CHAPTER 973

SENTENCING

973.01 Bifurcated sentence of imprisonment and extended supervision.
973.013 Indeterminate sentence; Wisconsin state prisons.
973.0135 Sentence for certain serious felonies; parole eligibility determination.
973.014 Sentence of life imprisonment; parole eligibility determination; extended supervision eligibility determination.
973.015 Misdemeanors, special disposition.
973.02 Place of imprisonment when none expressed.
973.03 Jail sentence.
973.032 Sentence to intensive sanctions program.
973.033 Sentencing; restriction on firearm possession.
973.034 Sentencing; restriction on child sex offender working with children.
973.035 Transfer to state−local shared correctional facilities.
973.04 Credit for imprisonment under earlier sentence for the same crime.
973.045 Crime victim and witness assistance surcharge.
973.046 Deoxyribonucleic acid analysis surcharge.
973.047 Deoxyribonucleic acid analysis requirements.
973.048 Sex offender reporting requirements.
973.05 Fines.
973.055 Domestic abuse assessments.
973.06 Costs.
973.07 Failure to pay fine or costs or to comply with certain community service work.
973.075 Forfeiture of property derived from crime and certain vehicles.
973.076 Forfeiture proceedings.
973.077 Burden of proof; liabilities.
973.08 Records accompanying prisoner.
973.09 Probation.
973.10 Control and supervision of probationers.
973.11 Placements with volunteers in probation program.
973.12 Sentence of a repeater or persistent repeater.
973.125 Notice of lifetime supervision for serious sex offenders.
973.13 Excessive sentence, errors cured.
973.135 Courts to report convictions to the state superintendent of public instruction.
973.14 Sentence to house of correction.
973.15 Sentence, terms, escapes.
973.155 Sentence credit.
973.16 Time out.
973.17 Judgment against a corporation or limited liability company.
973.18 Notice of rights to appeal and representation.
973.19 Motion to modify sentence.
973.20 Restitution.

Cross−reference: See definitions in s. 967.02.

973.01 Bifurcated sentence of imprisonment and extended supervision. **(1)** BIFURCATED SENTENCE REQUIRED. Except as provided in sub. (3), whenever a court sentences a person to imprisonment in the Wisconsin state prisons for a felony committed on or after December 31, 1999, the court shall impose a bifurcated sentence that consists of a term of confinement in prison followed by a term of extended supervision under s. 302.113.

(2) STRUCTURE OF BIFURCATED SENTENCES. The court shall ensure that a bifurcated sentence imposed under sub. (1) complies with all of the following:

(a) *Total length of bifurcated sentence.* Except as provided in par. (c), the total length of the bifurcated sentence may not exceed the maximum period of imprisonment for the felony.

(b) *Imprisonment portion of bifurcated sentence.* The portion of the bifurcated sentence that imposes a term of confinement in prison may not be less than one year, subject to any minimum sentence prescribed for the felony, and, except as provided in par. (c), may not exceed whichever of the following is applicable:

1. For a Class B felony, the term of confinement in prison may not exceed 40 years.

2. For a Class BC felony, the term of confinement in prison may not exceed 20 years.

3. For a Class C felony, the term of confinement in prison may not exceed 10 years.

4. For a Class D felony, the term of confinement in prison may not exceed 5 years.

5. For a Class E felony, the term of confinement in prison may not exceed 2 years.

6. For any felony other than a felony specified in subds. 1. to 5., the term of confinement in prison may not exceed 75% of the total length of the bifurcated sentence.

(c) *Penalty enhancement.* The maximum term of confinement in prison specified in par. (b) may be increased by any applicable penalty enhancement. If the maximum term of confinement in prison specified in par. (b) is increased under this paragraph, the total length of the bifurcated sentence that may be imposed is increased by the same amount.

(d) *Minimum term of extended supervision.* The term of extended supervision that follows the term of confinement in prison may not be less than 25% of the length of the term of confinement in prison imposed under par. (b).

(3) NOT APPLICABLE TO LIFE SENTENCES. If a person is being sentenced for a felony that is punishable by life imprisonment, he or she is not subject to this section but shall be sentenced under s. 973.014 (1g).

(3m) CHALLENGE INCARCERATION PROGRAM ELIGIBILITY. When imposing a bifurcated sentence under this section on a person convicted of a crime other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.055, 948.06, 948.07, 948.08 or 948.095, the court shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible for the challenge incarceration program under s. 302.045 during the term of confinement in prison portion of the bifurcated sentence.

(4) NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. A person sentenced to a bifurcated sentence under sub. (1) shall serve the term of confinement in prison portion of the sentence without reduction for good behavior. The term of confinement in prison portion is subject to extension under s. 302.113 (3) and, if applicable, to reduction under s. 302.045 (3m).

(5) EXTENDED SUPERVISION CONDITIONS. Whenever the court imposes a bifurcated sentence under sub. (1), the court may impose conditions upon the term of extended supervision.

(6) NO PAROLE. A person serving a bifurcated sentence imposed under sub. (1) is not eligible for release on parole.

(7) NO DISCHARGE. The department of corrections may not discharge a person who is serving a bifurcated sentence from custody, control and supervision until the person has served the entire bifurcated sentence.

(8) EXPLANATION OF SENTENCE. (a) When a court imposes a bifurcated sentence under this section, it shall explain, orally and in writing, all of the following to the person being sentenced:

1. The total length of the bifurcated sentence.

2. The amount of time the person will serve in prison under the term of confinement in prison portion of the sentence.

3. The amount of time the person will spend on extended supervision, assuming that the person does not commit any act that results in the extension of the term of confinement in prison under s. 302.113 (3).

4. That the amount of time the person must actually serve in prison may be extended as provided under s. 302.113 (3) and that

because of extensions under s. 302.113 (3) the person could serve the entire bifurcated sentence in prison.

5. That the person will be subject to certain conditions while on release to extended supervision, and that violation of any of those conditions may result in the person being returned to prison, as provided under s. 302.113 (9).

(am) If the court provides under sub. (3m) that the person is eligible for the challenge incarceration program, the court shall also inform the person of the provisions of s. 302.045 (3m).

(b) The court's explanation under par. (a) 3. of a person's potential period of extended supervision does not create a right to a minimum period of extended supervision.

History: 1997 a. 283.

973.013 Indeterminate sentence; Wisconsin state prisons. (1) (a) If imprisonment in the Wisconsin state prisons for a term of years is imposed, the court may fix a term less than the prescribed maximum. The form of such sentence shall be substantially as follows: "You are hereby sentenced to the Wisconsin state prisons for an indeterminate term of not more than .... (the maximum as fixed by the court) years."

(b) Except as provided in s. 973.01, the sentence shall have the effect of a sentence at hard labor for the maximum term fixed by the court, subject to the power of actual release from confinement by parole by the department or by pardon as provided by law. If a person is sentenced for a definite time for an offense for which the person may be sentenced under this section, the person is in legal effect sentenced as required by this section, said definite time being the maximum period. A defendant convicted of a crime for which the minimum penalty is life shall be sentenced for life.

(2) Upon the recommendation of the department, the governor may, without the procedure required by ch. 304, discharge absolutely, or upon such conditions and restrictions and under such limitation as the governor thinks proper, any inmate committed to the Wisconsin state prisons after he or she has served the minimum term of punishment prescribed by law for the offense for which he or she was sentenced, except that if the term was life imprisonment, 5 years must elapse after release on parole or extended supervision before such a recommendation can be made to the governor. The discharge has the effect of an absolute or conditional pardon, respectively.

(3) Female persons convicted of a felony may be committed to the Taycheedah correctional institution unless they are subject to sub. (3m).

(3m) If a person who has not attained the age of 16 years is sentenced to the Wisconsin state prisons, the department of corrections shall place the person at a secured juvenile correctional facility or a secured child caring institution, unless the department of corrections determines that placement in an institution under s. 302.01 is appropriate based on the person's prior record of adjustment in a correctional setting, if any; the person's present and potential vocational and educational needs, interests and abilities; the adequacy and suitability of available facilities; the services and procedures available for treatment of the person within the various institutions; the protection of the public; and any other considerations promulgated by the department of corrections by rule. This subsection does not preclude the department of corrections from designating an adult correctional institution as a reception center for the person and subsequently transferring the person to a secured juvenile correctional facility or a secured child caring institution. Section 302.11 and ch. 304 apply to all persons placed in a secured juvenile correctional facility or a secured child caring institution under this subsection.

(4) If information under s. 972.15 (2m) has been provided in a presentence investigation report, the court shall consider that information when sentencing the defendant.

History: 1973 c. 90; 1975 c. 189 s. 99 (1); 1975 c. 224 s. 146m; 1983 a. 102, 1983 a. 371 s. 13; Stats. 1983 s. 973.013; 1987 a. 27; 1989 a. 31, 107; 1993 a. 486; 1995 a. 27; 1997 a. 283.

The supreme court adopts Standard 2.3 (c) of the ABA Standards Relating to Appellate Review of Sentences, thereby requiring the sentencing judge to state for the record in the presence of the defendant the reasons for selecting the particular sentence imposed or, if the sentencing judge deems it in the interest of the defendant not to state his reasons in the presence of the defendant, to prepare a statement for transmission to the reviewing court as part of the record. McCleary v. State, 49 W (2d) 263, 182 NW (2d) 512.

It is not a denial of equal treatment to sentence a defendant to 4 years imprisonment although other persons involved (all minors) received lesser or no punishment. State v. Schilz, 50 W (2d) 395, 184 NW (2d) 134.

An abuse of discretion, as it relates to sentencing procedures, will be found only where there is no rational basis for the imposition of the sentence or these rationale are not articulated in, or inferable from, the record, or where discretion is exercised on the basis of clearly irrelevant or improper factors. Davis v. State, 52 W (2d) 697, 190 NW (2d) 890.

It is not an abuse of discretion to sentence a mature man to 7 years in prison for a sex offense against a 5 year old boy. Bastian v. State, 54 W (2d) 240, 194 NW (2d) 687.

Trial court increase of the defendant's sentence based solely on "reflection", did not constitute a valid basis for modification of a sentence, because this was not a "new factor" justifying a more severe sentence, a prerequisite for sentence reevaluation. Scott v. State, 64 W (2d) 54, 218 NW (2d) 350.

The trial court must take into consideration the time the defendant has spent in preconviction custody. Such consideration must be given even though the time spent in custody when added to the sentence would be less than the maximum. State v. Tew, 54 W (2d) 361, modified by making such consideration mandatory rather than permissive. Byrd v. State, 65 W (2d) 415, 222 NW (2d) 696.

Where the preconviction time in jail added to the sentence imposed does not reach the maximum possible under the statute, the rule in *Byrd* and the credit it gives is inapplicable. State v. Seals, 65 W (2d) 434, 223 NW (2d) 158.

Defendant's contention that he is being punished 3 times for carrying a weapon on the night in question is erroneous. He was convicted and sentenced for 3 acts. Ruff v. State, 65 W (2d) 713, 223 NW (2d) 446.

Sentence of the maximum 5 years in prison is reduced to reflect 89 days of a total 118 days of pretrial incarceration during which time defendant was unable to raise bail because of indigency. Wilkins v. State, 66 W (2d) 628, 225 NW (2d) 492.

A defendant's change in attitude or rehabilitative progress subsequent to sentencing is a factor to be considered by the department of health and social services in determining parole but is not a proper consideration upon which a trial court might base a reduction of sentence. State v. Wuensch, 69 W (2d) 467, 230 NW (2d) 665.

Byrd is not applicable to confinement during nonworking hours imposed subsequent to conviction as a condition of a probation which is later revoked. State v. Wills, 69 W (2d) 489, 230 NW (2d) 827.

The trial court's modification and making concurrent of certain of defendant's sentences for burglary was proper on the basis that subsequent to imposition of sentence the supreme court determined in *Edelman v. State*, 62 W (2d) 613, that a prison sentence has a minimum parole eligibility of one–year, because at the original sentencing hearing, the state emphasized eligibility for "instant parole" as a reason for the imposition of a substantial sentence on the first count and consecutive sentences on the other counts. Kutchera v. State, 69 W (2d) 534, 230 NW (2d) 750.

A defendant financially unable to make bail who is convicted of multiple offenses and given the statutory maximum for each offense, with sentences imposed to run concurrently, must be credited with his presentence incarceration as having received the maximum allowable sentence, since each sentence is considered separately, and the fact that the trial court chose to impose the sentences concurrently rather than consecutively does not alter the fact that each sentence was the maximum provided by law. Mitchell v. State, 69 W (2d) 695, 230 NW (2d) 884.

Although evidence concerning the incidents of sexual activity abroad was relevant as to defendant's character and thus admissible at the sentencing hearing, the trial court abused its discretion by punishing defendant not only for the crime of which he stood convicted, but for the events which occurred outside Wisconsin, as indicated by the fact that both sentencing hearings were devoted largely to these foreign incidents. Rosado v. State, 70 W (2d) 280, 234 NW (2d) 69.

Trial court exceeded jurisdiction by specifying conditions of incarceration. State v. Gibbons, 71 W (2d) 94, 237 NW (2d) 33.

Plea bargain agreements by law enforcement officials not to reveal relevant and pertinent information to sentencing judge are unenforceable as being against public policy. Grant v. State, 73 W (2d) 441, 243 NW (2d) 186.

Chronic offenses of theft by fraud by promising to marry several persons provide a rational basis for lengthy sentence. Lambert v. State, 73 W (2d) 590, 243 NW (2d) 524.

Sentencing judge does not deny due process by considering pending criminal charges in determining sentence. Scope of judicial inquiry prior to sentencing discussed. Handel v. State, 74 W (2d) 699, 247 NW (2d) 711.

See note to Art I, sec. 8, citing Holmes v. State, 76 W (2d) 259, 251 NW (2d) 56.

See note to Art. I, sec. 8, citing Williams v. State, 79 W (2d) 235, 255 NW (2d) 504.

Where consecutive sentences are imposed, pretrial incarceration due to indigency should be credited as time served on only one sentence. Wilson v. State, 82 W (2d) 657, 264 NW (2d) 234.

Courts may correct formal or clerical errors or an illegal sentence at any time. Krueger v. State, 86 W (2d) 435, 272 NW (2d) 847 (1979).

Trial court did not abuse discretion during resentencing where it refused to give defendant credit for time served on unrelated conviction which was voided. State v. Allison, 99 W (2d) 391, 298 NW (2d) 286 (Ct. App. 1980).

See note to 971.08, citing State v. Johnson, 105 W (2d) 657, 314 NW (2d) 897 (Ct. App. 1981).

Prosecutor is relieved from terms of plea agreement where it is judicially determined that defendant has materially breached its conditions. State v. Rivest, 106 W (2d) 406, 316 NW (2d) 395 (1982).

See note to Art. I, sec. 8, citing State v. Jackson, 110 W (2d) 548, 329 NW (2d) 182 (1983).

Increased sentence following vacated plan agreement and subsequent conviction did not violate *Pearce–Denny* due process doctrine. Test for judicial vindictiveness discussed. State v. Stubbendick, 110 W (2d) 693, 329 NW (2d) 399 (1983).

Reduction in maximum statutory penalty for offense is not "new factor" justifying postconviction motion to modify sentence. State v. Hegwood, 113 W (2d) 544, 335 NW (2d) 399 (1983).

Eighty–year sentence for first–time sexual offender was not abuse of discretion. State v. Curbello–Rodriguez, 119 W (2d) 414, 351 NW (2d) 758 (Ct. App. 1984).

Unambiguous sentence pronounced orally and recorded in sentencing transcript controls over written judgment of conviction. State v. Perry, 136 W (2d) 92, 401 NW (2d) 748 (1987).

Sentencing court does not abuse discretion in considering victim's statements and recommendations. State v. Johnson, 158 W (2d) 458, 463 NW (2d) 352 (Ct. App. 1990).

Due process does not require the presence of counsel at a presentence investigation interview of the defendant. State v. Perez, 170 W (2d) 130, 487 NW (2d) 630 (Ct. App. 1992).

Whether a particular factor will be considered as a mitigating or aggravating factor will depend on the particular defendant and case. State v. Thompson, 172 W (2d) 257, 493 NW (2d) 729 (Ct. App. 1992).

Trial court's possible consideration at sentencing of defendant's culpability in more serious offense although jury convicted on a lesser included offense was not error. State v. Marhal, 172 W (2d) 491, 493 NW (2d) 758 (Ct. App. 1992). See also State v. Bobbitt, 178 W (2d) 11, 503 NW (2d) 11 (Ct. App. 1993).

No specific burden of proof is imposed as to read–in offenses which bear upon sentencing; all sentencing is under the standard of judicial discretion. State v. Hubert, 181 W (2d) 333, 510 NW (2d) 799 (Ct. App. 1993).

A sentencing court may consider a defendant's religious beliefs and practices only if a reliable nexus exists between the defendant's criminal conduct and those beliefs and practices. State v. Fuerst, 181 W (2d) 903, 512 NW (2d) 243 (Ct. App. 1994).

