

CHAPTER 57

PAROLES AND PARDONS

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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 or she has served one-half of the minimum term prescribed by statute for the offense, or when he or she has served 20 years of a life term, less the deduction earned for good conduct as provided in s. 53.11. Parole eligibility shall be computed according to this paragraph for all persons incarcerated on or after June 29, 1974. 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 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 addiction to a controlled substance under ch. 161, 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 to the judge of such misdemeanor and traffic branches of the county court or criminal branches of the circuit court, as the commitment requires, stating the facts justifying the application. The 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 to the probation department of the criminal branches of the circuit or misdemeanor and traffic branches of the county court prior to January 1, 1972, 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

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serve the remainder of his sentence or for further treatment.

History: 1971 c 125, 219; 1973 c 90, 198, 333; 1975 c 156, 199.

Before a parole can be revoked, whether granted under 53.11 (7) or 57.06 (1), the department must hold a hearing and make a record so that on judicial review it can be determined whether the department acted arbitrarily or capriciously. The hearing need not be formal. The prisoner is not entitled to counsel at the hearing. State ex rel. Johnson v. Cady, 50 W (2d) 540, 185 NW (2d) 306.

A determination as to the need for counsel must be made on a case-by-case basis in the exercise of a sound discretion by the state authority charged with responsibility for administering the probation and parole system. State ex rel. Cresci v. H & SS Dept. 62 W (2d) 400, 215 NW (2d) 361.

Amendment to (1) by ch 90, laws of 1973, did not restore right of trial court to fix minimum sentences. Ch. 90 did not remove 1 yr. period under 973.02 and 973.15. Edelman v. State, 62 W (2d) 613, 215 NW (2d) 386.

A certiorari proceeding in the committing court to review a revocation of parole or probation is not a criminal proceeding. Contrary language in State ex rel. H & SS Dept. v. Circuit Court, 57 W (2d) 329, is withdrawn. State ex rel. Hanson v. H & SS Dept. 64 W (2d) 367, 219 NW (2d) 267.

See note to art. I, sec. 12, citing State ex rel. Mueller v. Powers, 64 W (2d) 643, 221 NW (2d) 692, concerning ex post facto legislation.

See note to 257.23, citing State ex rel. Fitas v. Milw. County, 65 W (2d) 130, 221 NW (2d) 902, concerning counsel on revocation.

Before a parole can be revoked the parolee must be given a hearing with assistance of counsel if indigent. Goolsby v. Gagnon, 322 F Supp 460.

57.07 Paroles for female inmates of the state prisons. (1) Without regard to the minimum terms prescribed by s. 57.06 (1) (a), the department may parole female prisoners in the state prisons 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. 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 s. 57.06.

History: 1975 c 189, 224, 422.

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 department, 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 secretary 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 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 sentenced or from which paroled; in cases supervised by the department, reinstatement of the offender's parole or probation by order of the department; in cases of misdemeanants, 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.

History: 1975 c 41, 199.

The court can revoke a probation after the probationary period has expired when the defendant has committed several crimes during the period. Williams v. State, 50 W (2d) 709, 184 NW (2d) 844.

See note to 973.15, citing Guyton v. State, 69 W (2d) 663, 230 NW (2d) 726.

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.

Restoration of civil rights is not a "pardon" for the purposes of liquor and cigarette license statutes. 60 Atty. Gen. 452.

A person convicted of a crime may vote if he has satisfied his sentence. 61 Atty. Gen. 260.

See note to art. XIII, sec. 3, citing 63 Atty. Gen. 74.

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.

Executive clemency in Wisconsin Bauer, 1973 WLR 1154

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.

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.

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 secretary 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 secretary may delegate this authority to the deputy, the administrator of the corrections function and the wardens and superintendents of the state prisons.

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.

Probationer, like a parolee, is entitled to a preliminary and a final revocation hearing *Gagnon v. Scarpelli*, 411 US 778.

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 Cooperative return of parole and probation violators. The secretary may 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 section shall be in writing and any person authorized to act as an agent under this section shall carry formal evidence of his deputization and shall produce the same upon demand.