

CHAPTER 57.

PROBATION, PAROLES AND PARDONS OF CONVICTS.

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57.01 Suspension of sentence. (1) Whenever any adult is convicted of a felony, convictions under sections 340.02, 340.03, 340.04, 340.05, 340.06, 340.07, 340.09, 340.39, 340.40, 340.56, 343.09, 343.121, 343.122, 351.16, 351.30 excepted, and it appears to the satisfaction of the court that the character of the defendant and the circumstances of the case indicate that he is not likely again to commit crime, and that the public good does not require that he shall suffer the penalty provided by law, said court may, except as otherwise provided for by law, by order suspend the judgment or stay the execution thereof and place the defendant on probation, stating therein the reasons for the order, which shall be made a part of the record, and may impose as a condition of making the order or of continuing the same in effect that the defendant shall make restitution or pay the costs of prosecution, or do both.

(2) Such adult may be returned to such court on the original charge for sentence, at any time within such period of probation; and upon the expiration of such period he may be sentenced, discharged, or continued under probation for an additional period to be then fixed by the court, subject to like return, discharge, sentence, or further probation thereafter. [1931 c. 150]

Note: This section does not apply to case where prisoner is convicted of arson under 343.01, in which maximum penalty is twenty years. 20 Atty. Gen. 27.

Person convicted of felony, sentenced to prison and placed on probation under stay of sentence may legally become party to contract. 25 Atty. Gen. 213.

When a person is convicted of one offense

and placed on probation and subsequently sentence is imposed for another offense committed prior to probation, sentence and probation run concurrently. 25 Atty. Gen. 539.

Court is authorized by (1) and (2) to provide for probationary period in case of felony which is of greater duration than maximum penalty prescribed by law for such offense. 27 Atty. Gen. 300.

57.02 Control of probationers. (1) The state board of control shall furnish the clerk of every court of record in this state exercising criminal jurisdiction with blank forms, setting forth all requirements and conditions used by them in the parole of persons from the state institutions, but amended so as to be applicable to the probation of convicts.

(2) Except as provided otherwise in subsection (3), every defendant placed on probation pursuant to section 57.01 shall be subject to the control and management of the said board under the regulations applying to persons paroled from state institutions after a period of imprisonment therein; and immediately upon the entry of the order of probation the clerk of the court shall certify a copy of the record in the case and deliver the same, to the said board, whereupon the custody of the convict shall vest in the said board.

(3) In all counties having a population of 250,000 or more, the municipal court shall have charge of all persons placed on probation pursuant to section 57.01, and the district court shall have charge of all persons placed on probation pursuant to subsection (4) of section 57.02 and subsection (1) of section 57.04, instead of the state department of public welfare; and there shall be one chief probation officer for said courts, who shall be a resident of said county, at a salary not less than \$1,500 per annum and such necessary expenses as may from time to time be allowed by the county board, to be paid as other county officers are paid. Such chief probation officer shall be appointed by the judge of the municipal court. Such chief probation officer shall be an officer of said courts and subject to the control of said municipal court except that as to matters pertaining exclusively to the probationers of said district court said district court shall have control, shall have power to arrest, and shall execute all orders of each of said courts affecting the respective probationers of said courts. The county board shall provide quarters and stationery for the use of such chief probation officer and any additional probation officers and may, from time to time, provide for and fix the salaries of additional probation officers, who shall be subordinate to the chief probation officer and who shall be appointed by the judge of the municipal court. Such municipal court may

appoint one of the additional probation officers as deputy chief probation officer to perform the duties of chief probation officer during the latter's absence or disability. Such additional probation officers shall have the power of arrest. Such probation officers shall make presentence and preprobation investigations and reports as may be required by either of such courts. Such chief probation officer shall report to the said courts as provided in subsection (4) of section 57.04 and the clerk or clerks of said court shall transmit a copy of such reports to the state department of public welfare. Rules and regulations governing such probation department shall be made jointly by the judges of the respective courts; and such rules and regulations shall not discriminate between the work of either court.