Where an oral pronouncement is ambiguous, it is proper to look to the written judgment to ascertain a court's intent in sentencing. An omission in the oral pronouncement can create an ambiguity. State v. Lipke, 186 W (2d) 358, 521 NW (2d) 444 (Ct. App. 1994).

Under s. 973.013, 1991 stats., [now sub. (1)], life imprisonment without parole is not an option. State v. Setagord, 187 W (2d) 339, 523 NW (2d) 124 (Ct. App. 1994).

A plea agreement is analogous to a contract and contract law principals are drawn upon to interpret an agreement. The state's enforcement of a penalty provision of the plea agreement did not require an evidentiary hearing to determine a breach where the breach was obvious and material. State v. Toliver, 187 W (2d) 345, 523 NW (2d) 113 (Ct. App. 1994).

An executory plea bargain is without constitutional significance and a defendant has no right to require the performance of the agreement, but upon entry of a plea due process requires the defendant's expectations to be fulfilled. State v. Wills, 187 W (2d) 528, 523 NW (2d) 569 (Ct. App. 1994).

A defendant who requests resentencing must show specific information was inaccurate and that the court relied on it. Where facts stated in a presentence report are not challenged at sentencing, the sentencing judge may appropriately consider them. State v. Mosley, 201 W (2d) 36, 547 NW (2d) 806 (Ct. App. 1996).

A court must consider 3 primary factors in exercising discretion in sentencing: the gravity of the offense, the character of the offender and the need to protect the public. Remorse is an additional factor which may be considered. State v. Rodgers, 203 W (2d) 83, 552 NW (2d) 123 (Ct. App. 1996). For enumeration of other additional factors which may be considered, see, State v. Barnes, 203 W (2d) 132, 552 NW (2d) 857 (Ct. App. 1996).

A defendant is automatically prejudiced when the prosecutor materially and substantially breaches a plea agreement. New sentencing is required. State v. Smith, 207 W (2d) 259, 558 NW (2d) 379 (1997).

When resentencing a defendant, a court should consider all information relevant about a defendant, including information not existing or not known when sentence was first passed. State v. Carter, 208 W (2d) 142, 560 NW (2d) 256 (1997).

A marital relationship between the prosecutor of a case and the presentence repot writer is sufficient to draw the objectivity of the report into question. It was error not to strike such a report. State v. Suchocki, 208 W (2d) 509, 561 NW (2d) 332 (Ct. App. 1997).

Rehabilitation may not be considered as a "new factor" for purposes of modifying an already imposed sentence. State v. Kluck, 210 W (2d) 1, 563 NW (2d) 468 (1997).

A new factor justifying sentence modification is a fact that is highly relevant but not known by the judge at the time of sentencing because it did not exist or was unknowingly overlooked. The new factor must operate to frustrate the sentencing court's original intent. State v. Johnson, 210 W (2d) 197, 565 NW (2d) 191 (Ct. App. 1997).

Evidence of unproven offenses involving the defendant my be considered in sentencing decisions as the court must must consider whether the crime is an isolated act or part of a pattern of conduct. State v. Fisher, 211 W (2d) 664, 565 NW (2d) 565 (Ct. App. 1997).

The unintentional misstatement of a plea agreement, promptly rectified by the efforts of both counsel, did not deny the defendant's due process right to have the full benefit of a relied upon plea bargain. State v. Knox, 213 W (2d) 318, 570 NW (2d) 599 (Ct. App. 1997)

The court's acceptance a guilty plea and order to implement a diversion agreement, the successful completion of which would have resulted in dismissal of criminal charges, constituted "sentencing". The standard to be applied in deciding a motion to withdraw the guilty plea was the "manifest injustice" standard applicable to such motions after sentence has been entered. State v. Barney, 213 W (2d) 344, 570 NW (2d) 731 (Ct. App. 1997).

A defendant's argument that his sentence was excessive in relation to other sentences for similar crimes committed in the same county was without merit. There is no requirement that that persons convicted of similar offenses must receive similar sentences. State v. Lechner, 217 W (2d) 392, 576 NW (2d) 912 (1998).

A conviction following an *Alford*, does not prevent imposing as a condition of probation that the defendant complete a treatment program that requires acknowledging responsibility for the crime which resulted in the conviction. The imposition of the condition does not violate the defendant's due process rights. There is nothing inherent in the plea that gives the defendant any rights as to punishment. State ex rel. Warren v. Schwarz, 219 W (2d) 616, 579 NW (2d) 698 (1998).

A defendant faced with recommendations of a lengthy sentence, in part, because of evidence of the virtue of the victim, in fairness should have been allowed to recommend a lesser sentence, in part, because of the victim's criminal record. State v. Spears, 220 W (2d) 720, 585 NW (2d) 161 (Ct. App. 1998).

In fixing sentence within statutory limits, judge may consider defendant's false testimony observed by judge during trial. United States v. Grayson, 438 US 41 (1978).

Appellate sentence review. 1976 WLR 655. (1983).

973.0135 Sentence for certain serious felonies; parole eligibility determination. **(1)** In this section:

(a) "Prior offender" means a person who meets all of the following conditions:

1. The person has been convicted of a serious felony on at least one separate occasion at any time preceding the serious felony for which he or she is being sentenced.

2. The person's conviction under subd. 1. remains of record and unreversed.

3. As a result of the conviction under subd. 1., the person was sentenced to more than one year of imprisonment.

(b) "Serious felony" means any of the following:

1. Any felony under s. 961.41 (1), (1m) or (1x) if the felony is punishable by a maximum prison term of 30 years or more.

2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

NOTE: Subd. 2. is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).

3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

4. A crime at any time under federal law or the law of any other state or, prior to April 21, 1994, under the law of this state that is comparable to a crime specified in subd. 1., 2. or 3.

(2) Except as provided in sub. (3), when a court sentences a prior offender to imprisonment in a state prison for a serious felony committed on or after April 21, 1994, but before December 31, 1999, the court shall make a parole eligibility determination regarding the person and choose one of the following options:

(a) The person is eligible for parole under s. 304.06 (1).

(b) The person is eligible for parole on a date set by the court. Under this paragraph, the court may not set a date that occurs before the earliest possible parole eligibility date as calculated under s. 304.06 (1) and may not set a date that occurs later than two–thirds of the sentence imposed for the felony.

(3) A person is not subject to this section if the current serious felony is punishable by life imprisonment.

(4) If a prior conviction is being considered as being covered under sub. (1) (b) 4. as comparable to a felony specified under sub. (1) (b) 1., 2. or 3., the conviction may be counted as a prior conviction under sub. (1) (a) only if the court determines, beyond a reasonable doubt, that the violation relating to that conviction would constitute a felony specified under sub. (1) (b) 1., 2. or 3. if committed by an adult in this state.

History: 1993 a. 194, 483; 1995 a. 448; 1997 a. 219, 283, 295; s. 13.93 (2) (c).

973.014 Sentence of life imprisonment; parole eligibility determination; extended supervision eligibility determination. (1) Except as provided in sub. (2), when a court sentences a person to life imprisonment for a crime committed on or after July 1, 1988, but before December 31, 1999, the court shall make a parole eligibility determination regarding the person and choose one of the following options:

(a) The person is eligible for parole under s. 304.06 (1).

(b) The person is eligible for parole on a date set by the court. Under this paragraph, the court may set any later date than that provided in s. 304.06 (1), but may not set a date that occurs before the earliest possible parole eligibility date as calculated under s. 304.06 (1).

(c) The person is not eligible for parole. This paragraph applies only if the court sentences a person for a crime committed on or after August 31, 1995, but before December 31, 1999.

(1g) (a) Except as provided in sub. (2), when a court sentences a person to life imprisonment for a crime committed on or after December 31, 1999, the court shall make an extended supervision eligibility date determination regarding the person and choose one of the following options:

1. The person is eligible for release to extended supervision after serving 20 years.

2. The person is eligible for release to extended supervision on a date set by the court. Under this subdivision, the court may set any later date than that provided in subd. 1., but may not set a date that occurs before the earliest possible date under subd. 1.

3. The person is not eligible for release to extended supervision.

(b) When sentencing a person to life imprisonment under par. (a), the court shall inform the person of the provisions of s. 302.114 (3) and the procedure for petitioning under s. 302.114 (5) for release to extended supervision.

(c) A person sentenced to life imprisonment under par. (a) is not eligible for release on parole.

(2) When a court sentences a person to life imprisonment under s. 939.62 (2m) (c), the court shall provide that the sentence is without the possibility of parole or extended supervision.

NOTE: Sub. (2) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).

History: 1987 a. 412; 1989 a. 31; 1993 a. 289; 1995 a. 48; 1997 a. 283, 326; s. 13.93 (2) (c).

Constitutionality of 973.014 upheld. State v. Borrell, 167 W (2d) 749, 482 NW (2d) 883 (1992).

Denial of presentence confinement credit under sub. (2) was constitutional. State v. Chapman, 175 W (2d) 231, 499 NW (2d) 223 (Ct. App. 1993).

Sub. (1) (b) allows a circuit court to impose a parole eligibility date beyond a defendant's expected lifetime. State v. Setagord, 211 W (2d) 397, 565 NW (2d) 506 (1997).

A trial court sentencing a defendant under sub. (1) (b), exercising its discretion, may or may not give credit for presentence incarceration. State v. Seeley, 212 W (2d) 75, 567 NW (2d) 897 (Ct. App. 1997).

973.015 Misdemeanors, special disposition. (1) When a person is under the age of 21 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum penalty is imprisonment for one year or less in the county jail, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition.

(2) A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation. Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record.

History: 1975 c. 39; 1975 c. 189 s. 105; 1975 c. 199; 1983 a. 519; 1991 a. 189.

Forfeitures may not be expunged under (1). State v. Michaels, 142 W (2d) 172, 417 NW (2d) 415 (Ct. App. 1987).

Expunged conviction is not admissible to attack witness credibility. State v. Anderson, 160 W (2d) 435, 466 NW (2d) 681 (Ct. App. 1991).

"Expunge" under this section means to strike or obliterate from the record all references to defendant's name and identity. 67 Atty. Gen. 301.

Circuit courts do not possess inherent powers to expunge or destroy conviction records. 70 Atty. Gen. 115.

973.02 Place of imprisonment when none expressed. Except as provided in s. 973.032, if a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence of less than one year shall be to the county jail, a sentence of more than one year shall be to the Wisconsin state prisons and the minimum under the indeterminate sentence law shall be one year, and a sentence of one year may be to either the Wisconsin state prisons or the county jail. In any proper case, sentence and commitment may be to the department or any house of correction or other institution as provided by law or to detention under s. 973.03 (4).

History: 1973 c. 90; 1987 a. 27; 1991 a. 39.

See note to 939.60, citing State ex rel. McDonald v. Douglas Cty. Cir. Ct. 100 W (2d) 569, 302 NW (2d) 462 (1981).

Criminal defendant who receives consecutive sentences that in aggregate exceed one year, but individually are all less than one year, should be incarcerated in county jail rather than Wisconsin prison system. 78 Atty. Gen. 44.

973.03 Jail sentence. (1) If at the time of passing sentence upon a defendant who is to be imprisoned in a county jail there is no jail in the county suitable for the defendant and no cooperative agreement under s. 302.44, the court may sentence the defendant to any suitable county jail in the state. The expenses of supporting the defendant there shall be borne by the county in which the crime was committed.

(2) A defendant sentenced to the Wisconsin state prisons and to a county jail or house of correction for separate crimes shall serve all sentences whether concurrent or consecutive in the state prisons.

(3) (a) If a court sentences a defendant to imprisonment in the county jail, the court may provide that the defendant perform community service work under pars. (b) and (c). The defendant earns good time at a rate of one day for each 3 days of work performed. A day of work equals 8 hours of work performed. This good time is in addition to good time authorized under s. 302.43.

(b) The court may require that the defendant perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any other offense which is read into the record at the time of conviction. An order may only apply if agreed to by the defendant and the organization or agency. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

(c) Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

(d) This subsection applies to persons who are sentenced to a county jail but are transferred to a Huber facility under s. 303.09, to a county work camp under s. 303.10 or to a tribal jail under s. 302.445.

(e) A court may not provide that a defendant perform community service work under this subsection if the defendant is being sentenced regarding any of the following:

1. A crime which is a Class A or B felony.

2. A crime which is a Class C felony listed in s. 969.08 (10) (b), but not including any crime specified in s. 943.10.

3. A crime which is a Class C felony specified in s. 948.05.

(4) (a) In lieu of a sentence of imprisonment to the county jail, a court may impose a sentence of detention at the defendant's place of residence or other place designated by the court. The length of detention may not exceed the maximum possible period of imprisonment. The detention shall be monitored by the use of an electronic device worn continuously on the defendant's person and capable of providing positive identification of the wearer at

the detention location at any time. A sentence of detention in lieu of jail confinement may be imposed only if agreed to by the defendant. The court shall ensure that the defendant is provided a written statement of the terms of the sentence of detention, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms of the sentence of detention may include a requirement that the defendant pay a daily fee to cover the costs associated with monitoring him or her. In that case, the terms must specify to whom the payments are made.

(b) A person sentenced to detention under par. (a) is eligible to earn good time in the amount of one–fourth of his or her term for good behavior if sentenced to at least 4 days, but fractions of a day shall be ignored. The person shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). If the defendant fails to comply with the terms of the sentence of detention, the court may order the defendant brought before the court and the court may order the defendant deprived of good time.

(c) If the defendant fails to comply with the terms of the sentence of detention, the court may order the defendant brought before the court and the court may order that the remainder of the sentence of detention be served in the county jail.

(d) A sentence under this subsection is not a sentence of imprisonment, except for purposes of ss. 973.04, 973.15 (8) (a) and 973.19.

(5) (a) In this subsection:

1. "Commission of a serious crime" has the meaning given under s. 969.08 (10) (a).

2. "Serious crime" has the meaning given under s. 969.08 (10) (b).

(b) In lieu of a continuous sentence, a court may sentence a person to serve a series of periods, not less than 48 hours nor more than 3 days for each period, of imprisonment in a county jail. The person is not subject to confinement between periods of imprisonment.

(c) A court may not sentence a person under par. (b) regarding any violation under ch. 961 or the commission of a serious crime.

History: 1971 c. 298; 1983 a. 110, 192; 1985 a. 150; 1987 a. 27; 1987 a. 332 s. 64; 1987 a. 398, 399; 1989 a. 31, 85; 1993 a. 48; 1995 a. 281, 448.

973.032 Sentence to intensive sanctions program. **(1)** SENTENCE. Beginning July 1, 1992, a court may sentence a person who is convicted of a felony occurring on or after August 15, 1991, but before December 31, 1999, to participate in the intensive sanctions program under s. 301.048. If a person is convicted of a felony occurring on or after December 31, 1999, a court may not sentence the person to participate in the intensive sanctions program under s. 301.048.

(2) ELIGIBILITY. (a) A court may sentence a person under sub. (1) if the department provides a presentence investigation report recommending that the person be sentenced to the program. If the department does not make the recommendation, a court may order the department to assess and evaluate the person. After that assessment and evaluation, the court may sentence the person to the program unless the department objects on the ground that it recommends that the person be placed on probation.

(b) Notwithstanding par. (a), the court may not sentence a person under sub. (1) if he or she is convicted of a felony punishable by life imprisonment.

(3) LIMITATIONS. The following apply to a sentence under sub. (1):

(a) The court shall provide a maximum period for the sentence, which may not exceed the maximum term of imprisonment that could be imposed on the person, including imprisonment authorized by any penalty enhancement statute.

(b) The court shall provide a maximum period for placements under s. 301.048 (3) (a) 1., which may not exceed one year unless the defendant waives this requirement.

(c) 1. In this paragraph, "Type 1 prison" has the meaning given in s. 301.01 (5).

2. The court may prescribe reasonable and necessary conditions of the sentence in accordance with s. 301.048 (3), except the court may not specify a particular Type 1 prison, jail, camp or facility where the offender is to be placed under s. 301.048 (3) (a) and the court may not restrict the department's authority under s. 301.048 (3) (b) or (c).

(4) MODIFICATION. (a) The department may provide for placements under s. 301.048 (3) (a) for a shorter period than the maximum period specified by the court under sub. (3) (b).

(b) The department may request that the court extend the maximum period provided by the court under sub. (3) (a) or the maximum period provided by the court under sub. (3) (b) or both. Unless a hearing is voluntarily waived by the person, the court shall hold a hearing on the matter. The court may not extend the maximum period of the sentence beyond the amount allowable under sub. (3) (a). Except as provided in par. (c), the court may not extend the maximum period for placements under s. 301.048 (3) (a) 1. beyond a total, including the original period and all extensions, of 2 years or two–thirds of the maximum term of imprisonment that could have been imposed on the person, whichever is less.

(c) The court may extend under par. (b) the maximum period for placements under s. 301.048 (3) (a) 1. to a period not exceeding two–thirds of the maximum term of imprisonment that could have been imposed on the person under sub. (3) (a) for his or her sentence to the intensive sanctions program if all of the following apply:

1. The person escaped from a sentence to the intensive sanctions program.

2. The person is sentenced for the escape under s. 946.42 (4) (b) to a sentence of imprisonment concurrent with the sentence to the intensive sanctions program.

