CHAPTER 57

PAROLES AND PARDONS

57.06 Paroles from state prisons and house of correction. (1) 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. The person serving the life term shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). The department shall not provide any convicted offender or other person sentenced to its custody any parole eligibility or evaluation until the person has been confined at least 60 days following sentencing. Parole eligibility shall be computed according to this subsection for all persons incarcerated on or after June 29, 1974, except that parole eligibility for all persons serving a life term shall be determined under this subsection. 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. Before a person is released on parole under this subsection, the department shall so notify the municipal police department and the county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department a written statement waiving the right to be notified.

(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. If the department alleges that any condition or rule of parole has been violated by the prisoner, the department may take physical custody of the prisoner for the investigation of the alleged violation. If the department is satisfied that any condition or rule of parole has been violated it shall afford the prisoner such administrative hearings as are required by law. The final administrative hearing shall be held before hearing examiners who are licensed to practice law in this state. The hearing examiners shall enter an order revoking or not revoking parole which order shall be, upon request by either party, reviewed by the secretary. If the examiner or the secretary upon review finds that the prisoner has violated the rules or conditions of parole, the examiner, or the secretary upon review, may order the prisoner returned to prison to continue serving his or her sentence, or to continue on parole, and in either case, may order that the prisoner forfeit good time as provided in s. 53.11 (2a). If the prisoner claims or appears to be indigent, the department shall refer the prisoner to the authority for indigency determinations specified under s. 977.07 (1).

(3m) If the convicting court is informed by the department that a prisoner on parole has absconded and that the prisoner's whereabouts are unknown, the court may issue a capias for execution by the sheriff.

(4) (a) If any person convicted of a misdemeanor or traffic offense, any person convicted of a criminal offense in the circuit court for a county having a population of 500,000 or more and sentenced to 2 years or less in the house of correction or any person committed to the house of correction for treatment and rehabilitation for addiction to a controlled substance under ch. 161, during the period of confinement or treatment appears to have been rehabilitated or

cured to the extent, in the opinion of the superintendent of the house of correction or the person in charge of treatment and rehabilitation of a prisoner at that institution, that the prisoner may be released, the prisoner may be released upon conditional parole. Before a person is released on conditional parole under this paragraph, the superintendent or person in charge of treatment and rehabilitation shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department a written statement waiving the right to be notified.

(b) Application for such conditional parole shall be made in writing by the superintendent of the house of correction to the court of commitment stating the facts justifying the application. The 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 or she may be released and that proper provision for employment and residence has been made for the prisoner, the judge may order the prisoner's release on parole to the superintendent of the house of correction, 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 or she shall be returned to the court and may be recommitted to the house of correction to serve the remainder of his or her sentence or for further treatment.

History: 1971 c. 125, 219; 1973 c. 90, 198, 333; 1975 c. 156, 199; 1977 c. 29, 353, 418, 449; 1979 c. 356; 1981 c. 266.

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.

Refusal of parole board to grant discretionary parole is subject to judicial review. Failure to notify prisoner of standards and criteria applied to parole application constituted denial of due process. State ex rel. Tyznik v. H&SS Dept. 71 W (2d) 169, 238 NW (2d) 66.

Every violation of probation or parole does not result in automatic revocation. Snajder v. State, 74 W (2d) 303, 246 NW (2d) 665.

See note to art. I, sec. 8, citing State ex rel. Struzik v. H&SS Dept. 77 W (2d) 216, 252 NW (2d) 660.

See note to art. I, sec. 8, citing State ex rel. Flowers v. H&SS Dept. 81 W (2d) 376, 260 NW (2d) 727.

Presentence incarceration due to indigency must be credited towards a life sentence for the purpose of determining eligibility for parole. Wilson v. State, 82 W (2d) 657, 264 NW (2d) 234.

Parole agent's failure to act on knowledge of similar prior violations did not preclude revocation. Van Ermen v. H&SS Dept. 84 W (2d) 57, 267 NW (2d) 17 (1978).

Prison inmates subject to parole rescission are entitled to Morrissey-Gagnon due process. State ex rel. Klinke v. H&SS Dept. 87 W (2d) 110, 273 NW (2d) 379 (Ct. App. 1978).

Secretary's authority to revoke under (3) cannot be bound by agent's representations. State ex rel. Lewis v. H&SS Dept. 89 W (2d) 220, 278 NW (2d) 232 (Ct. App. 1979).

