



2003 ASSEMBLY BILL 137

March 6, 2003 - Introduced by Representatives OWENS, JESKEWITZ, KRAWCZYK, LOEFFELHOLZ, ALBERS and VAN ROY, cosponsored by Senator ROESSLER. Referred to 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:** the senior court program.

Analysis by the Legislative Reference Bureau

Under current law, if a defendant pleads guilty or no contest to or is convicted of one or more misdemeanors for which imprisonment is not required, the court may withhold the entry of judgment or the sentence and order the defendant to be placed with a volunteers in probation program. The defendant's participation in the program is subject to conditions set by the court in its order, which may include a requirement that the defendant be confined for specified periods of time. In addition, if the defendant is placed in the program before conviction, the defendant must enter into a deferred prosecution agreement with the district attorney and the court and is subject to any conditions established in that agreement. If the defendant complies with the placement order, the court discharges the defendant and, unless the defendant was previously convicted, dismisses the case. If the defendant does not comply with the order, the court may impose a sentence or modify or continue the order. Children who are alleged or found to be delinquent based on an act that would be a misdemeanor if committed by an adult may also be placed in a volunteers in probation program. The creation of a volunteers in probation program is subject to the approval of the chief administrative judge of the judicial administrative district.

This bill authorizes the creation of senior court programs for adult offenders. Under the bill, if a defendant pleads guilty or no contest to or is convicted of one or more misdemeanors for which imprisonment is not required, and the defendant was less than 25 years old at the time of each offense, the court may withhold the entry

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of judgment or the sentence and order the defendant to be placed with an approved senior court program. The defendant's participation in the program is subject to conditions set by the court in its order. The order, however, may not require the defendant to be confined. In addition, if the defendant is placed in the program before conviction, the defendant must enter into a suspended prosecution agreement with the district attorney and the court and is subject to any conditions established in that agreement. If the defendant complies with the placement order and, if applicable, the suspended prosecution agreement, the court discharges the defendant and, unless the defendant was previously convicted, dismisses the case. If the defendant does not comply with the order or a suspended prosecution agreement, the court 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 continue the order.

The senior court program created by this bill may not be used in juvenile delinquency proceedings.

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.** 971.41 of the statutes is created to read:

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

7 **SECTION 2.** 972.13 (1) of the statutes is amended to read:

8 972.13 (1) ~~A~~ Except as provided in s. 973.11 (1) or 973.115 (2), a judgment of
9 conviction shall be entered upon a verdict of guilty by the jury, a finding of guilty by
10 the court in cases where a jury is waived, or a plea of guilty or no contest.

11 **SECTION 3.** 973.115 of the statutes is created to read:

12 **973.115 Placements with senior court program.** (1) APPROVAL OF
13 PROGRAMS. In each judicial administrative district under s. 757.60, the chief judge

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1 of the district may approve senior court programs established in a county within the
2 district for placements under this section.

3 **(2) PLACEMENTS.** (a) The court may withhold the judgment of conviction or the
4 sentence and order that a person be placed in a senior court program if all of the
5 following apply:

6 1. The person is convicted of or pleads guilty or no contest to one or more
7 misdemeanors for which mandatory periods of imprisonment are not required.

8 2. The person committed each offense under subd. 1. when he or she was under
9 25 years of age.

10 3. If the court is to withhold the judgment of conviction, the court, the district
11 attorney, and the defendant have entered into a suspended prosecution agreement
12 under s. 971.41.

13 4. The chief judge of the judicial administrative district has approved a senior
14 court program established in that county.

15 5. The court decides that the senior court program will likely benefit the person
16 and the community.

17 (b) Except as provided in sub. (3), the court may establish reasonable and
18 appropriate conditions on the defendant's placement and it shall include those
19 conditions in its order. The court shall set the length of the order, which initially may
20 not exceed 2 years.

21 **(3) STATUS OF DEFENDANT.** A defendant who is placed with a senior court
22 program under sub. (2) is subject to conditions set by the court in the placement order
23 and the conditions provided in any applicable suspended prosecution agreement.
24 The defendant is not on probation under ss. 973.09 and 973.10 and the department

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1 is not responsible for supervising him or her. The court may not require the person
2 to be confined as a condition of the placement order.

3 (4) DISPOSITION. (a) If the defendant satisfies the conditions of the order and
4 any applicable suspended prosecution agreement, the court shall discharge the
5 defendant and, if a judgment of conviction was not previously entered, dismiss the
6 charges against the defendant.

7 (b) 1. If the defendant is alleged to have violated the conditions of the order or
8 any applicable suspended prosecution agreement, the court may hold a hearing
9 regarding the allegations. The court shall notify the defendant at least 7 days before
10 holding any hearing and may extend the period of supervision for up to 45 days to
11 accommodate the hearing. Failure of the defendant to appear at the hearing tolls the
12 running of the period of supervision.

13 2. At the hearing, the defendant has the right to counsel, the right to remain
14 silent, the right to present and cross-examine witnesses, and the right to have the
15 hearing recorded by a court reporter.

16 3. If the court finds that the violation occurred, it may enter a judgment of
17 conviction if it was not previously entered, impose a sentence, revise the conditions
18 or the length of the order, or allow the order to continue.

19 (5) **Other modifications to order.** At any time before an order entered under
20 sub. (2) expires, the court may modify the conditions of the order or shorten its length.
21 Upon request of the defendant or district attorney, the court shall hold a hearing
22 regarding a determination under this subsection.

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

24 974.06 (1) After the time for appeal or postconviction remedy provided in s.
25 974.02 has expired, a prisoner in custody under sentence of a court or a person

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1 convicted and placed with a volunteers in probation program under s. 973.11 or a
2 senior court program under s. 973.115 claiming the right to be released upon the
3 ground that the sentence was imposed in violation of the U.S. constitution or the
4 constitution or laws of this state, that the court was without jurisdiction to impose
5 such sentence, or that the sentence was in excess of the maximum authorized by law
6 or is otherwise subject to collateral attack, may move the court which imposed the
7 sentence to vacate, set aside or correct the sentence.

8 **SECTION 5. Initial applicability.**

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

11 (END)