3. The sentence under subd. 2. exceeds the total of the maximum period originally provided by the court under sub. (3) (b) for the sentence to the intensive sanctions program and the maximum extensions available under par. (b).

(5) PAROLE RESTRICTIONS. A person sentenced under sub. (1) is eligible for parole except as provided in ss. 302.11, 304.02 and 304.06.

(6) CREDIT. Any sentence credit under s. 973.155 (1) applies toward service of the period under sub. (3) (a) but does not apply toward service of the period under sub. (3) (b).

History: 1991 a. 39; 1993 a. 79; 1995 a. 27, 390; 1997 a. 283.

Where a presentence investigation recommends it, nothing prohibits a court from sentencing a person for whom the sentencing guidelines would recommend probation to the intensive sanctions program. State v. Miller, 180 W (2d) 320, 509 NW (2d) 98 (Ct. App. 1993).

An extension of confinement under this provision may be appealed by common law writ of certiorari. Time for appeal is governed by s. 808.04. State v. Bridges, 195 W (2d) 254, 536 NW (2d) 153 (Ct. App. 1995).

The extension of a placement period under the intensive sanctions program must be based on public safety considerations and the participant's need for punishment and treatment. All that needs to be shown at an extension hearing is that the participant has not made sufficient progress in the program and that more time is required to meet those concerns. State v. Turner, 200 W (2d) 168, 546 NW (2d) 880 (Ct. App. 1996).

The right under s. 972.14 (2) of a defendant to make a statement prior to sentencing does not apply to an extension of a placement under the intensive sanctions program. State v. Turner, 200 W (2d) 168, 546 NW (2d) 880 (Ct. App. 1996).

Intensive Sanctions: A New Sentencing Option. Fiedler. Wis. Law. June 1992.

973.033 Sentencing; restriction on firearm possession. Whenever a court imposes a sentence or places a defendant on probation regarding a felony conviction, the court shall inform the defendant of the requirements and penalties under s. 941.29.

History: 1989 a. 142.

Failure to give the warning under this section does not prevent a conviction under s. 941.29. State v. Phillips, 172 W (2d) 391, 493 NW (2d) 270 (Ct. App. 1992).

973.034 Sentencing; restriction on child sex offender working with children. Whenever a court imposes a sentence or places a defendant on probation regarding a conviction under

s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is under 18 years of age at the time of the offense, or a conviction under s. 948.02 (1), 948.025 (1), 948.05 (1), 948.06 or 948.07 (1), (2), (3) or (4), the court shall inform the defendant of the requirements and penalties under s. 948.13.

History: 1995 a. 265; 1997 a. 220.

973.035 Transfer to state–local shared correctional facilities. Any person serving a sentence of imprisonment to the Wisconsin state prisons, a county jail, a county reforestation camp or a county house of correction or serving a sentence to the intensive sanctions program may be transferred to a state–local shared correctional facility under s. 302.45 (1).

History: 1983 a. 332; 1989 a. 31; 1991 a. 39.

973.04 Credit for imprisonment under earlier sentence for the same crime. When a sentence is vacated and a new sentence is imposed upon the defendant for the same crime, the department shall credit the defendant with confinement previously served.

History: 1983 a. 66, 528.

While periods of time served due to an indigent's inability to post bail prior to trial must be credited as time served on a prison sentence imposed, a court need not credit time served by an indigent offender against probationary confinement. State v. Avila, 192 W (2d) 870, 532 NW (2d) 423 (Ct. App. 1995).

973.045 Crime victim and witness assistance surcharge. (1) On or after October 1, 1983, if a court imposes a sentence or places a person on probation, the court shall impose a crime victim and witness assistance surcharge calculated as follows:

(a) For each misdemeanor offense or count, $50.

(b) For each felony offense or count, $70.

(2) After the clerk determines the amount due, the clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer under s. 59.25 (3) (f) 2.

(3) (a) The clerk shall record the crime victim and witness surcharge in 2 parts. Part A is the portion that the state treasurer shall credit to the appropriation account under s. 20.455 (5) (g) and part B is the portion that the state treasurer shall credit to the appropriation account under s. 20.455 (5) (gc), as follows:

1. Part A equals $30 for each misdemeanor offense or count and $50 for each felony offense or count.

2. Part B equals $20 for each misdemeanor offense or count and $20 for each felony offense or count.

(b) The person paying the crime victim and witness surcharge shall pay all of the moneys due under part A before he or she pays any of the moneys due under part B.

(4) If an inmate in a state prison or a person sentenced to a state prison has not paid the crime victim and witness assistance surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the state treasurer.

History: 1983 a. 27; 1987 a. 27; 1989 a. 31; 1993 a. 16; 1995 a. 201.

973.046 Deoxyribonucleic acid analysis surcharge. (1) If a court imposes a sentence or places a person on probation under any of the following circumstances, the court shall impose a deoxyribonucleic acid analysis surcharge of $250:

(a) The person violated s. 940.225 or 948.02 (1) or (2).

(b) The court required the person to provide a biological specimen under s. 973.047 (1).

(2) After the clerk of court determines the amount due, the clerk shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer under s. 59.25 (3) (f) 2.

(3) All moneys collected from deoxyribonucleic acid analysis surcharges shall be deposited by the state treasurer as specified in s. 20.455 (2) (Lm) and utilized under s. 165.77.

(4) If an inmate in a state prison or a person sentenced to a state prison has not paid the deoxyribonucleic acid analysis surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the state treasurer.

History: 1993 a. 16; 1995 a. 201; 1997 a. 27.

The requirement in sub. (1) (a) that persons convicted of burglary under s. 943.10 pay the DNA analysis surcharge has no rational basis and is unconstitutional. The remainder of the section is not invalid. State v. Trepanier, 204 W (2d) 505, 555 NW (2d) 394 (Ct. App. 1996).

973.047 Deoxyribonucleic acid analysis requirements. (1) (a) If a court imposes a sentence or places a person on probation for a violation of s. 940.225, 948.02 (1) or (2) or 948.025, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) Except as provided in par. (a), if a court imposes a sentence or places a person on probation for any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(c) The results from deoxyribonucleic acid analysis of a specimen under par. (a) or (b) may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

(2) The department of justice shall promulgate rules providing for procedures for defendants to provide specimens under sub. (1) and for the transportation of those specimens to the state crime laboratories for analysis under s. 165.77.

History: 1993 a. 16, 98, 227; 1995 a. 440.

973.048 Sex offender reporting requirements. (1m) Except as provided in sub. (2m), if a court imposes a sentence or places a person on probation for any violation, or for the solicitation, conspiracy or attempt to commit any violation, under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the person to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the person report under s. 301.45.

(2m) If a court imposes a sentence or places a person on probation for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the person was not the victim's parent, the court shall require the person to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the person, that the person is not required to comply under s. 301.45 (1m).

(3) In determining under sub. (1m) whether it would be in the interest of public protection to have the person report under s. 301.45, the court may consider any of the following:

(a) The ages, at the time of the violation, of the person and the victim of the violation.

(b) The relationship between the person and the victim of the violation.

(c) Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

(d) Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

(e) The probability that the person will commit other violations in the future.

(g) Any other factor that the court determines may be relevant to the particular case.

History: 1995 a. 440; 1997 a. 130.

973.05 Fines. (1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment of the fine, of the penalty assessment imposed by s. 165.87, the jail assessment imposed by s. 302.46 (1), the crime victim and witness assistance surcharge under s. 973.045, the crime laboratories and drug law enforcement assessment imposed by s. 165.755, any applicable deoxyribonucleic acid analysis surcharge under s. 973.046, any applicable drug abuse program improvement surcharge imposed by s. 961.41 (5), any applicable domestic abuse assessment imposed by s. 971.37 (1m) (c) 1. or 973.055, any applicable driver improvement surcharge imposed by s. 346.655, any applicable enforcement assessment imposed by s. 253.06 (4) (c), any applicable weapons assessment imposed by s. 167.31, any applicable uninsured employer assessment imposed by s. 102.85 (4), any applicable environmental assessment imposed by s. 299.93, any applicable wild animal protection assessment imposed by s. 29.983, any applicable natural resources assessment imposed by s. 29.987 and any applicable natural resources restitution payment imposed by s. 29.989 to be made within a period not to exceed 60 days. If no such permission is embodied in the sentence, the fine, the penalty assessment, the jail assessment, the crime victim and witness assistance surcharge, the crime laboratories and drug law enforcement assessment, any applicable deoxyribonucleic acid analysis surcharge, any applicable drug abuse program improvement surcharge, any applicable domestic abuse assessment, any applicable driver improvement surcharge, any applicable enforcement assessment, any applicable weapons assessment, any applicable uninsured employer assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment and any applicable natural resources restitution payment shall be payable immediately.

NOTE: Sub. (1) is shown as affected by three acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).

(1m) If the court orders payment of restitution and a fine and related payments under s. 973.20, the court may authorize a payment period in excess of the limit imposed under sub. (1).

(2) When a defendant is sentenced to pay a fine and is also placed on probation, the court may make the payment of the fine, the penalty assessment, the jail assessment, the crime victim and witness assistance surcharge, the crime laboratories and drug law enforcement assessment, any applicable deoxyribonucleic acid analysis surcharge, any applicable drug abuse program improvement surcharge, any applicable domestic abuse assessment, any applicable uninsured employer assessment, any applicable driver improvement surcharge, any applicable enforcement assessment under s. 253.06 (4) (c), any applicable weapons assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment and any applicable natural resources restitution payments a condition of probation. When the payments are made a condition of probation by the court, payments thereon shall be applied first to payment of the penalty assessment until paid in full, shall then be applied to the payment of the jail assessment until paid in full, shall then be applied to the payment of part A of the crime victim and witness assistance surcharge until paid in full, shall then be applied to part B of the crime victim and witness assistance surcharge until paid in full, shall then be applied to the crime laboratories and drug law enforcement assessment until paid in full, shall then be applied to the deoxyribonucleic acid analysis surcharge until paid in full, shall then be applied to the drug abuse improvement surcharge until paid in full, shall then be applied to payment of the driver improvement surcharge until paid in full, shall then be applied to payment of the domestic abuse assessment until paid in full, shall then be applied to payment of the natural resources assessment if applicable until paid in full, shall then be applied to payment of the natural resources restitution payment until paid in full, shall then be applied to the payment of the environmental assessment if applicable until paid in full, shall then be applied to the payment of the wild animal protection assessment if applicable until paid in full, shall then be applied to payment of the weapons assessment until paid in full, shall then be applied to payment of the uninsured employer assessment until paid in full, shall then be applied to payment of the enforcement assessment under s. 253.06 (4) (c), if applicable, until paid in full and shall then be applied to payment of the fine.

(3) (a) In lieu of part or all of a fine imposed by a court, the court may stay the execution of part or all of the sentence and provide that the defendant perform community service work under pars. (b) and (c). The amount of the fine actually paid, if any, shall be used to determine any applicable assessment or surcharge under sub. (1), except that any applicable driver improvement surcharge under s. 346.655 or any domestic abuse assessment imposed by s. 973.055 shall be imposed regardless of whether part or all of the sentence has been stayed. If the defendant fails to comply with the community service order, the court shall order the defendant brought before the court for imposition of sentence. If the defendant complies with the community service order, he or she has satisfied that portion of the sentence.

(b) The court may require that the defendant perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any other offense which is read into the record at the time of conviction. An order may only apply if agreed to by the defendant and the organization or agency. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

(c) Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

(4) If a defendant fails to pay the fine, assessment, surcharge or restitution payment within the period specified under sub. (1) or (1m), the court may do any of the following:

(a) Issue a judgment for the unpaid amount and direct the clerk to file and docket a transcript of the judgment, without fee. If the court issues a judgment for the unpaid amount, the court shall send to the defendant at his or her last−known address written notification that a civil judgment has been issued for the unpaid fine, assessment, surcharge or restitution payment. The judgment has the same force and effect as judgments docketed under s. 806.10.

(b) Issue an order assigning not more than 25% of the defendant's commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 and other money due or to be due in the future to the clerk of circuit court for payment of the unpaid fine, assessment, surcharge or restitution payment. In this paragraph, "employer" includes the state and its political subdivisions.

(c) Issue an order assigning lottery prizes won by a defendant whose name is on the list supplied to the clerk of circuit court under s. 565.30 (5r) (a), for payment of the unpaid fine, assessment, surcharge or restitution payment.

(4m) As provided in s. 767.265 (4), a child support withholding assignment under state law has priority over any assignment or order under sub. (4).

(5) (a) 1. Upon entry of the assignment under sub. (4) (b), unless the court finds that income withholding is likely to cause the defendant irreparable harm, the court shall provide notice of the assignment by regular mail to the last−known address of the person from whom the defendant receives or will receive money. If the clerk of circuit court does not receive the money from the person notified, the court shall provide notice of the assignment to any other person from whom the defendant receives or will receive money. Notice of an assignment under sub. (4) (b) shall inform the intended recipient that, if a prior assignment under sub. (4) (b) has been received relating to the same defendant, the recipient is required to notify the clerk of circuit court that sent the subsequent notice of assignment that another assignment has already been received. A notice of assignment shall include a form per-

mitting the recipient to designate on the form that another assignment has already been received.

2. If, after receiving the annual list under s. 565.30 (5r) (a), the clerk of circuit court determines that a person identified in the list may be subject to an assignment under sub. (4) (c), the clerk shall inform the court of that determination. If the court issues an order under sub. (4) (c), the clerk of circuit court shall send the notice of that order to the administrator of the lottery division of the department of revenue, including a statement of the amount owed under the judgment and the name and address of the person owing the judgment. The court shall notify the administrator of the lottery division of the department of revenue when the judgment that is the basis of the assignment has been paid in full.

3. Notice under this paragraph may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order which directs payment.

(b) For each payment made under the assignment under sub. (4) (b), the person from whom the defendant under the order receives money shall receive an amount equal to the person's necessary disbursements, not to exceed $3, which shall be deducted from the money to be paid to the defendant.

(c) A person who receives notice of the assignment under sub. (4) (b) shall withhold the amount specified in the notice from any money that person pays to the defendant later than one week after receipt of the notice of assignment. Within 5 days after the day on which the person pays money to the defendant, the person shall send the amount withheld to the clerk of circuit court of the jurisdiction providing notice. If the person has already received a notice of an assignment under sub. (4) (b), the person shall retain the later assignment and withhold the amount specified in that assignment after the last of any prior assignments is paid in full. Within 10 days of receipt of the later notice, the person shall notify the clerk of circuit court that sent the notice that the person has received a prior notice of an assignment under sub. (4) (b). Section 241.09 does not apply to assignments under this section.

(d) If after receipt of notice of assignment under par. (a) 1. the person from whom the defendant receives money fails to withhold the money or send the money to the clerk of circuit court as provided in this subsection, the person may be proceeded against under the principal action under ch. 785 for contempt of court or may be proceeded against under ch. 778 and be required to forfeit not less than $50 nor more than an amount, if the amount exceeds $50, that is equal to 1% of the amount not withheld or sent.

(e) If an employer who receives notice of an assignment under sub. (4) (b) fails to notify the clerk of circuit court within 10 days after an employe is terminated or otherwise temporarily or permanently leaves the employer's employment, the employer may be proceeded against under the principal action under ch. 785 for contempt of court.

(f) Compliance by the person from whom the defendant receives money with the order operates as a discharge of the person's liability to the defendant as to that portion of the defendant's commission, earnings, salaries, wages, benefits or other money so affected.

(g) No employer may use an assignment under sub. (4) (b) as a basis for the denial of employment to a defendant, the discharge of an employe or any disciplinary action against an employe. An employer who denies employment or discharges or disciplines an employe in violation of this paragraph may be fined not more than $500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department of workforce development for enforcement of this paragraph.

(i) 1. In this paragraph, "payroll period" has the meaning given in s. 71.63 (5).

2. If after an assignment is in effect the defendant's employer changes its payroll period, or the defendant changes employers and the new employer's payroll period is different from the former employer's payroll period, the clerk may, unless otherwise ordered by a judge, amend the withholding assignment or order so that all of the following apply:

a. The withholding frequency corresponds to the new payroll period.

b. The amounts to be withheld reflect the adjustment to the withholding frequency.

(j) The clerk shall provide notice of the amended withholding assignment or order under par. (i) by regular mail to the defendant's employer and to the defendant.

History: 1977 c. 29; 1979 c. 34, 111; 1981 c. 20, 88, 352; 1983 a. 27, 535; 1985 a. 36; 1987 a. 27, 339, 398; 1989 a. 64, 107, 359; 1991 a. 39; 1993 a. 16; 1995 a. 227, 438, 448; 1997 a. 3, 27, 35, 148, 248; s. 13.93 (2) (c).

See note to Art. I, sec. 8, citing State ex rel. Pedersen v. Blessinger, 56 W (2d) 286, 201 NW (2d) 778.