Parole violation may not be proved entirely by unsubstantiated hearsay testimony. State ex rel. Henschel v. H&SS Dept. 91 W (2d) 268, 280 NW (2d) 785 (Ct. App. 1979).

See note to art. I, sec. 1, citing State v. Aderhold, 91 W (2d) 306, 284 NW (2d) 108 (Ct. App. 1979).

See note to art. I, sec. 8, citing State ex rel. Alvarez v. Lotter, 91 W (2d) 329, 283 NW (2d) 408 (Ct. App. 1979).

See note to 973.15, citing State v. Stuhr, 92 W (2d) 46, 284 NW (2d) 459 (Ct. App. 1979).

Inmate who entered into Mutual Agreement Program (MAP) "contract" for discretionary parole may not bring civil action for breach of contract. Coleman v. Percy, 96 W (2d) 578, 292 NW (2d) 615 (1980).

Mandatory release parole violator may be required to serve beyond final discharge date originally set by court. State ex rel. Bieser v. Percy, 97 W (2d) 702, 295 NW (2d) 179 (Ct. App. 1980).

See note to 53.12, citing Parker v. Percy, 105 W (2d) 486, 314 NW (2d) 166 (Ct. App. 1981).

When probationer or parolee is charged with a crime and may have otherwise violated conditions of release, revocation hearings based on the non-criminal violations should be held without delay. 65 Atty. Gen. 20.

Convict has no constitutional right to be paroled. Greenholtz v. Nebraska Penal Inmates, 442 US 1 (1979).

Probation and parole revocation in Wisconsin. 1977 WLR 503.

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. (1) The period of probation or parole ceases running upon the date the offender absconds, commits a crime or otherwise violates the terms of his or her probation or parole which is sufficient, as determined by the department, to warrant revocation of probation or parole. If the probationer or parolee is reinstated rather than revoked, the period between the alleged violation and the reinstatement shall be treated as service of the probationary or parole period, unless the reinstatement order concludes that

the probationer or parolee did in fact violate the terms of his or her probation or parole, in which case the reinstatement order shall credit days spent in a jail, correctional institution or other detention facility as service of the probationary or parole period.

(2) The sentence of a revoked parolee resumes running on the day a final revocation order is entered by the department, subject to sentence credit for the period of custody in a jail, correctional institution or any other detention facility pending revocation according to the terms of s. 973.155.

(3) The sentence of a revoked probationer shall be credited with the period of custody in a jail, correctional institution or any other detention facility pending revocation and commencement of sentence according to the terms of s. 973.155.

History: 1975 c. 41, 199; 1977 c. 353.

Revisor's Note, 1977: The following annotations concern s. 57.072, 1975 stats., which was repealed and recreated by ch. 353, laws of 1977.

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.

Before tolling statute applies, department must make final determination that violation occurred. Locklear v. State, 87 W (2d) 392, 274 NW (2d) 898 (Ct. App. 1978).

Where revocation proceedings were initiated prior to expiration of parole period, parole was properly revoked after period expired. State ex rel. Avery v. Percy, 99 W (2d) 459, 299 NW (2d) 886 (Ct. App. 1980).

Department may not grant jail credit where it is not provided for by statute. OAG 29-82.

57.075 Probationer and parolee loan 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. The fund shall be used to defray the expenses of clothing, transportation, maintenance and other necessities for probationers and parolees who are without means to secure those necessities. All payments made from the fund 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.

History: 1977 c. 29.

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.

This section does not remove felony conviction for purposes of federal firearm statute. United States v. Ziengenhagen, 420 F Supp. 72.

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 Uniform act for 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 cooperative 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".

History: 1979 c. 89.

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

See note to art. I, sec. 1, citing State ex rel. Niederer v. Cady, 72 W (2d) 311, 240 NW (2d) 626.

See note to 976.03, citing State ex rel. Reddin v. Meekma, 99 W (2d) 56, 298 NW (2d) 192 (Ct. App. 1980). Aff'd, 102 W (2d) 358, 306 NW (2d) 664 (1981).

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 s. 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 s. 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.

Probation order to spend 3 years in India doing charitable work exceeded trial court's authority. State v. Dean, 102 W (2d) 300, 306 NW (2d) 286 (Ct. App. 1981).

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.