or a community court program under s. 973.115 claiming the right to be released upon the ground that the sentence was imposed in violation of the U.S. constitution or the constitution or laws of this state, that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

SECTION 5. Initial applicability.

(1) This act first applies to persons charged with misdemeanors on the effective date of this subsection.