Trial courts are encouraged to use instalment method when dealing with indigent defenders; instalment period may exceed 60 days. Will v. State, 84 W (2d) 397, 267 NW (2d) 357 (1978).

Court cannot impose probation or order defendant to perform community work in lieu of imposing statutorily required minimum jail sentence. 71 Atty. Gen. 41.

973.055 Domestic abuse assessments. (1) If a court imposes a sentence on an adult person or places an adult person on probation, regardless of whether any fine is imposed, the court shall impose a domestic abuse assessment of $50 for each offense if:

(a) 1. The court convicts the person of a violation of a crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19, 940.20 (1m), 940.201, 940.21, 940.225, 940.23, 940.285, 940.30, 940.305, 940.31, 940.42, 940.43, 940.44, 940.45, 940.48, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125 or of a municipal ordinance conforming to s. 941.20, 940.201, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125; and

2. The court finds that the conduct constituting the violation under subd. 1. involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child; or

(b) The court convicts a person under s. 813.12 (8) (a) or a conforming municipal ordinance.

(2) (a) If the assessment is imposed by a court of record, after the court determines the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2.

(b) If the assessment is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit the amount to the treasurer of the county, city, town or village, and that treasurer shall make payment to the state treasurer as provided in s. 66.12 (1) (b).

(3) All moneys collected from domestic abuse assessments shall be deposited by the state treasurer in s. 20.435 (3) (hh) and utilized in accordance with s. 46.95.

(4) A court may waive part or all of the domestic abuse assessment under this section if it determines that the imposition of the full assessment would have a negative impact on the offender's family.

History: 1979 c. 111; 1979 c. 221 s. 2202 (20); 1979 c. 355; 1981 c. 20 s. 2202 (20) (s); 1983 a. 27 s. 2202 (20); 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 262, 319; 1995 a. 27, 201, 343, 353; 1997 a. 27, 35, 143.

973.06 Costs. (1) Except as provided in s. 93.20, the costs taxable against the defendant shall consist of the following items and no others:

(a) The necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, preliminary examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed to return a defendant from another state or country.

(am) Moneys expended by a law enforcement agency under all of the following conditions:

1. The agency expended the moneys to purchase a controlled substance or controlled substance analog that was distributed in violation of ch. 961.

2. The moneys were expended in the course of an investigation that resulted in the defendant's conviction.

3. The moneys were used to obtain evidence of the defendant's violation of the law.

4. The agency has not previously been reimbursed or repaid for the expended moneys by the defendant.

(b) Fees and travel allowance of witnesses for the state at the preliminary examination and the trial.

(c) Fees and disbursements allowed by the court to expert witnesses. Section 814.04 (2) shall not apply in criminal cases.

(d) Fees and travel allowance of witnesses for the defense incurred by the county at the request of the defendant, at the preliminary hearing and the trial.

(e) Attorney fees payable to the defense attorney by the county or the state. If the court determines at the time of sentencing that the defendant's financial circumstances are changed, the court may adjust the amount in accordance with s. 977.07 (1) (a) and (2).

(f) An amount determined by the court to make a reasonable contribution to a crime prevention organization, if the court determines that the person has the financial ability to make the contribution and the contribution is appropriate.

(g) An amount equal to 10% of any restitution ordered under s. 973.20, payable to the county treasurer for use by the county.

(h) The cost of performance of a test under s. 968.38, if ordered by the court.

(2) The court may remit the taxable costs, in whole or in part.

(3) If the court orders payment of restitution, collection of costs shall be as provided under s. 973.20.

History: Sup. Ct. Order, 67 W (2d) 585, 784 (1975); 1979 c. 356; 1981 c. 352; 1985 a. 29; 1987 a. 347, 398, 403; 1991 a. 39, 269; 1995 a. 27, 53, 448.

See note to 814.51, citing State v. Foster, 100 W (2d) 103, 301 NW (2d) 192 (1981).

Court may not order reimbursement of law enforcement agency for routine investigative activities. State v. Peterson, 163 W (2d) 800, 472 NW (2d) 571 (Ct. App. 1991).

Contribution under (1) (e) toward defendant's attorney fees payable by county may not be taxed in an order separate from the sentence. State v. Grant, 168 W (2d) 682, 484 NW (2d) 371 (Ct. App. 1992).

Sub. (1) (c) provides authority to order payment of costs to the state crime laboratory for tests performed, whether or not an expert from the laboratory actually testified at trial. State v. Ferguson, 195 W (2d) 174, 536 NW (2d) 116 (Ct. App. 1995).

Sub. (1) (c) does not limit recovery of expert witness fees to fees for court appointed witnesses. State v. Schmaling, 198 W (2d) 757, 543 NW (2d) 555 (Ct. App. 1995).

A court was authorized to order that a defendant pay the cost of DNA testing by a private laboratory as a cost under this section. State v. Beiersdorf, 208 W (2d) 492, 561 NW (2d) 749 (Ct. App. 1997).

Expenses incurred by a sheriff's department in transporting a witness from a Florida corrections facility to testify at the defendant's trial were chargeable to the defendant under s. 973.06 (1) (a). State v. Bender, 213 W (2d) 338, 570 NW (2d) 590 (Ct. App. 1997).

For costs to be imposed under sub. (1) (am) all the listed conditions must be met. State v. Neave, 220 W (2d) 786, 585 NW (2d) 169 (Ct. App. 1998).

Obligation of defendant under this section is not dischargeable in bankruptcy. Matter of Zarzynski, 771 F (2d) 304 (1985).

Right to counsel; repayment of cost of court–appointed counsel as a condition of probation. 56 MLR 551.

973.07 Failure to pay fine or costs or to comply with certain community service work. If the fine, costs, penalty assessment, jail assessment, crime victim and witness assistance surcharge, crime laboratories and drug law enforcement assessment, applicable deoxyribonucleic acid analysis surcharge, applicable drug abuse program improvement surcharge, applicable domestic abuse assessment, applicable driver improvement surcharge, applicable enforcement assessment under s. 253.06 (4) (c), applicable weapons assessment, applicable uninsured employer assessment, applicable environmental assessment, applicable wild animal protection assessment, applicable natural resources assessment and applicable natural resources restitution payments are not paid or community service work under s. 943.017 (3) is not completed as required by the sentence, the defendant may be committed to the county jail until the fine, costs, penalty assessment, jail assessment, crime victim and witness assistance surcharge, crime laboratories and drug law enforcement assessment, applicable deoxyribonucleic acid analysis surcharge, applicable drug abuse program improvement surcharge, applicable domestic abuse assessment, applicable driver improvement surcharge, applicable enforcement assessment under s. 253.06 (4) (c), applicable weapons assessment, applicable uninsured employer assessment, applicable environmental assessment, applicable wild animal protection assessment, applicable natural resources assessment or applicable natural resources restitution payments are paid or discharged, or the community service work under s. 943.017 (3) is completed, for a period fixed by the court not to exceed 6 months.

History: 1977 c. 29; 1979 c. 34, 111; 1981 c. 20; 1983 a. 27; 1985 a. 36; 1987 a. 27, 339; 1989 a. 64; 1991 a. 39; 1993 a. 16; 1995 a. 24; 1997 a. 27.

See note to Art. I, sec. 8, citing State ex rel. Pedersen v. Blessinger, 56 W (2d) 286, 201 NW (2d) 778.

Where fine and payment schedule are reasonably suited to offender's means, offender carries heavy burden of showing inability to pay. Will v. State, 84 W (2d) 397, 267 NW (2d) 357 (1978).

Commitment under this section may be consecutive to another term of incarceration. State v. Way, 113 W (2d) 82, 334 NW (2d) 918 (Ct. App. 1983).

The six month limit on commitments under this section is the aggregate amount of time a defendant may be jailed for nonpayment of a fine. State v. Schuman, 173 W (2d) 743, 496 NW (2d) 684 (Ct. App. 1993).

973.075 Forfeiture of property derived from crime and certain vehicles. (1) The following are subject to seizure and forfeiture under ss. 973.075 to 973.077:

(a) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime.

(b) 1m. Except as provided in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the following ways:

a. To transport any property or weapon used or to be used or received in the commission of any felony.

b. In the commission of a crime under s. 946.70.

c. In the commission of a crime in violation of s. 944.30, 944.31, 944.32, 944.33 or 944.34.

d. In the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

e. To cause more than $1,000 worth of criminal damage to cemetery property in violation of s. 943.01 (2) (d) or 943.012.

f. In the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or 940.32.

2m. a. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under ss. 973.075 to 973.077 unless it appears that the owner or other person in charge of the vehicle had knowledge of or consented to the commission of the crime.

b. No vehicle is subject to forfeiture under ss. 973.075 to 973.077 by reason of any act or omission established by the owner of the vehicle to have been committed or omitted without his or her knowledge or consent.

c. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the crime which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(bm) Any property used in the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or 940.32, but if the property is encumbered by a bonafide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(c) All remote sensing equipment, navigational devices, survey equipment and scuba gear and any other equipment or device used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

(d) A tank vessel that violates s. 299.62 (2) that is owned by a person who, within 5 years before the commission of the current violation, was previously convicted of violating s. 299.62 (2), but if the tank vessel is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(2) A law enforcement officer may seize property subject to this section upon process issued by any court of record having jurisdiction over the property. Except for vehicles used in the commission of a crime in violation of s. 944.30, 944.31, 944.32, 944.33 or 944.34, seizure without process may be made under any of the following circumstances:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under any administrative or special inspection warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state.

(c) The officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) The officer has probable cause to believe that the property was derived from or realized through a crime or that the property is a vehicle which was used to transport any property or weapon used or to be used or received in the commission of any felony, which was used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47 or which was used to cause more than $1,000 worth of criminal damage to cemetery property in violation of s. 943.01 (2) (d) or 943.012.

(3) If there is a seizure under sub. (2) or s. 342.30 (4) (a), proceedings under s. 973.076 shall be instituted. Property seized under this section or s. 342.30 (4) (a) is not subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this section or s. 342.30 (4) (a), the person seizing the property may do any of the following:

(a) Place the property under seal.

(b) Remove the property to a place designated by it.

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(4) When property is forfeited under ss. 973.075 to 973.077, the agency seizing the property may sell the property that is not required by law to be destroyed or transferred to another agency. The agency may retain any vehicle for official use or sell the vehicle. The agency seizing the property may deduct 50% of the amount received for administrative expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as the proceeds of the forfeiture. If the property forfeited under ss. 973.075 to 973.077 is money, all the money shall be deposited in the school fund.

(5) All forfeitures under ss. 973.075 to 973.077 shall be made with due provision for the rights of innocent persons under sub. (1) (b) 2m. and (d). Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(6) Sections 973.075 to 973.077 do not apply to crimes committed under ch. 961.

History: 1981 c. 267; 1985 a. 245, 258; 1987 a. 348; 1989 a. 263; 1993 a. 92, 169, 459, 491; 1995 a. 290, 448; 1997 a. 35, 285.

The critical inquiry under (1) (b) is not whether the vehicle was used in crime, but whether property carried by vehicle was used in crime. State v. One 1971 Oldsmobile Cutlass, 159 W (2d) 718, 464 NW (2d) 851 (Ct. App. 1990).

The forfeiture of a motor vehicle under sub. (1) (b) did not violate the constitutional guarantees against excessive punishment. State v. Hammad, 212 W (2d) 343, 569 NW (2d) 68 (Ct. App. 1997).

973.076 Forfeiture proceedings. (1) TYPE OF ACTION; WHERE BROUGHT. In an action brought to cause the forfeiture of any property specified in s. 342.30 (4) (a) or s. 973.075 (1), the court may render a judgment in rem or against a party personally, or both. The circuit court for the county in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Any property seized may be the subject of a federal forfeiture action.

(2) COMMENCEMENT. (a) The district attorney of the county within which the property was seized or in which the defendant is convicted shall commence the forfeiture action within 30 days after the seizure of the property or the date of conviction, whichever is earlier, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

(c) In counties having a population of 500,000 or more, the district attorney or the corporation counsel may proceed under par. (a).

(d) If no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in s. 806.02.

(3) BURDEN OF PROOF. The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture under s. 973.075 to 973.077.

(4) ACTION AGAINST OTHER PROPERTY OF THE PERSON. The court may order the forfeiture of any other property of a defendant up to the value of property found by the court to be subject to forfeiture under s. 973.075 if the property subject to forfeiture meets any of the following conditions:

(a) Cannot be located.

(b) Has been transferred or conveyed to, sold to or deposited with a 3rd party.

(c) Is beyond the jurisdiction of the court.

(d) Has been substantially diminished in value while not in the actual physical custody of the law enforcement agency.

(e) Has been commingled with other property that cannot be divided without difficulty.

History: 1981 c. 267; Sup. Ct. Order, 120 W (2d) xiii (1984); 1985 a. 245; 1989 a. 121; 1993 a. 92, 321, 491; 1997 a. 187.

Judicial Council Note, 1984: Sub. (2) (a) has been amended by allowing 60 days after the action is commenced for service of the summons, complaint and affidavit on the defendants. The prior statute, requiring service within 30 days after seizure of the property, was an exception to the general rule of s. 801.02 (2), stats. [Re Order effective Jan. 1, 1985]

Section 801.15 (2) governs extensions of time after the time for setting a hearing has expired. State v. Elliot, 203 W (2d) 95, 551 NW (2d) 850 (Ct. App. 1996).

973.077 Burden of proof; liabilities. **(1)** It is not necessary for the state to negate any exemption or exception regarding any crime in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under s. 973.076. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3) No liability is imposed by ss. 973.075 to 973.077 upon any authorized law enforcement officer or employe engaged in the lawful performance of duties.

History: 1981 c. 267.

973.08 Records accompanying prisoner. **(1)** When any defendant is sentenced to the state prisons, a copy of the judgment of conviction and a copy of any order for restitution under s. 973.20 shall be delivered by the officer executing the judgment to the warden or superintendent of the institution when the prisoner is delivered.

(2) The transcript of any portion of the proceedings relating to the prisoner's sentencing shall be filed at the institution within 120 days from the date sentence is imposed.

(3) The transcript of all other testimony and proceedings upon order of a court shall be delivered to a prisoner within 120 days of his or her request.

(4) The transcript of all other testimony and proceedings upon order of a court shall be delivered to the department within 120 days of its request.

(5) The clerk of court shall file or deliver a transcript under sub. (2), (3) or (4).

History: 1971 c. 298 s. 26 (1); 1977 c. 187; Sup. Ct. Order, eff. 1–1–80; 1979 c. 221; 1987 a. 398.

For a court order to be entered under sub. (3), at a minimum a requesting prisoner must show that he or she either never received or was denied access to the requested documents. State v. Wilson, 170 W (2d) 720, 490 NW (2d) 48 (Ct. App. 1992).

973.09 Probation. **(1)** (a) Except as provided in par. (c) or if probation is prohibited for a particular offense by statute, if a person is convicted of a crime, the court, by order, may withhold sentence or impose sentence under s. 973.15 and stay its execution, and in either case place the person on probation to the department for a stated period, stating in the order the reasons therefor. The court may impose any conditions which appear to be reasonable and appropriate. The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously. If the court imposes an increased term of probation, as authorized under sub. (2) (a) 2. or (b) 2., it shall place its reasons for doing so on the record.

(b) If the court places the person on probation, the court shall order the person to pay restitution under s. 973.20, unless the court finds there is substantial reason not to order restitution as a condition of probation. If the court does not require restitution to be paid to a victim, the court shall state its reason on the record. If the court does require restitution, it shall notify the department of justice of its decision if the victim may be eligible for compensation under ch. 949.

(c) When a person is convicted of any crime which is punishable by life imprisonment, the court shall not place the person on probation.

(d) If a person is convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment, a court may place the person on probation under par. (a) if the court requires, as a condition of probation, that the person be confined under sub. (4) for at least that mandatory or presumptive minimum period. The person is eligible to earn good time credit calculated under s. 302.43 regarding the period of confinement. This paragraph does not apply if the conviction is for any violation under s. 346.63.

(e) The court may impose a sentence under s. 973.032, stay its execution and place the person on probation. A court may not provide that a condition of any probation involves participation in the intensive sanctions program.

(1g) If the court places the person on probation, the court may require, upon consideration of the factors specified in s. 973.20 (13) (a) 2. to 5., that the probationer reimburse the county or the state, as applicable, for any costs for legal representation to the county or the state for the defense of the case. In order to receive this reimbursement, the county or the state public defender shall provide a statement of its costs of legal representation to the defendant and court within the time period set by the court.

(1x) If the court places a person on probation, the court may require that the probationer make a contribution to a crime prevention organization if the court determines that the probationer has the financial ability to make the contribution.

(2) The original term of probation shall be:

(a) 1. Except as provided in subd. 2., for misdemeanors, not less than 6 months nor more than 2 years.

2. If the probationer is convicted of not less than 2 nor more than 4 misdemeanors at the same time, the maximum original term of probation may be increased by one year. If the probationer is convicted of 5 or more misdemeanors at the same time, the maximum original term of probation may be increased by 2 years.