(4) In all counties having a population of 250,000 or more the district court, when any adult is convicted of any misdemeanor or violation of a county or city ordinance, may place such adult on probation under the conditions prescribed in subsection (1) of section 57.04; provided that such probation may be for a period of time not to exceed 2 years and upon such terms and conditions, including the payment of any fine imposed as it shall determine. Such adult may be returned to such district court on the original charge for sentence, at any time within such period of probation; and upon the expiration of such period he may be sentenced, discharged, or continued under probation for an additional period, not to exceed the maximum of 2 years, to be then fixed by the court, subject to like return, discharge, sentence, or further probation thereafter. [1931 c. 357; 1933 c. 428 s. 2; 1933 c. 432 s. 2; Spl. S. 1933 c. 9; 1939 c. 523; 1941 c. 296]

Note: Money collected and deposited by probation and parole department of state board of control is public deposit within meaning of chapter 34, Stats. Said department is protected against loss of such money same as are other public deposits in case of bank failure. 27 Atty. Gen. 388.

57.03 Recommitment on violation of probation; discharge. (1) Whenever it appears to the board of control that any such probationer in its charge has violated the regulations or conditions of his probation, the said board may, upon full investigation and personal hearing, order him to be brought before the court for sentence upon his former conviction, which shall then be imposed without further stay, or if already sentenced to any penal institution, may order him to be imprisoned in said institution, and the term of said sentence shall be deemed to have begun at the date of his first detention at such institution. A copy of the order of the board shall be sufficient authority for the officer executing it to take and convey such probationer to the court or to the prison; but any such officer may, without order or warrant, whenever it appears to him necessary in order to prevent escape or enforce discipline, take and detain the probationer and bring him before the board for its action.

(2) Whenever, in the judgment of the board the probationer has satisfactorily met the conditions of his probation, he shall be discharged from further supervision, and said board shall issue to him a certificate of final discharge; but the period of probation shall not be less than the minimum nor more than the maximum term for which he might have been imprisoned.

Note: One who is convicted of embezzlement and is sentenced by trial court and placed on probation to board of control, upon violation of said probation should be brought before board instead of circuit court for revocation of probation and to be placed in prison. Order of circuit court revoking probation is null and void, as court has no jurisdiction. 22 Atty. Gen. 86.

Where A was sentenced to state prison

for two years and at time of sentence sentence was suspended and defendant was placed on probation to state board of control, subsequent sentence for violation of parole "for balance of said two year term as provided by law" is construed to mean that two-year sentence starts on date prisoner is received at state prison as provided by this section. 27 Atty. Gen. 821.

57.04 Probation for misdemeanors and desertion. (1) When any adult is convicted in any court of record of a misdemeanor or of any violation of section 351.30 the court, in its discretion, may by order suspend the judgment or stay the execution thereof and place the defendant on probation for such period of time, not exceeding the maximum penalty prescribed, and upon such terms and conditions, including the payment of any fine imposed, as it shall determine, so that the defendant may be given the opportunity to pay the fine, if one is imposed, within a reasonable time. Upon payment of the fine the judgment shall be satisfied and the probation cease.

(2) In such case the court shall by said order place the probationer in charge of the state board of control or designate some suitable person to act as probation officer who shall be entitled to necessary expenses in the performance of his duties, to be paid out of the county treasury the same as other court expenses, and, for causes hereinafter named, may, without warrant or other process, or upon the order of the court, at any time until the final disposition of the case, take the probationer and bring him before the court; and thereupon, if the court shall have reason to believe from the report of the probation officer, or otherwise, that the probationer has violated or is violating the conditions of his probation, or is engaging in criminal practices, or has formed improper associates, or is

leading a vicious life, it may revoke such probation and pronounce sentence on the former conviction, or if sentence has been pronounced, issue commitment on the sentence or judgment without deduction of the period of probation.

(3) The court may at any time after such revocation of probation again stay further execution on any terms and conditions which it could have imposed originally; and may, whenever the ends of justice shall be subserved thereby, and the good conduct and reform of the probationer shall warrant it, terminate the period of probation and discharge him from custody; but in all cases, if the court has not revoked the probation, or discharged the probationer, he shall at the end of the term of probation be discharged from custody, and said judgment or sentence be deemed fully satisfied.