(b) 1. Except as provided in subd. 2., for felonies, not less than one year nor more than either the statutory maximum term of imprisonment for the crime or 3 years, whichever is greater.

2. If the probationer is convicted of 2 or more crimes, including at least one felony, at the same time, the maximum original term of probation may be increased by one year for each felony conviction.

(2m) If a court imposes a term of probation in excess of the maximum authorized by statute, the excess is void and the term of probation is valid only to the extent of the maximum term authorized by statute. The term is commuted without further proceedings.

(3) (a) Prior to the expiration of any probation period, the court, for cause and by order, may extend probation for a stated period or modify the terms and conditions thereof.

(b) The department shall notify the sentencing court, any person to whom unpaid restitution is owed and the district attorney of the status of the ordered restitution payments unpaid at least 90 days before the probation expiration date. If payment as ordered has not been made, the court shall hold a probation review hearing prior to the expiration date, unless the hearing is voluntarily waived by the probationer with the knowledge that waiver may result in an extension of the probation period or in a revocation of probation. If the court does not extend probation, it shall issue a judgment for the unpaid restitution and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket, without fee, unless it finds that the victim has already recovered a judgment against the probationer for the damages covered by the restitution order. If the court issues a judgment for the unpaid restitution, the court shall send to the person at his or

her last–known address written notification that a civil judgment has been issued for the unpaid restitution. The judgment has the same force and effect as judgments entered under s. 806.10.

(bm) 1. At least 90 days before the expiration date of a probationer's period of probation, the department may notify the sentencing court and the district attorney that a probationer owes unpaid fees to the department under s. 304.073 or 304.074.

2. Upon receiving notice from the department under subd. 1., the court shall schedule a probation review hearing to be held before the expiration date of the period of probation unless the probationer either pays the fees before the scheduled hearing date or voluntarily waives the hearing. A waiver of a probation review hearing under this subdivision shall include an acknowledgement by the probationer that waiver may result in an extension of the probation period, a modification of the terms and conditions of probation or a revocation of probation.

3. At a probation review hearing under subd. 2., the department has the burden of proving that the probationer owes unpaid fees under s. 304.073 or 304.074 and the amount of the unpaid fees. If the department proves by a preponderance of the evidence that the probationer owes unpaid fees under s. 304.073 or 304.074, the court may, by order, extend the period of probation for a stated period or modify the terms and conditions of probation.

4. If the court does not extend or modify the terms of probation under subd. 3., it shall issue a judgment for the unpaid fees and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket, without fee. If the court issues a judgment for the unpaid fees, the court shall send to the department a written notification that a civil judgment has been issued for the unpaid fees. The judgment has the same force and effect as judgments entered under s. 806.10.

(c) Any of the following may constitute cause for the extension of probation:

1. The probationer has not made a good faith effort to discharge court–ordered payment obligations or to pay fees owed under s. 304.073 or 304.074.

2. The probationer is not presently able to make required restitution payments and the probationer and the person to whom restitution is owed consent to the performance of community service work under sub. (7m) in satisfaction of restitution ordered for that person, for which an extended period of probation is required.

3. The probationer stipulates to the extension of supervision and the court finds that extension would serve the purposes for which probation was imposed.

(4) The court may also require as a condition of probation that the probationer be confined during such period of the term of probation as the court prescribes, but not to exceed one year. The court may grant the privilege of leaving the county jail, Huber facility, work camp or tribal jail during the hours or periods of employment or other activity under s. 303.08 (1) (a) to (e) while confined under this subsection. The court may specify the necessary and reasonable hours or periods during which the probationer may leave the jail, Huber facility, work camp or tribal jail or the court may delegate that authority to the sheriff. In those counties without a Huber facility under s. 303.09, a work camp under s. 303.10 or an agreement under s. 302.445, the probationer shall be confined in the county jail. In those counties with a Huber facility under s. 303.09, the sheriff shall determine whether confinement under this subsection is to be in that facility or in the county jail. In those counties with a work camp under s. 303.10, the sheriff shall determine whether confinement is to be in the work camp or the county jail. The sheriff may transfer persons confined under this subsection between a Huber facility or a work camp and the county jail. In those counties with an agreement under s. 302.445, the sheriff shall determine whether confinement under this subsection is to be in the tribal jail or the county jail, unless otherwise provided under the agreement. In those counties, the sheriff may transfer persons confined under this subsection between a tribal jail and a county jail, unless otherwise provided under the agreement. While subject to this subsection, the probationer is subject to s. 303.08 (1), (3) to (6), (8) to (12) and (14) or to s. 303.10, whichever is applicable, and to all the rules of the county jail, Huber facility, work camp or tribal jail and the discipline of the sheriff.

(5) When the period of probation for a probationer has expired, the probationer shall be discharged from probation and the department shall do all of the following:

(a) If the probationer was placed on probation for a felony, issue the probationer one of the following:

1. A certificate of discharge from probation for the felony for which he or she was placed on probation if, at the time of discharge, the probationer is on probation or parole for another felony.

2. A certificate of final discharge if, at the time of discharge, the probationer is not on probation or parole for another felony. A certificate of final discharge under this subdivision shall list the civil rights which have been restored to the probationer and the civil rights which have not been restored to the probationer.

(b) If the probationer was placed on probation for a misdemeanor, notify the probationer that his or her period of probation has expired.

(c) In all cases, notify the court that placed the probationer on probation that the period of probation has expired.

(7m) (a) Except as provided in s. 943.017 (3), the court may require as a condition of probation that the probationer perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any other offense which is read into the record at the time of conviction. An order may only apply if agreed to by the probationer and the organization or agency. The court shall ensure that the probationer is provided a written statement of the terms of the community service order and that the community service order is monitored. If the court requires the conditions provided in this subsection and sub. (4), the probationer reduces the period of confinement under sub. (4) at a rate of one day for each 3 days of work performed. A day of work equals 8 hours of work performed.

(b) Any organization or agency acting in good faith to which a probationer is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the probationer.

History: 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989 a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289.

Judicial Council Note, 1981: A cross–reference to s. 973.15 has been inserted to clarify that the provisions of that statute govern the imposition of sentence even though the court stays execution of the sentence under this statute. [Bill 341–A]

Judicial Council Note, 1987: Sub. (1g) is amended to require the court to consider the defendant's ability to pay when ordering reimbursement of the costs of legal representation.

Sub. (3) (c) specifies grounds for extending probation. The availability of a civil judgment for unpaid restitution enforceable by the victim under s. 973.20 (1), stats., substantially reduces the necessity of extending probation solely for the purpose of enforcing court–ordered payments, a practice of questionable cost–effectiveness. See legislative audit bureau report No. 85–10, April 15, 1985, at 17–18. Probation may, however, be extended upon stipulation of the defendant, to enforce community service in satisfaction of restitution, or when the probationer has not made a good faith effort to make restitution or other payments. Huggett v. State, 83 Wis. 2d 790, 803 (1978). [87 Act 398]

Terminology of work–release under (4) and Huber law privileges under 56.08 cannot be used interchangeably without danger of inappropriate sentence. Yingling v. State, 73 W (2d) 438, 243 NW (2d) 420.

Claims of credit for pretrial or preconviction incarceration may be made only as to sentences imposed, and not to periods of confinement during nonworking hours imposed as a condition of probation under (4). Full confinement for one year as a condition of probation is not authorized under (4). State v. Gloudemans, 73 W (2d) 514, 243 NW (2d) 220.

Probation condition that probationer not contact her codefendant fiance was permissible infringement of her constitutional rights because the condition was reasonably related to rehabilitation and was not overly broad. Edwards v. State, 74 W (2d) 79, 246 NW (2d) 109.

Where defendant is sentenced for 3 charges and placed on consecutive probation for the 4th charge, trial court may not impose probation condition that defendant make restitution for all charges. Garski v. State, 75 W (2d) 62, 248 NW (2d) 425.

Failure to make restitution is not cause for extending probation under (3) if probationer demonstrates good faith effort to pay but lacks capacity to pay during probation. Huggett v. State, 83 W (2d) 790, 266 NW (2d) 403 (1978).

Order to pay restitution, in amount to be determined later, authorized collection of funds from defendant. Thieme v. State, 96 W (2d) 98, 291 NW (2d) 474 (1980).

Remand for resentencing was proper procedure where trial court improperly imposed period of probation to run concurrently with period of parole. State v. Givens, 102 W (2d) 476, 307 NW (2d) 178 (1981).

Issuance of warrant during probationary term tolls running of term. State ex rel. Cox v. H&SS Dept. 105 W (2d) 378, 314 NW (2d) 148 (Ct. App. 1981).

Restitution order reversed for failure to consider probationer's resources and future ability to pay. State v. Pope, 107 W (2d) 726, 321 NW (2d) 359 (Ct. App. 1982).

See note to Art. I, sec. 8, citing State ex rel. Thompson v. Riveland, 109 W (2d) 580, 326 NW (2d) 768 (1982).

See note to Art. I, sec. 8, citing State v. Dean, 111 W (2d) 361, 330 NW (2d) 630 (Ct. App. 1983).

Court lacked authority to impose consecutive probationary terms. State v. Gereaux, 114 W (2d) 110, 338 NW (2d) 118 (Ct. App. 1983).

Court erred in imposing consecutive sentences of probation. Increased punishment on resentencing did not violate double jeopardy clause. State v. Pierce, 117 W (2d) 83, 342 NW (2d) 776 (Ct. App. 1983).

See note to Art. I, sec. 8, citing State v. Sepulveda, 120 W (2d) 231, 353 NW (2d) 790 (1984).

Court may not assess costs of special prosecutor's fees as condition of probation. State v. Amato, 126 W (2d) 212, 376 NW (2d) 75 (Ct. App. 1985).

Under facts of case, continuation of probation solely to collect restitution debt was abuse of discretion. State v. Jackson, 128 W (2d) 356, 382 NW (2d) 429 (1986).

Court may order defendant to reimburse police for funds used for drug purchase which resulted in the conviction. State v. Connelly, 143 W (2d) 500, 421 NW (2d) 859 (Ct. App. 1988).

Lack of counsel at probation revocation hearing didn't deny probationer's constitutional rights. State v. Hardwick, 144 W (2d) 54, 422 NW (2d) 922 (Ct. App. 1988.)

Sub. (1) (b) does not restrict court's authority to condition probation on any reasonable and appropriate requirement under (1) (a). State v. Heyn, 155 W (2d) 621, 456 NW (2d) 157 (1990).

Sub. (3) (a) authorizes court to modify all conditions of probation established for a specific probationer, including those imposed by corrections department. State ex rel. Taylor v. Linse, 161 W (2d) 719, 469 NW (2d) 201 (Ct. App. 1991).

Plea agreement to amend judgment of conviction upon successful completion of probation is not authorized by statute. State v. Hayes, 167 W (2d) 423, 481 NW (2d) 699 (Ct. App. 1992).

Due process rights of a probationer at a hearing to modify probation enumerated. State v. Hayes, 173 W (2d) 439, 496 NW (2d) 645 (Ct. App. 1992).

Requiring a convicted defendant to deposit money for possible future counselling costs of victims was impermissible. State v. Handley, 173 W (2d) 838, 496 NW (2d) 725 (Ct. App. 1993).

Requiring defendant convicted of sexual assault to pay victim's costs of tuition to attend another school to avoid harassment which arose after the assault was a reasonable condition of probation. State v. Brown, 174 W (2d) 550, 497 NW (2d) 463 (Ct. App. 1993).

A condition of probation not related to the underlying conviction but related to prior convictions was reasonable and appropriate. State v. Miller, 175 W (2d) 204, NW (2d) (Ct. App. 1993).

The notification provisions of sub. (3) apply only in the case of probation extension proceedings, not revocations. Bartus v. DHSS, 176 W (2d) 1063, 501 NW (2d) 419 (1993).

Sub. (2) (a) applies to probation for misdemeanors and sub. (2) (b) to felonies; sub. (2) (b) 2. does not authorize increasing probation for a misdemeanor if the defendant is convicted of a felony at the same time. State v. Reagles, 177 W (2d) 168, 501 NW (2d) 861 (Ct. App. 1993).

A forced confession as a condition of probation does not violate the right against self–incrimination; the constitution protects against the use of confessions in subsequent criminal prosecutions but does not protect against the use of such statements in a revocation proceeding. State v. Carrizales, 191 W (2d) 85, 528 NW (2d) 29 (Ct. App. 1995).

While periods of time served due to an indigent's inability to post bail prior to trial must be credited as time served on a prison sentence imposed, a court need not credit time served by an indigent offender against probationary confinement. State v. Avila, 192 W (2d) 870, 532 NW (2d) 423 (Ct. App. 1995).

A jail term probationer eligible for good time credit under sub. (1) (d) may not be denied the possibility of earning good time as a sentence condition. State v. McClinton, 195 W (2d) 344, 536 NW (2d) 413 (Ct. App. 1995).

A court was authorized to order that a defendant pay the cost of DNA testing by a private laboratory as a condition of probation. State v. Beiersdorf, 208 W (2d) 492, 561 NW (2d) 749 (Ct. App. 1997).

A conviction following an *Alford* plea of no contest where the defendant does not admit guilt, does not prevent imposing as a condition of probation that the defendant complete a treatment program that requires acknowledging responsibility for the crime which resulted in the conviction. The imposition of the condition does not violate the defendant's due process rights. State ex rel. Warren v. Schwarz, 219 W (2d) 616, 579 NW (2d) 698 (1998).

A condition of probation placed on a sex offender that he not engage in a sexual relationship without first discussing it with his agent and obtaining his agent's approval did not unreasonably restrict the probationer's constitutional rights of privacy. Krebs v. Schwartz, 212 W (2d) 127, 568 NW (2d) 26 (Ct. App. 1997).

An unfulfilled condition of probation does not automatically extend the probation period; an extension must be obtained. If the probation has not been stayed and the probation period has been served, the probationer is entitled to discharge even in the face of an unfulfilled condition of probation. At that point the trial court loses jurisdiction. State v. Stefanovic, 215 W (2d) 309, 572 NW (2d) 140 (Ct. App. 1997).

When a court orders probation under sub. (1) (d), it lacks authority to order monitored home detention in lieu of confinement under sub. (4). State v. Eastman, 220 W (2d) 330, 582 NW (2d) 749 (Ct. App. 1998)

Sub. (2) applies to all sentences pronounced at the same time whether grouped together because they are related or because of convenience. U.S. v. Stalbaum, 63 F (3d) 537 (1995).

973.10 Control and supervision of probationers. **(1)** Imposition of probation shall have the effect of placing the defendant in the custody of the department and shall subject the defendant to the control of the department under conditions set by the court and rules and regulations established by the department for the supervision of probationers, parolees and persons on extended supervision.

(1m) (a) The department may order that a probationer perform community service work for a public agency or a nonprofit charitable organization. An order may apply only if agreed to by the probationer and the organization or agency. The department shall ensure that the probationer is provided a written statement of the terms of the community service order and shall monitor the probationer's compliance with the community service order. Compliance with this subsection does not entitle a probationer to credit under s. 973.155.

(b) Any organization or agency acting in good faith to which a probationer is assigned under an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the probationer. The department has immunity from any civil liability for acts or omissions by or impacting on the probationer regarding the assignment under this subsection.

(2) If a probationer violates the conditions of probation, the department of corrections may initiate a proceeding before the division of hearings and appeals in the department of administration. Unless waived by the probationer, a hearing examiner for the division shall conduct an administrative hearing and enter an order either revoking or not revoking probation. Upon request of either party, the administrator of the division shall review the order. If the probationer waives the final administrative hearing, the secretary of corrections shall enter an order either revoking or not revoking probation. If probation is revoked, the department shall:

(a) If the probationer has not already been sentenced, order the probationer brought before the court for sentence which shall then be imposed without further stay under s. 973.15; or

(b) If the probationer has already been sentenced, order the probationer to prison, and the term of the sentence shall begin on the date the probationer enters the prison.

(2g) Upon demand prior to a revocation hearing under sub. (2), the district attorney shall disclose to a defendant the existence of any videotaped oral statement of a child under s. 908.08 which is within the possession, custody or control of the state and shall make reasonable arrangements for the defendant and defense counsel to view the videotaped statement. If, subsequent to compliance with this subsection, the state obtains possession, custody or control of such a videotaped statement, the district attorney shall promptly notify the defendant of that fact and make reasonable arrangements for the defendant and defense counsel to view the videotaped statement.

(2m) In any administrative hearing under sub. (2), the hearing examiner may order the taking and allow the use of a videotaped deposition under s. 967.04 (7) to (10).

(3) A copy of the order of the department of corrections in the case of a waiver or the division of hearings and appeals in the department of administration in the case of a final administrative hearing is sufficient authority for the officer executing it to take the probationer to court or to prison. The officer shall execute the order as a warrant for arrest but any officer may, without order or warrant, take the probationer into custody whenever necessary in order to prevent escape or enforce discipline or for violation of probation.

(4) The division of hearings and appeals in the department of administration shall make either an electronic or stenographic record of all testimony at each probation revocation hearing. The division shall prepare a written transcript of the testimony only at the request of a judge who has granted a petition for judicial review of the revocation decision. Each hearing notice shall include notice of the provisions of this subsection and a statement that any person who wants a written transcript may record the hearing at his or her own expense.

History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283.

Judicial Council Note, 1981: Sub. (2) (a) has been amended to clarify that, upon revocation of probation of an offender from whom sentence was originally withheld, the court must impose sentence in accordance with s. 973.15. That section now permits the court to order that any sentence be concurrent with or consecutive to any sentence imposed at the same time or previously. [Bill 341−A]

Before probation can be revoked 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. State ex rel. Johnson v. Cady, 50 W (2d) 540, 185 NW (2d) 306.

Revocation of probation is an integral part of the sentencing process; hence a defendant is entitled to assistance of counsel at parole or probation revocation hearings without regard to whether the hearing occurs in a sentence withheld or a postsentence situation. Oestrich v. State, 55 W (2d) 222, 198 NW (2d) 664.

Since probation revocation hearings are independent from the original conviction and sentencing, a judge disqualified in the original case may preside at the hearing in the absence of challenge. State v. Fuller, 57 W (2d) 408, 204 NW (2d) 452.

Witnesses at a probation revocation hearing need not be sworn. State v. Gerard, 57 W (2d) 611, 205 NW (2d) 374.

ABA Standards Relating to Probation adopted and applied. State ex rel. Plotkin v. H&SS Dept. 63 W (2d) 535, 217 NW (2d) 641.

See note to 304.06, citing State ex rel. Hanson v. H&SS Dept. 64 W (2d) 367, 219 NW (2d) 267.

While the U.S. Supreme Court in *Scarpelli* has explicated that the rights of a defendant to counsel could arise at both the preliminary and final hearing, discretion is specifically lodged in the state authority charged with responsibility for administering. State ex rel. Hawkins v. Gagnon, 64 W (2d) 394, 219 NW (2d) 252.

A defendant convicted of taking indecent liberties with a minor and sexual perversion, placed on probation, allowed to settle in Tennessee, and charged with an attempted sodomy violation of probation there was denied due process where the revocation hearing was held in Wisconsin and the H&SS department refused to allow deposition of his witnesses in Tennessee, because the witnesses' testimony as to defendant's actions on the date of the alleged assault constituted testimony of a direct and unequivocally exculpatory nature rather than merely cumulative, character, or background testimony which might have been adequately presented by deposition or affidavit. State ex rel. Harris v. Schmidt, 69 W (2d) 668, 230 NW (2d) 890.

Department of H&SS probation files and records are public records and admissible as such at probation revocation hearing. State ex rel. Prellwitz v. Schmidt, 73 W (2d) 35, 242 NW (2d) 227.

Time spent in jail awaiting revocation is deducted from maximum sentence despite option available to defendant to spend the time in prison. State ex rel. Solie v. Schmidt, 73 W (2d) 76, 242 NW (2d) 244.

When the department overrules its hearing examiner and revokes probation, it must provide a statement of the evidence relied upon and the reasons for revoking probation. Ramaker v. State, 73 W (2d) 563, 243 NW (2d) 534.

See note to Art. I, sec. 11, citing State v. Tarrell, 74 W (2d) 647, 247 NW (2d) 696.

Trial court had no authority to extend probation of defendant brought before court under (2). State v. Balgie, 76 W (2d) 206, 251 NW (2d) 36.

Court exceeded jurisdiction by releasing defendant on bail pending revocation proceedings. State ex rel. DH&SS v. Second Jud. Cir. Ct. 84 W (2d) 707, 267 NW (2d) 373 (1978).

Equal protection does not require symmetry in probation and parole systems. 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 Art. I, sec. 12, citing State v. White, 97 W (2d) 517, 294 NW (2d) 36 (Ct. App. 1979).

Probation can be revoked for violation of criminal statute even absent a written probation agreement. State ex rel. Rodriguez v. DH&SS, 133 W (2d) 47, 393 NW (2d) 105 (Ct. App. 1986).

A probation officer may conduct a warrantless search. That the underlying conviction is subsequently overturned does not retroactively invalidate a warrantless search by the probation officer. State v. Angiolo, 207 W (2d) 559, 558 NW (2d) 701 (Ct. App. 1996).

A probationer has a right to a competency determination when during a revocation proceeding the administrative law judge has reason to doubt the probationer's competence. The determination shall be made by the circuit court in the county of sentencing, which shall adhere to ss. 971.13 and 971.14 to the extent practicable. State ex rel. Vanderbeke v. Endicott, 210 NW (2d) 503, 563 NW (2d) 883 (1997).

Because an administrative decision may be reviewed upon a timely petition for certiorari, an adequate remedy exists at law to correct defects and relief under habeas corpus will not be granted. State ex rel. Reddin v. Galster, 215 W (2d) 178, 572 NW (2d) 505 (Ct. App. 1998).

A revocation hearing must be heard in the court of conviction. A hearing in the same circuit court is not sufficient. It must be by the same branch. Drow v. Schwartz, 220 W (2d) 415, 583 NW (2d) 655 (Ct. App. 1998).

See note to 304.06, citing 65 Atty. Gen. 20.

State may require probation officers, among other "peace officers", to be U.S. citizens. Cabel v. Chavez−Solido, 454 US 432 (1982).

See note to Art. I, sec. 8, citing Hahn v. Burke, 430 F (2d) 100.

A probation revocation hearing may be administrative. Retained or appointed counsel must be allowed to participate. Gunsolus v. Gagnon, 454 F (2d) 416.

Probation revocation; right to a hearing and to counsel. 1971 WLR 648.

Probation and parole revocation in Wisconsin. 1977 WLR 503.

973.11 Placements with volunteers in probation program. **(1)** PLACEMENTS. If a person is convicted of or pleads guilty or no contest to one or more misdemeanors for which mandatory periods of imprisonment are not required, if the chief judge of the judicial administrative district has approved a volunteers in probation program established in the applicable county, and if the court decides that volunteer supervision under the program will likely benefit the person and the community and subject to the limitations under sub. (3), the court may withhold sentence or judgment of conviction and order that the person be placed with that volunteers in probation program. Except as provided in sub. (3), the order shall provide any conditions that the court determines are reasonable and appropriate and may include, but need not be limited to, one or more of the following:

(a) A directive to a volunteer to provide one or more of the following functions for the defendant:

1. Role model.
2. Informal counseling.
3. General monitoring.
4. Monitoring of conditions set by the court.

(b) Any requirement that the court may impose under s. 973.09 (1g), (1x), (4) and (7m).

(2) APPROVAL OF PROGRAMS. In each judicial administrative district under s. 757.60, the chief judge of the district may approve volunteers in probation programs established in the district for placements under this section.

(3) STATUS. A defendant who is placed with a volunteers in probation program under sub. (1) is subject to the conditions set by the court. The defendant is not on probation under ss. 973.09 and 973.10 and the department is not responsible for supervising him or her. A court may place a defendant under sub. (1) prior to conviction only if a deferred prosecution agreement is reached under s. 971.40. In that case, the person is subject to the conditions set by the court under this section and the conditions provided in the agreement.

(4) TERM. The court shall set the length of the order, which may not exceed 2 years unless extended pursuant to a hearing under sub. (5). When the defendant has satisfied the conditions of the order, the court shall discharge the defendant and dismiss the charges against the defendant if a judgment of conviction was not previously entered.

(5) FAILURE TO COMPLY WITH ORDER. (a) If the defendant is alleged to have violated the conditions of an order under sub. (1), the court may hold a hearing regarding the allegations. The court shall notify the defendant at least 7 days prior to holding any such hearing. At the hearing, the defendant has the right to each of the following:

1. Counsel.
2. Remain silent.
3. Present and cross−examine witnesses.
4. Have the hearing recorded by a court reporter.

(b) The court may extend the period of supervision for up to 45 days to accommodate a hearing under this subsection.

(c) Failure of the defendant to appear at a hearing under this subsection tolls the running of the period of supervision.

(d) If the court finds that the violation occurred, it may impose a sentence, revise the conditions of the order or allow the order to continue.

(6) OTHER MODIFICATIONS TO ORDER. At any time prior to the expiration of the order the court may shorten the length of the

order or modify the conditions of the order. The court shall hold a hearing regarding a determination under this subsection if the defendant or district attorney requests a hearing.

History: 1991 a. 253; 1993 a. 213.

973.12 Sentence of a repeater or persistent repeater. **(1)** Whenever a person charged with a crime will be a repeater or a persistent repeater under s. 939.62 if convicted, any applicable prior convictions may be alleged in the complaint, indictment or information or amendments so alleging at any time before or at arraignment, and before acceptance of any plea. The court may, upon motion of the district attorney, grant a reasonable time to investigate possible prior convictions before accepting a plea. If the prior convictions are admitted by the defendant or proved by the state, he or she shall be subject to sentence under s. 939.62 unless he or she establishes that he or she was pardoned on grounds of innocence for any crime necessary to constitute him or her a repeater or a persistent repeater. An official report of the F.B.I. or any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any conviction or sentence therein reported. Any sentence so reported shall be deemed prima facie to have been fully served in actual confinement or to have been served for such period of time as is shown or is consistent with the report. The court shall take judicial notice of the statutes of the United States and foreign states in determining whether the prior conviction was for a felony or a misdemeanor.

(2) In every case of sentence under s. 939.62, the sentence shall be imposed for the present conviction, but if the court indicates in passing sentence how much thereof is imposed because the defendant is a repeater, it shall not constitute reversible error, but the combined terms shall be construed as a single sentence for the present conviction.

History: 1993 a. 289.

This section does not authorize 2 sentences for one crime. State v. Upchurch, 101 W (2d) 329, 305 NW (2d) 57 (1981).

See note to 939.62, citing State v. Harris, 119 W (2d) 612, 350 NW (2d) 633 (1984).

Report under (1) must contain critically relevant facts in order to support penalty enhancement. State v. Farr, 119 W (2d) 651, 350 NW (2d) 640 (1984).

No contest plea constitutes admission of all facts alleged in action, including those referring to prior convictions. State v. Rachwal, 159 W (2d) 494, 465 NW (2d) 490 (1991).

See note to 971.09, citing State v. Rachwal, 159 W (2d) 494, 465 NW (2d) 490 (1991).

No amendment to charging document to add repeater allegation may be made after arraignment and acceptance of any plea. State v. Martin, 162 W (2d) 883, 470 NW (2d) 900 (1991).

Post–plea amendment of repeater allegation in charging document which meaningfully changes the basis on which possible punishment can be assessed is barred. State v. Wilks, 165 W (2d) 102, 477 NW (2d) 632 (Ct. App. 1991).

A guilty plea without a specific admission to repeater allegations is not sufficient to establish the facts necessary to impose the repeater penalty enhancer. Sate v. Zimmermann, 185 W (2d) 549, 518 NW (2d) 303 (Ct. App. 1994).

When a defendant does not admit to habitual criminality, the state must prove the alleged repeater status beyond a reasonable doubt. State v. Theriault, 187 W (2d) 125, 522 NW (2d) 254 (Ct. App. 1994).

For a repeater enhancer to apply, the prior conviction must be alleged prior to the entry of a plea, but an error in the information regarding the penalty may be corrected when an amendment will cause no prejudice. State v. Gerard, 189 W (2d) 505, 525 NW (2d) 718 (1995).

Proof of repeater status must be made prior to sentencing. Judicial notice of prior convictions at a postconviction hearing was improper. State v. Koeppen, 195 W (2d) 117, 536 NW (2d) 386 (Ct. App. 1995).

A trial court in exercising sentencing discretion is not prohibited from entertaining general predispositions based on experience, but the judge's predispositions may never be so specific as to ignore the particular circumstances of the individual offender. State v. Ogden, 199 W (2d) 566, 544 NW (2d) 574 (1996).

Gerard is not limited to clerical errors. Where the information correctly alleges a defendant's repeater status, a post–arraignment amendment to the information does not violate this section as long as it does not affect the sufficiency of the notice to the defendant concerning his or her repeater status. State v. Campbell, 201 W (2d) 777, 549 NW (2d) 501 (Ct. App. 1996).

The requirements for establishing prior offenses in s. 973.12 are not applicable to the penalty enhancement provisions under chs. 341–349, including drunk driving offenses under s. 346.65 (2) or operating after revocation offenses under 343.44 (2). State v. Wideman, 206 W (2d) 90, 556 NW (2d) 737 (1996) and State v. Spaeth, 206 W (2d) 134, 556 NW (2d) 728 (1996).

Sub. (1) does not require that the period of incarceration under s. 939.62 (2) must be alleged in the charging document. State v. Squires, 211 W (2d) 873, 565 NW (2d) 309 (Ct. App. 1997).

973.125 Notice of lifetime supervision for serious sex offenders. **(1)** Whenever a prosecutor decides to seek lifetime supervision under s. 939.615 of a person charged with a serious sex offense specified in s. 939.615 (1) (b) 1., the prosecutor shall, at any time before or at arraignment and before acceptance of any plea, state in the complaint, indictment or information or amendments to the complaint, indictment or information that the prosecution will seek to have the person placed on lifetime supervision under s. 939.615.

(2) Whenever a prosecutor decides to seek lifetime supervision under s. 939.615 of a person charged with a serious sex offense specified in s. 939.615 (1) (b) 2., the prosecutor shall, at any time before or at arraignment and before acceptance of any plea, do all of the following:

(a) State in the complaint, indictment or information or amendments to the complaint, indictment or information that the prosecution will seek to have the person placed on lifetime supervision under s. 939.615.

(b) Allege in the complaint that the violation with which the person is charged is a serious sex offense under s. 939.615 (1) (b) because one of the purposes for the conduct constituting the violation was for the person's sexual arousal or gratification.

(3) Before accepting a plea, the court may, upon motion of the district attorney, grant a reasonable time to investigate whether lifetime supervision may be necessary for a defendant or whether one of the purposes for the conduct constituting a violation with which a defendant is charged was for the defendant's sexual arousal or gratification.

History: 1997 a. 275.

973.13 Excessive sentence, errors cured. In any case where the court imposes a maximum penalty in excess of that authorized by law, such excess shall be void and the sentence shall be valid only to the extent of the maximum term authorized by statute and shall stand commuted without further proceedings.

This section caps the length of a sentence reduced thereby, but it does not address other aspects or conditions of sentencing. The sentencing court may resentence the defendant if the new sentence is permitted by the law. State v. Holloway, 202 W (2d) 695, 551 NW (2d) 841 (Ct. App. 1996).

This section commands that all sentences in excess of that authorized by law be declared void, including the repeater portion of a sentence. Prior postconviction motions that failed to challenge the validity of the sentence do not bar seeking relief from faulty repeater sentences. State v. Flowers, 221 W (2d) 20, ___ NW (2d) ___ (Ct. App. 1998).

973.135 Courts to report convictions to the state superintendent of public instruction. **(1)** In this section:

(a) "Educational agency" has the meaning given in s. 115.31 (1) (b).

(b) "State superintendent" means the state superintendent of public instruction.

(2) If a court determines that a person convicted of a crime specified in ch. 948, including a crime specified in s. 948.015, a felony for which the maximum term of imprisonment is at least 5 years, 4th degree sexual assault under s. 940.225 (3m) or a crime in which the victim was a child, is employed by an educational agency, the clerk of the court in which such conviction occurred shall promptly forward to the state superintendent the record of conviction.

(3) If a conviction under sub. (2) is reversed, set aside or vacated, the clerk of the court shall promptly forward to the state superintendent a certificate stating that the conviction has been reversed, set aside or vacated.

History: 1991 a. 42; 1995 a. 27; 1997 a. 27, 35.

973.14 Sentence to house of correction. **(1)** In addition to the authority in ss. 302.18 and 303.18, prisoners sentenced to a county jail may be transferred by the sheriff to a house of correction without court approval.

(2) Prisoners confined in the house of correction may be transferred by the superintendent of the house of correction to the county jail without court approval.

(3) A prisoner sentenced to a county jail or the house of correction being held in a county jail awaiting trial on another charge shall be deemed to be serving the county jail or house of correction sentence and shall be given credit on the sentence as provided in s. 302.43 or 303.19.

History: 1977 c. 126; 1989 a. 31.

973.15 Sentence, terms, escapes. (1) Except as provided in s. 973.032, all sentences to the Wisconsin state prisons shall be for one year or more. Except as otherwise provided in this section, all sentences commence at noon on the day of sentence, but time which elapses after sentence while the convicted offender is at large on bail shall not be computed as any part of the term of imprisonment.

(2) (a) Except as provided in par. (b), the court may impose as many sentences as there are convictions and may provide that any such sentence be concurrent with or consecutive to any other sentence imposed at the same time or previously.