(4) Each probation officer appointed under this section shall report to the court appointing him at least once each month, and at such other times as may be designated by the court, concerning the conduct of the probationer in his charge. The necessary blanks for such reports shall be supplied by the state board of control.

(5) Whenever any person is placed on probation under this section, the clerk of the court shall immediately mail to the state board of control certified copies of the information or indictment, the plea, the sentence or judgment, the order for probation, and, from time to time thereafter, each report of the probation officer; and shall receive for such services the compensation provided by law for certifying copies of papers in his custody, which shall be paid out of the treasury of the county in which the probationer was convicted.

Note: After sentencing man to serve jail probation or discharge him after he has sentence court has no power to put him on served part of his term. 24 Atty. Gen. 648.

57.05 Probation of minors. (1) If any minor, other than a delinquent child as defined in section 48.01, be found guilty of any misdemeanor, or be convicted of a felony, convictions under sections 340.02, 340.08, 340.09, 340.39, 340.40, 340.56, 343.122, 351.16, and 351.30 excepted, the court in its discretion may suspend sentence and place such minor under the guidance and control of the state board of control as in the case of an adult, or of some adult person who shall have consented in writing to become responsible for the good behavior of such minor for such period of probation not exceeding the maximum penalty prescribed as the court shall fix; and the court may require as a condition of the making or continuing in effect of the order, the payment of costs or the making of restitution, or both, in the court's discretion.

(2) Such minor may be returned to such court on the original charge for sentence, at any time within such period of probation; and upon the expiration of such period, he may be sentenced, discharged, or continued under probation for an additional period to be then fixed by the court, subject to like return, discharge, sentence, or further probation thereafter. [1931 c. 214 s. 1]

57.06 Paroles from state prison and Milwaukee house of correction. (1) The board of control, with the approval of the governor, may, upon ten days' written notice to the district attorney and judge who participated in the trial of the prisoner, parole any prisoner convicted of a felony and imprisoned in the state prison or in the house of correction of Milwaukee county who, if sentenced for less than life, shall have served at least one-half of the term for which he was sentenced, not deducting any allowance of time for good behavior, or who, if sentenced for life, shall have served thirty years less the diminution which would have been allowed for good conduct, pursuant to law, had his sentence been for thirty years, or who if he is a first offender and is sentenced for an indeterminate term, shall have served the minimum, or one-half the maximum, whichever shall be less, for which he was sentenced not deducting any allowance for time for good behavior or who, if he is a first offender and is sentenced under a statute imposing a minimum in excess of two years, shall have served two years, or one-half the maximum, whichever shall be less, not deducting any allowance of time for good behavior.

(2) No such prisoner shall be paroled until it shall appear, to the satisfaction of said board, that some suitable employment has been secured for him; and the paroled prisoner, shall at least once each month render a written report to said board giving such information as may be required by the board, which shall be approved by the person in whose employment the prisoner may be at the time.

(3) Every such paroled prisoner remains in the legal custody of the state board of control and may at any time, on the order of the board, be reimprisoned in said prison or said house of correction; and shall be reimprisoned whenever found exhibited in any show or exhibition. A certified copy of said order shall be sufficient authority for any officer executing it to take and convey the prisoner to the institution from which he was paroled, and all officers shall execute such order in the same manner as a warrant for arrest, but any such officer may, without order or warrant, whenever it appears to him necessary in order to prevent escape or enforce discipline, take and detain the prisoner and bring him before the board for its action. [1933 c. 384; 1937 c. 165]

Note: See note to art. VII, s. 3, Const., citing *In re Zabel*, 219 W 49, 261 NW 669.

Board of control cannot parole prisoner from state prison without giving required written notice to district attorney who participated in trial of prisoner. The board cannot parole prisoner from state prison after denial of former application for parole without giving new notice to judge and to district attorney who participated in trial of prisoner. *State ex rel. Zabel v. Hannan*, 219 W 257, 262 NW 625.

Approval by the governor of orders of parole made by the board of control is a necessary and discretionary act, rather than a purely ministerial act of positive and absolute duty which would be subject to enforcement by mandamus. *State ex rel. Kay v. La Follette*, 222 W 245, 267 NW 907.