(b) The court may not impose a sentence to the intensive sanctions program consecutive to any other sentence. The court may not impose a sentence to the intensive sanctions program concurrent with a sentence imposing imprisonment, except that the court may impose a sentence to the program concurrent with an imposed and stayed imprisonment sentence or with a prison sentence for which the offender has been released on extended supervision or parole. The court may impose concurrent intensive sanctions program sentences. The court may impose an intensive sanctions program sentence concurrent to probation. The court may impose any sentence for an escape from a sentence to the intensive sanctions program concurrent with the sentence to the intensive sanctions program.

(3) Courts may impose sentences to be served in whole or in part concurrently with a sentence being served or to be served in a federal institution or an institution of another state.

(4) When a court orders a sentence to the Wisconsin state prisons to be served in whole or in part concurrently with a sentence being served or to be served in a federal institution or an institution of another state:

(a) The court shall order the department to immediately inform the appropriate authorities in the jurisdiction where the prior sentence is to be served that the convicted offender is presently available to commence or resume serving that sentence; and

(b) The trial and commitment records required under s. 973.08 shall be delivered immediately to the warden or superintendent of the Wisconsin institution designated as the reception center to receive the convicted offender when he or she becomes available to Wisconsin authorities.

(5) A convicted offender who is made available to another jurisdiction under ch. 976 or in any other lawful manner shall be credited with service of his or her Wisconsin sentence or commitment under the terms of s. 973.155 for the duration of custody in the other jurisdiction.

(6) Sections 302.11 and 304.06 are applicable to an inmate serving a sentence to the Wisconsin state prisons for a crime committed before December 31, 1999, but confined in a federal institution or an institution in another state.

(7) If a convicted offender escapes, the time during which he or she is unlawfully at large after escape shall not be computed as service of the sentence.

(8) (a) The sentencing court may stay execution of a sentence of imprisonment or to the intensive sanctions program only:

1. For legal cause;
2. Under s. 973.09 (1) (a); or
3. For not more than 60 days.

(b) If a court sentences a person under s. 973.03 (5) (b), this subsection applies only to the first period of imprisonment.

History: 1973 c. 90; 1977 c. 347, 353, 447; 1981 c. 50, 292; 1983 a. 528; 1989 a. 31, 85; 1991 a. 39; 1993 a. 79; 1995 a. 390; 1997 a. 283.

Judicial Council Note, 1981: Sub. (2) has been simplified to allow a court, in imposing a criminal sentence, to order that it be concurrent with or consecutive to any other sentence imposed at the same time or previously. The prior statute, although lengthier and more complicated, failed to achieve its apparent purpose of allowing consecutive sentencing in situations involving probation and parole revocations, escapes, etc. See Drinkwater v. State, 69 Wis. 2d 60 (1975); Guyton v. State, 69 Wis. 2d 663 (1975); Bruneau v. State, 77 Wis. 2d 166 (1977); Smith v. State, 85 Wis. 2d 650 (1978); and Donaldson v. State, 93 Wis. 2d 306 (1980).

This revision allows sentences to be made consecutive to any previously or simultaneously imposed sentence, without regard to whether the offender is "then serving" such sentence, is subject to parole revocation proceedings, or has received a new sentence between the time of an escape and a return to a state facility. The revised statute also governs the sentencing of probationers by virtue of the cross–references in ss. 973.09 (1) (a) and 973.10 (2) (a). [Bill 341–A]

Judicial Council Note, 1981: Sub. (8) has been added to specify the circumstances under which execution of a sentence of imprisonment may be stayed. Par. (a) references the rule of Reinex v. State, 51 Wis. 152 (1881) and Weston v. State, 28 Wis. 2d 136 (1965), whereby execution can be stayed for "legal cause", such as during the pendency of an appeal. Par. (b) cross–references the probation statute. Par. (c) is new. It allows the court to delay the commencement of a sentence for up to 60 days. The Wisconsin supreme court recently held that courts have no authority to stay execution of a sentence of imprisonment in the absence of such a statutory provision or legal cause. State v. Braun, 100 Wis. 2d 77 (1981). [Bill 736–A]

Under subs. 973.15 (2) and (3), 1979 stats., state court may impose sentence consecutive to out–of–state sentence. State v. Toy, 125 W (2d) 216, 371 NW (2d) 386 (Ct. App. 1985).

Sentencing court has authority to stay sentence and order it be served consecutive to s. 345.47 and 973.07 commitment for failure to pay fine and penalty assessment. State v. Strohbeen, 147 W (2d) 566, 433 NW (2d) 288 (Ct. App. 1988).

Defendant is entitled to credit against sentence for period during which he was denied admission to county jail due to overcrowding, however, defendant is not entitled to credit for time as of date he was to have reported to jail to serve sentence. State v. Riske, 152 W (2d) 260, 448 NW (2d) 260 (Ct. App. 1989).

Primary factors to be considered in exercising discretion in sentencing are gravity of offense, rehabilitative needs of defendant and protection of public. State v. Paske, 163 W (2d) 52, 471 NW (2d) 55 (1991).

An adult sentence cannot run consecutive to a juvenile disposition. State v. Woods, 173 W (2d) 129, 496 NW (2d) 144 (Ct. App. 1992).

The sentence of a defendant convicted of committing a crime while committed under a prior not guilty by reason of mental incompetence commitment under s. 971.17 may not be served concurrent with the commitment. State v. Szulczewski, 209 W (2d) 1, 561 NW (2d) 781 (Ct. App. 1997).

Sub. (2) authorizes a trial court to impose a sentence consecutive to a previously imposed and stayed sentence where the previous sentence is to be served only upon revocation of probation and probation has not yet been revoked. State v. Thompson, 208 W (2d) 253, 559 NW (2d) 917 (Ct. App. 1997).

A court may not order a prison sentence consecutive to an s. 971.17 commitment. A sentence can only be imposed concurrent or consecutive to another sentence. State v. Harr, 211 W (2d) 584, 568 NW (2d) 307 (Ct. App. 1997).

The power under sub. (2) to impose consecutive sentences does not grant authority to impose a sentence to be served consecutively to jail time being served as a condition of probation. State v. Moran, 214 W (2d) 383, 571 NW (2d) 454 (Ct. App. 1997).

A commitment under s. 971.17 is legal cause under s. 973.15 (8) to stay the sentence of a defendant who commits a crime while serving the commitment. Whether to stay the sentence while the commitment is in effect or to begin the sentence immediately is within the sentencing court's discretion. State v. Szulczewski, 216 W (2d) 494, 574 NW (2d) 660 (1998).

Overcrowding doesn't constitute legal cause under (8) (a). 76 Atty. Gen. 165.

973.155 Sentence credit. (1) (a) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:

1. While the offender is awaiting trial;
2. While the offender is being tried; and
3. While the offender is awaiting imposition of sentence after trial.

(b) The categories in par. (a) include custody of the convicted offender which is in whole or in part the result of a probation, extended supervision or parole hold under s. 304.06 (3) or 973.10 (2) placed upon the person for the same course of conduct as that resulting in the new conviction.

(2) After the imposition of sentence, the court shall make and enter a specific finding of the number of days for which sentence credit is to be granted, which finding shall be included in the judg-

ment of conviction. In the case of revocation of probation, extended supervision or parole, the department, if the hearing is waived, or the division of hearings and appeals in the department of administration, in the case of a hearing, shall make such a finding, which shall be included in the revocation order.

(3) The credit provided in sub. (1) shall be computed as if the convicted offender had served such time in the institution to which he or she has been sentenced.

(4) The credit provided in sub. (1) shall include earned good time for those inmates subject to s. 302.43, 303.07 (3) or 303.19 (3) serving sentences of one year or less and confined in a county jail, house of correction or county reforestation camp.

(5) If this section has not been applied at sentencing to any person who is in custody or to any person who is on probation, extended supervision or parole, the person may petition the department to be given credit under this section. Upon proper verification of the facts alleged in the petition, this section shall be applied retroactively to the person. If the department is unable to determine whether credit should be given, or otherwise refuses to award retroactive credit, the person may petition the sentencing court for relief. This subsection applies to any person, regardless of the date he or she was sentenced.

(6) A defendant aggrieved by a determination by a court under this section may appeal in accordance with s. 809.30.

History: 1977 c. 353; 1979 c. 154; 1983 a. 377, 528; 1987 a. 403 s. 256; 1989 a. 31, 107; 1997 a. 283.

This section grants credit for each day in custody regardless of basis for confinement as long as it is connected to offense for which sentence is imposed. State v. Gilbert, 115 W (2d) 371, 340 NW (2d) 511 (1983).

Where intended sentence was valid, but judge did not follow procedures under this section, appropriate remedy was to modify sentence to conform it to requirements of this section. State v. Walker, 117 W (2d) 579, 345 NW (2d) 413 (1984).

"Custody" must result from occurrence of legal event, process, or authority which occasions, or is related to, confinement on charge for which accused is ultimately sentenced. State v. Demars, 119 W (2d) 19, 349 NW (2d) 708 (Ct. App. 1984).

Where offender committed robbery and 24 hours later fled from officer, offender was not entitled to credit toward robbery sentence for time served under sentence for fleeing officer. State v. Gavigan, 122 W (2d) 389, 362 NW (2d) 162 (Ct. App. 1984).

Where probationer is arrested for second crime and consequently begins serving time for first crime, no credit towards second sentence is required for time served under first sentence. State v. Beets, 124 W (2d) 372, 369 NW (2d) 382 (1985).

No credit was due for time spent in drug treatment facility as condition of probation where defendant was not in actual "custody" at facility within meaning of this section and 946.42. State v. Cobb, 135 W (2d) 181, 400 NW (2d) 9 (Ct. App. 1986).

Credit under this section is given on a day−to−day basis, which isn't to be duplicatively credited to more than one consecutive sentence. State v. Boettcher, 144 W (2d) 86, 423 NW (2d) 533 (1988).

Defendant not entitled to credit against sentence for time spent under home detention. State v. Pettis, 149 W (2d) 207, 441 NW (2d) 247 (Ct. App. 1989).

Pre−sentence credit must be applied to each of the concurrent terms to which defendant is sentenced. State v. Ward, 153 W (2d) 743, 452 NW (2d) 158 (Ct. App. 1989).

Out of state presentence confinement while defendant was on parole from Wisconsin may not be credited against subsequent reconfinement in Wisconsin for parole violation. State v. Rohl, 160 W (2d) 325, 466 NW (2d) 208 (Ct. App. 1991).

Where waiver of juvenile jurisdiction is granted, secure juvenile detention time is eligible for credit consideration under this section as if it were jail time, retroactive to the date of the filing of the juvenile petition. State v. Baker, 179 W (2d) 655, 508 NW (2d) 40 (Ct. App. 1993).

A person subject to home detention under s. 302.425 is not "in custody" and therefore is not entitled to sentence credit for time served under s. 973.155. State v. Swadley, 190 W (2d) 139, 526 NW (2d) 778 (Ct. App. 1994).

The definition of "custody" in s. 946.42 (1) (a) is used to determine whether a person is in custody for sentence credit purposes. State v. Sevelin, 204 W (2d) 127, 554 NW (2d) 521 (Ct. App. 1996).

Custody of a person in the intensive sanctions program exists for purposes of sentence credit under s. 973.155 only if the person's sanctions program sufficiently infringes upon the person's freedom to equate with being under the state's control for a substantial time. State v. Collett, 207 W (2d) 321, 558 NW (2d) 642 (Ct. App. 1996).

A person confined on a probation revocation or change in intensive sanctions due to an arrest for a subsequent crime is not entitled to credit under sub. (1) against the sentence for the subsequent crime although the confinement was triggered by the subsequent crime. State v. Abbott, 207 W (2d) 621, 558 NW (2d) 927 (Ct. App. 1996).

Sub. (1) (a) provides sentence credit only for custody connected to the charges to which the custody resulted from. Time served as the result of a bail jumping charge was not credited against a sentence for sexual assault although the bail condition violated was in the sexual assault case. State v. Beiersdorf, 208 W (2d) 492, 561 NW (2d) 749 (Ct. App. 1997).

When a defendant is unable to satisfy cash−bail requirements on 2 or more unrelated charges, the defendant is entitled to sentence credit on both charges. However if the defendant is committed following a finding of not guilty by reason of mental defect on one charge there will be no sentence credit from the commitment against a sentence upon conviction on another of the charges as the confinement after the commitment is solely the result of the commitment. State v. Harr, 211 W (2d) 584, 568 NW (2d) 307 (Ct. App. 1997).

Department may not grant jail credit where it is not provided for by statute. 71 Atty. Gen. 102.

Sentence Credit: More Than Just Math. White. Wis. Law. Oct. 1991.

973.16 Time out. If an order or judgment releasing a prisoner on habeas corpus is reversed, the time during which the prisoner was at liberty thereunder shall not be counted as part of the prisoner's term.

History: 1993 a. 486.

973.17 Judgment against a corporation or limited liability company. (1) If a corporation or limited liability company fails to appear within the time required by the summons, the default of such corporation or limited liability company may be recorded and the charge against it taken as true, and judgment shall be rendered accordingly.

(2) Upon default of the defendant corporation or limited liability company or upon conviction, judgment for the amount of the fine shall be entered.

(3) A judgment against a corporation or limited liability company shall be collected in the same manner as in civil actions.

History: 1993 a. 112.

973.18 Notice of rights to appeal and representation. (1) In this section, "postconviction relief" and "sentencing" have the meanings ascribed in s. 809.30 (1).

(2) The trial judge shall personally inform the defendant at the time of sentencing of the right to seek postconviction relief and, if indigent, the right to the assistance of the state public defender.

(3) Before adjourning the sentencing proceeding, the judge shall direct the defendant and defendant's trial counsel to sign a form to be entered in the record, indicating that the lawyer has counseled the defendant regarding the decision to seek postconviction relief, and that the defendant understands that a notice of intent to pursue postconviction relief must be filed in the trial court within 20 days after sentencing for that right to be preserved.

(4) The judge shall direct the defendant's counsel to confer with the defendant before signing the form, during the proceeding or as soon thereafter as practicable, and may make appropriate orders to allow the defendant to confer with counsel before being transferred to the state prison. The defendant shall be given a copy of the form.

(5) If the defendant desires to pursue postconviction relief, the defendant's trial counsel shall file the notice required by s. 809.30 (2) (b).

History: Sup. Ct. Order, 123 W (2d) xi (1985).

Judicial Council Note, 1984: Sub. (2) is similar to prior s. 809.30 (1) (b). Subs. (3) and (4) codify State v. Argiz, 101 Wis. 2d 546, 305 N.W. 2d 124 (1981). Sub. (5) codifies trial counsel's continuing duty to provide representation until appellate counsel is retained or appointed. Whitmore v. State, 56 Wis. 2d 706, 203 NW 2d 56 (1973). [Re order effective July 1, 1985]

973.19 Motion to modify sentence. (1) (a) A person sentenced to imprisonment or the intensive sanctions program or ordered to pay a fine who has not requested the preparation of transcripts under s. 809.30 (2) may, within 90 days after the sentence or order is entered, move the court to modify the sentence or the amount of the fine.

(b) A person who has requested transcripts under s. 809.30 (2) may move for modification of a sentence or fine under s. 809.30 (2) (h).

(2) Within 90 days after a motion under sub. (1) (a) is filed, the court shall enter an order either determining the motion or extending the time for doing so by not more than 90 days for cause.

(3) If an order determining a motion under sub. (1) (a) is not entered timely under sub. (2), the motion shall be considered denied and the clerk of the court shall immediately enter an order denying the motion.

(4) An appeal from an order determining a motion under sub. (1) (a) is governed by the procedure for civil appeals.

(5) By filing a motion under sub. (1) (a) the defendant waives his or her right to file an appeal or postconviction motion under s. 809.30 (2).

History: Sup. Ct. Order, 123 W (2d) xiv (1985); 1991 a. 39.

Judicial Council Note, 1984: This section is intended as an expeditious alternative to the procedure prescribed in s. 809.30 (2) when the only claim for postconviction relief relates to the severity of the sentence. It is not intended to alter the substantive grounds for such relief and it restores the time limits governing such motions prior to the 1978 revision of the appellate rules.

This section will probably be most frequently used in guilty plea cases, although it is not limited to such cases. However, if the defendant intends to withdraw a guilty plea or file other postconviction motions, s. 809.30 (2) or 974.06 provides the appropriate procedure. Motions under this section should usually be filed by trial counsel without the need for transcripts or for appointment of an appellate public defender. A defendant must elect between the remedies provided by this section and s. 809.30 (2). Filing a motion under this section waives relief under s. 809.30 (2). However, a defendant who has filed a notice of intent to pursue postconviction relief under s. 809.30 (2) (b) may invoke this remedy at any time before transcripts are ordered under s. 809.30 (2). If transcripts are required for prosecution of a motion under sub. (1) (a), they should be sought under SCR 71.03 (2).

Sub. (4) does not expand the scope of appellate review. [Re Order effective July 1, 1985.]

Are two alternative means to seek modification of sentence, proceeding under (1) (a) or (b); under either, motion must be first made in trial court. State v. Norwood, 161 W (2d) 676, 468 NW (2d) 741 (Ct. App. 1991).