In determining whether prisoner is second offender date of conviction and not date of commission of offenses controls. 19 Atty. Gen. 382.

Person convicted of larceny by court-martial and sentenced to two years' imprisonment, who subsequently commits crime of burglary in Wisconsin, is second offender. 20 Atty. Gen. 32.

First offender is one who has not before been convicted of crime punishable by imprisonment in state prison. That offense has not been so punished is immaterial. 21 Atty. Gen. 506.

One whose only previous conviction was under 343.401 is first offender under this section. 22 Atty. Gen. 21.

Amendment to (1) made by chapter 384, Laws 1933, refers to minimum of indeterminate sentence. 23 Atty. Gen. 143.

A, who is serving sentence of from three to five years in state prison as second offender and who is out on conditional pardon for part of his term, may be paroled after he has served one-half of his sentence, including that part when he was out on conditional pardon. 23 Atty. Gen. 172.

Person sentenced to term of from one to three years on one count and from three to five years on other counts, sentences running concurrently, may be paroled after serving two years. 24 Atty. Gen. 263.

Person sentenced for life whose sentence was commuted to indeterminate term of fourteen to twenty-five years may be pa-

roled, if first offender, after he has served two years. 24 Atty. Gen. 513.

Board of control may furnish medical care to paroled prisoners under certain circumstances. 25 Atty. Gen. 488.

One who was sentenced to life imprisonment and whose sentence has been commuted to twenty-five years must serve at least twelve and one-half years before becoming eligible for parole. 26 Atty. Gen. 155.

Time prisoner is out under parole later declared invalid because of technical procedural defects is counted toward service of his sentence when such absence from prison was not due to fault or crime of prisoner. 26 Atty. Gen. 292.

Governor has power to commute life sentence to indeterminate sentence of one to twenty years. First offender whose sentence is so commuted is eligible for parole under (1) after serving one year. 27 Atty. Gen. 91.

Prisoner who, after commencing to serve sentence, is tried and convicted of another offense for which he is given sentence to run concurrently with one then being served is second offender for parole purposes. 29 Atty. Gen. 135.

Person convicted of felony is "first offender" in meaning of (1) unless he has previously been convicted of another felony. "Conviction" in meaning of penal statutes signifies judicial determination of guilt, upon defendant's admission or plea or upon verdict, by court having jurisdiction to try or to sentence defendant. 29 Atty. Gen. 299.

Rule for determining parole eligibility with respect to both indeterminate and determinate sentences imposed to run consecutively is that prisoner must serve minimum period of incarceration required under each separate sentence before he becomes eligible for parole and, for purposes of computing service of said required minimum periods, prisoner will be deemed to be serving his second minimum period at expiration of minimum period of incarceration upon first, and so on. Where prisoner receives additional consecutive sentence while incarcerated on prior conviction, same rule applies and after serving minimum required term on original sentence he will be deemed to commence serving minimum required term on second sentence, for parole purposes. 29 Atty. Gen. 317.

57.07 Paroles from reformatory and industrial home for women. (1) The state board of control may parole any inmate in the state reformatory or industrial home for women whenever suitable employment has been secured for such inmate, and his past conduct for a reasonable time has satisfied said board that he will be law abiding, temperate, honest, and industrious.

(2) Every such paroled inmate remains in the legal custody of said board, and may be returned to the institution from which he was paroled, in the manner prescribed in subsection (3) of section 57.06.

57.075 Probationers' fund. The state board of control shall create a revolving fund out of any moneys in its hands belonging to persons who have been placed on probation, and who have violated their contracts and absconded, or who may in the future violate their contracts and abscond, or whose whereabouts is, or may become, unknown. Said funds shall be used to defray the expenses of clothing or other necessaries, and for transporting probationers who are without money or other means to secure the same; provided that all payments made from such funds shall be re-collected from such probationers for whose benefit they are paid whenever collection thereof is possible; and provided further that any moneys belonging to any absconding probationers so paid into the said revolving fund shall be repaid to such probationers in accordance with law, with interest at three per cent, in case a lawful claim therefor is filed with said board of control showing the legal right of the claimant to such money.

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 ten 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.

Note: One who has been convicted of felony and has served his sentence may be granted pardon by governor to restore his civil rights, without having complied with

regular procedural steps. 21 Atty. Gen. 483.

Upon facts stated it is doubtful whether or not governor's pardon would prevent deportation. 25 Atty. Gen. 479.

Rule and regulation that no restoration of civil rights will be granted until one year after expiration of sentence, except where party is on parole, parole period then being counted as part of year, applies to probation also but only if a condition of probation is that party is out on parole. 25 Atty. Gen. 652.

57.09 Notice of application. Notice of such application, stating the name of the convict, the crime of which he was convicted, the date and term of his sentence, the place of his imprisonment, and the date when the application will be filed with the governor, shall be served upon the judge and the district attorney, if they can be found, who participated in the trial of the convict, at least three weeks before the hearing of the application and shall be published at least once each week for two successive weeks before such hearing in some newspaper of general circulation in the county where the offense was committed, or, if there be no such newspaper such notice shall be posted in a conspicuous place on the door of the courthouse of such county for three weeks before such hearing and published once each week for two consecutive weeks before such hearing in some newspaper published in an adjoining county.

57.10 Application papers. Each such application shall be accompanied by the following papers:

(1) The notice of application, with acknowledgments or affidavits showing due service and affidavits showing due publication thereof, and of its posting whenever required by law.

(2) A certified copy of the whole record, including docket entries, the indictment or information, pleas, transcript of the testimony, and all other papers on file in the court relating to the case.

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

(4) Written communications from the judge and the district attorney who participated in the trial of the convict, if such can be obtained, indicating their views regarding the application and stating briefly any circumstances within their knowledge in aggravation or extenuation of the guilt of the convict.

(5) If the convict was sentenced for the crime of murder, a recommendation of the judge in office when the application is made in the circuit where the trial was had.

(6) A certificate of the warden or keeper of the prison where such convict shall have been confined showing whether or not the convict has, during his confinement, conducted himself in a peaceful and obedient manner.

57.11 Conditional pardon. (1) Whenever, in any case, the governor has granted a pardon upon conditions, or with restrictions or limitations, he may issue his warrant or warrants for carrying into effect such conditional pardons, which warrants shall be obeyed and executed in lieu of the sentence.

(2) Whenever it shall appear to the governor that the convict to whom such pardon has been granted has violated or failed to comply with any such conditions, restrictions, or limitations, during the term of his sentence, he may issue his warrant, directed to the sheriff of any county, commanding said sheriff to arrest such convict and bring him before the governor; and the sheriff shall execute such warrant without delay.

(3) If, upon inquiry it shall further appear, to the satisfaction of the governor, that such convict has so violated or failed to comply with any of such conditions, restrictions or limitations, he may issue his warrant remanding such convict to the institution from which he was discharged, who shall thereupon be confined therein until the expiration of his sentence; otherwise he shall be discharged, subject to such conditional pardon.

Note: After prison sentence has expired and did not live up to all conditions of that governor has no further jurisdiction over pardon. 25 Atty. Gen. 633.

57.115 Temporary release from confinement. Whenever an emergency exists which, in the opinion of the governor makes it advisable, the governor may permit the temporary removal of a convict from confinement for such period and upon such conditions as he may determine.

Note: Prisoner in Waupun may be tried to take prisoner out of prison for that purpose. 25 Atty. Gen. 162.

57.12 Execution, return, and record of warrants. Whenever any convict is pardoned or his punishment commuted, or whenever he shall be remanded to imprisonment for the violation of any of the conditions, restrictions, or limitations of his pardon, the officer to whom the warrant for that purpose is issued, after executing the same, shall make return thereon, to the governor as soon as may be; and shall also file with the clerk of the court in which the offender was convicted an attested copy of the warrant and return, who 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 six 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 six months' notice in writing of its intention to withdraw the compact to the other states party thereto.

(8) If any section, sentence, subdivision or clause of this section is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this section.

(9) This section may be cited as the "Uniform Act for Out-of-State Parolee Supervision". [1939 c. 345]