973.20 Restitution. (1g) In this section:

(a) "Crime considered at sentencing" means any crime for which the defendant was convicted and any read–in crime.

(b) "Read–in crime" means any crime that is uncharged or that is dismissed as part of a plea agreement, that the defendant agrees to be considered by the court at the time of sentencing and that the court considers at the time of sentencing the defendant for the crime for which the defendant was convicted.

(1r) When imposing sentence or ordering probation for any crime for which the defendant was convicted, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing or, if the victim is deceased, to his or her estate, unless the court finds substantial reason not to do so and states the reason on the record. Restitution ordered under this section is a condition of probation, extended supervision or parole served by the defendant for a crime for which the defendant was convicted. After the termination of probation, extended supervision or parole, or if the defendant is not placed on probation, extended supervision or parole, restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order to receive restitution or enforced under ch. 785.

(2) If a crime considered at sentencing resulted in damage to or loss or destruction of property, the restitution order may require that the defendant:

(a) Return the property to the owner or owner's designee; or

(b) If return of the property under par. (a) is impossible, impractical or inadequate, pay the owner or owner's designee the reasonable repair or replacement cost or the greater of:

1. The value of the property on the date of its damage, loss or destruction; or

2. The value of the property on the date of sentencing, less the value of any part of the property returned, as of the date of its return. The value of retail merchandise shall be its retail value.

(3) If a crime considered at sentencing resulted in bodily injury, the restitution order may require that the defendant do one or more of the following:

(a) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care and treatment.

(b) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation.

(c) Reimburse the injured person for income lost as a result of a crime considered at sentencing.

(d) If the injured person's sole employment at the time of the injury was performing the duties of a homemaker, pay an amount sufficient to ensure that the duties are continued until the person is able to resume performance of the duties.

(4) If a crime considered at sentencing resulted in death, the restitution order may also require that the defendant pay an amount equal to the cost of necessary funeral and related services under s. 895.04 (5).

(4m) If the defendant violated s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.07 or 948.08 and sub. (3) (a) does not apply, the restitution order may require that the defendant pay an amount, not to exceed $10,000, equal to the cost of necessary professional services relating to psychiatric and psychological care and treatment. The $10,000 limit under this subsection does not apply to the amount of any restitution ordered under sub. (3) or (5) for the cost of necessary professional services relating to psychiatric and psychological care and treatment.

(5) In any case, the restitution order may require that the defendant do one or more of the following:

(a) Pay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.

(b) Pay an amount equal to the income lost, and reasonable out–of–pocket expenses incurred, by the person against whom a crime considered at sentencing was committed resulting from the filing of charges or cooperating in the investigation and prosecution of the crime.

(c) Reimburse any person or agency for amounts paid as rewards for information leading to the apprehension or successful prosecution of the defendant for a crime for which the defendant was convicted or to the apprehension or prosecution of the defendant for a read–in crime.

(d) If justice so requires, reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.

(6) Any order under sub. (5) (c) or (d) shall require that all restitution to victims under the order be paid before restitution to other persons.

(7) If the court orders that restitution be paid to more than one person, the court may direct the sequence in which payments are to be transferred under sub. (11) (a). If more than one defendant is ordered to make payments to the same person, the court may apportion liability between the defendants or specify joint and several liability. If the court specifies that 2 or more defendants are jointly and severally liable, the department or the clerk to whom payments are made under sub. (11) (a) shall distribute any overpayments so that each defendant, as closely as possible, pays the same proportion of the ordered restitution.

(8) Restitution ordered under this section does not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action. The facts that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action. Any restitution made by payment or community service shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

(9) (a) If a crime victim is paid an award under ch. 949 for any loss arising out of a criminal act, the state is subrogated to the rights of the victim to any restitution required by the court. The rights of the state are subordinate to the claims of victims who

have suffered a loss arising out of the offenses or any transaction which is part of the same continuous scheme of criminal activity.

(b) When restitution is ordered, the court shall inquire to see if an award has been made under ch. 949 and if the department of justice is subrogated to the cause of action under s. 949.15. If the restitution ordered is less than or equal to the award under ch. 949, the restitution shall be paid only to the general fund. If the restitution ordered is greater than the award under ch. 949, the general fund shall receive an amount equal to the award under ch. 949 and the balance shall be paid to the victim.

(10) The court may require that restitution be paid immediately, within a specified period or in specified instalments. If the defendant is placed on probation or sentenced to imprisonment, the end of a specified period shall not be later than the end of any period of probation, extended supervision or parole. If the defendant is sentenced to the intensive sanctions program, the end of a specified period shall not be later than the end of the sentence under s. 973.032 (3) (a).

(11) (a) Except as otherwise provided in this paragraph, the restitution order shall require the defendant to deliver the amount of money or property due as restitution to the department for transfer to the victim or other person to be compensated by a restitution order under this section. If the defendant is not placed on probation or sentenced to prison, the court may order that restitution be paid to the clerk of court for transfer to the appropriate person. The court shall require the defendant to pay a surcharge equal to 5% of the total amount of any restitution, costs and attorney fees and any fines and related payments ordered under s. 973.05 (1) to the department or clerk of court for administrative expenses under this section.

(b) The department shall establish a separate account for each person in its custody or under its supervision ordered to make restitution for the collection and disbursement of funds. A portion of each payment constitutes the surcharge for administrative expenses under par. (a).

(12) (a) If the court orders restitution in addition to the payment of fines, related payments under s. 973.05 and costs under s. 973.06, it shall set the amount of fines, related payments and costs in conjunction with the amount of restitution and issue a single order, signed by the judge, covering all of the payments. If the costs for legal representation by a private attorney appointed under s. 977.08 are not established at the time of issuance of the order, the court may revise the order to include those costs at a later time.

(b) Except as provided in par. (c), payments shall be applied first to satisfy the ordered restitution in full, then to pay any fines or related payments under s. 973.05, then to pay costs other than attorney fees and finally to reimburse county or state costs of legal representation.

(c) If a defendant is subject to more than one order under this section and the financial obligations under any order total $50 or less, the department or the clerk of court, whichever is applicable under sub. (11) (a), may pay these obligations first.

(13) (a) The court, in determining whether to order restitution and the amount thereof, shall consider all of the following:

1. The amount of loss suffered by any victim as a result of a crime considered at sentencing.

2. The financial resources of the defendant.

3. The present and future earning ability of the defendant.

4. The needs and earning ability of the defendant's dependents.

5. Any other factors which the court deems appropriate.

(b) The district attorney shall attempt to obtain from the victim prior to sentencing information pertaining to the factor specified in par. (a) 1. Law enforcement agencies, the department of corrections and any agency providing services under ch. 950 shall extend full cooperation and assistance to the district attorney in discharging this responsibility. The department of justice shall provide technical assistance to district attorneys in this regard and develop model forms and procedures for collecting and documenting this information.

(c) The court, before imposing sentence or ordering probation, shall inquire of the district attorney regarding the amount of restitution, if any, that the victim claims. The court shall give the defendant the opportunity to stipulate to the restitution claimed by the victim and to present evidence and arguments on the factors specified in par. (a). If the defendant stipulates to the restitution claimed by the victim or if any restitution dispute can be fairly heard at the sentencing proceeding, the court shall determine the amount of restitution before imposing sentence or ordering probation. In other cases, the court may do any of the following:

1. Order restitution of amounts not in dispute as part of the sentence or probation order imposed and direct the appropriate agency to file a proposed restitution order with the court within 90 days thereafter, and mail or deliver copies of the proposed order to the victim, district attorney, defendant and defense counsel.

2. Adjourn the sentencing proceeding for up to 60 days pending resolution of the amount of restitution by the court, referee or arbitrator.

3. With the consent of the defendant, refer the disputed restitution issues to an arbitrator acceptable to all parties, whose determination of the amount of restitution shall be filed with the court within 60 days after the date of referral and incorporated into the court's sentence or probation order.

4. Refer the disputed restitution issues to a court commissioner or other appropriate referee, who shall conduct a hearing on the matter and submit the record thereof, together with proposed findings of fact and conclusions of law, to the court within 60 days of the date of referral. Within 30 days after the referee's report is filed, the court shall determine the amount of restitution on the basis of the record submitted by the referee and incorporate it into the sentence or probation order imposed. The judge may direct that hearings under this subdivision be recorded either by audio recorder or by a court reporter. A transcript is not required unless ordered by the judge.

(14) At any hearing under sub. (13), all of the following apply:

(a) The burden of demonstrating by the preponderance of the evidence the amount of loss sustained by a victim as a result of a crime considered at sentencing is on the victim. The district attorney is not required to represent any victim unless the hearing is held at or prior to the sentencing proceeding or the court so orders.

(b) The burden of demonstrating, by the preponderance of the evidence, the financial resources of the defendant, the present and future earning ability of the defendant and the needs and earning ability of the defendant's dependents is on the defendant. The defendant may assert any defense that he or she could raise in a civil action for the loss sought to be compensated. The office of the state public defender is not required to represent any indigent defendant unless the hearing is held at or prior to the sentencing proceeding, the defendant is incarcerated when the hearing is held or the court so orders.

(c) The burden of demonstrating, by the preponderance of the evidence, such other matters as the court deems appropriate is on the party designated by the court, as justice requires.

(d) All parties interested in the matter shall have an opportunity to be heard, personally or through counsel, to present evidence and to cross–examine witnesses called by other parties. The court, arbitrator or referee shall conduct the proceeding so as to do substantial justice between the parties according to the rules of substantive law and may waive the rules of practice, procedure, pleading or evidence, except provisions relating to privileged communications and personal transactions or communication with a decedent or mentally ill person or to admissibility under s. 901.05. Discovery is not available except for good cause shown. If the defendant is incarcerated, he or she may participate by tele-

phone under s. 807.13 unless the court issues a writ or subpoena compelling the defendant to appear in person.

History: 1987 a. 398 ss. 39 to 41, 43; 1989 a. 31, 188; 1991 a. 39, 269; 1993 a. 213; 1995 a. 141, 161; 1997 a. 283.

Judicial Council Note, 1987: Sub. (1) allows restitution to be ordered although the defendant is not placed on probation. It allows restitution to be made payable to the estate of a deceased victim. It requires restitution ordered to be a condition of probation or parole served by the defendant for the offense. Finally, it allows restitution unpaid at the time probation or parole supervision terminates to be enforced by the victim as a judgment creditor. See 18 USC 3662 (a), (c) and (h).

Sub. (2) is patterned on 18 USC 3663 (b) (1) and prior s. 973.09 (1r), stats.

Sub. (3) is patterned on 18 USC 3663 (b) (2). Paragraph (d) is patterned on s. 949.06 (1) (b) 3., stats.

Sub. (4) is patterned on 18 USC 3663 (b) (3).

Sub. (5) (a) and (b) is based on prior s. 973.09 (8) (a) and (b), stats. A new provision allows the court to order restitution of income lost by the victim while participating in the investigation and prosecution of the offense.

Sub. (5) (c) is new. It allows the court to order restitution of rewards paid for information which helps solve or prosecute the offense.

Sub. (5) (d) carries forward the provision of prior s. 973.09 (1) (b), stats., allowing restitution to insurers, sureties, etc.

Sub. (6) is based on 18 USC 3663 (e) (1).

Sub. (7) is new. It allows the court to direct the order of payment when there is more than one victim, and to apportion liability when more than one defendant is ordered to make restitution to the same person, or to specify joint and several liability.

Sub. (10) is based on 18 USC 3663 (f).

Sub. (11) (a) is based on prior s. 973.09 (1) (b) and (1m) (c), stats.

Sub. (11) (b) is based on prior s. 973.09 (1m) (d), stats.

Sub. (12) (a) is based on prior s. 973.09 (1m) (a), stats.

Sub. (12) (b) is based on prior s. 973.09 (1m) (c), stats.

Sub. (12) (c) is based on prior s. 973.09 (1m) (cm), stats.

Sub. (13) (a) is patterned on 18 USC 3664 (a). Prior s. 973.09 (1m) (a), stats., similarly required the court to consider the defendant's ability to pay when determining the amount of restitution.

Sub. (13) (b) is new. It makes the district attorney primarily responsible for obtaining information relating to the amount of loss suffered by any crime victim. Law enforcement, probation and parole, and victim assistance agencies must cooperate with the district attorney in this regard. The department of justice is directed to develop model forms and procedures for collecting victim loss data. See legislative audit bureau report No. 85−10, April 15, 1985, at 14−18.

Sub. (13) (c) creates several optional procedures for resolving disputes over the amount of restitution without resort to a judicial evidentiary hearing as provided by prior s. 973.09 (1m) (b), stats. First, the defendant may stipulate to the district attorney's determination of the amount of victim loss, while reserving the right to seek a lower amount of restitution based on ability−to−pay factors. Second, the court may hear the dispute at the sentencing proceeding, or adjourn the matter for later hearing prior to imposing sentence. Third, the court may order restitution of items not in dispute, referring disputed issues for subsequent resolution. Fourth, the court, with the consent of the parties, may refer disputed restitution issues to an arbitrator, whose determination is final and binding. Fifth, the court may appoint a referee to conduct fact−finding into the disputed restitution issues, whose proposed findings must be presented to the court within 60 days.

Sub. (14) (a) to (c) is based on 18 USC 3664 (d) and prior s. 973.09 (1m) (a), stats.

Sub. (14) (d) is new. It is intended to allow restitution disputes to be heard in an informal way so that parties may participate effectively without the need for legal counsel. Restitution hearings are not governed by the rules of evidence. State v. Pope, 107 Wis. 2d 726 (Ct. App. 1982). [87 Act 398]

In absence of objection to restitution summary, where defendant has received a copy, trial court may assume amount is not in dispute and may order restitution on that basis. In such cases, court need not make detailed findings under (13)(c). State v. Szarkowitz, 157 W (2d) 740, 460 NW (2d) 819 (Ct. App. 1990).

Under (14)(b) defendant has burden to offer evidence concerning ability to pay. Where defendant fails to offer evidence, trial court may order restitution without making detailed findings as to (13)(a)1 through 4. State v. Szarkowitz, 157 W (2d) 740, 460 NW (2d) 819 (Ct. App. 1990).

Application of bail toward payment of restitution is not permitted. State v. Cetnarowski, 166 W (2d) 700, 480 NW (2d) 790 (Ct. App. 1992).

Requiring a convicted defendant to deposit money for possible future counselling costs of victims was impermissible. State v. Handley, 173 W (2d) 838, 496 NW (2d) 725 (Ct. App. 1993).

Restitution to a party with no relation on the record to the crime of conviction or to read−in crimes is improper. State v. Mattes, 175 W (2d) 572, 499 NW (2d) 711 (Ct. App. 1993).

This section does not authorize restitution for non−pecuniary damages. State v. Stowers, 177 W (2d) 798, 503 NW (2d) 8 (Ct. App. 1993).

Imposition of restitution order after commencement of the defendant's jail sentence did not constitute double jeopardy. State v. Perry, 181 W (2d) 43, 510 NW (2d) 722 (Ct. App. 1993).

The time period for determining restitution under sub. (13) (c) 2. is directory not mandatory. State v. Perry, 181 W (2d) 43, 510 NW (2d) 722 (Ct. App. 1993).

Restitution for read−in charges may be ordered without the defendant's personal admission to the read−in charge. State v. Cleaves, 181 W (2d) 73, 510 NW (2d) 143 (Ct. App. 1993).

Sub. (1) imposes a mandatory duty on a court to provide for restitution; a sentence not providing restitution is illegal and subject to amendment to provide restitution. State v. Borst, 181 W (2d) 118, 510 NW (2d) 739 (Ct. App. 1993).

Repayment to police department of money used by police to buy drugs from a defendant is not authorized by this section. State v. Evans, 181 W (2d) 978, 512 NW (2d) 259 (Ct. App. 1994).

Interest on a restitution award is not allowed. State v. Hufford, 186 W (2d) 461, 522 NW (2d) 26 (Ct. App. 1994).

A restitution award for the repair or replacement cost of a stolen or damaged item is not limited to the fair market value of that item as determined by the jury. State v. Kennedy, 190 W (2d) 252, 528 NW (2d) 9 (Ct. App. 1994).

In the absence of specific objection at the time restitution is ordered, the trial court may proceed with the understanding that the defendant's silence is a constructive stipulation to the restitution, including the amount. State v. Hopkins, 196 W (2d) 36, 538 NW (2d) 543 (Ct. App. 1995).

The expenses of fire fighting and clean up resulting from a crime could not be properly awarded to the county as restitution because the county did not have a direct relationship with the crime of record and was not a victim. State v. Schmaling, 198 W (2d) 757, 543 NW (2d) 555 (Ct. App. 1995).

A restitution order is unaffected by bankruptcy proceedings. State v. Sweat, 202 W (2d) 366, 550 NW (2d) 709 (Ct. App. 1996).

While a trial court may not as part of a restitution order assess general damages which compensate a victim for such things as pain and suffering, anguish or humiliation, it may award as a special damage any specific expenditure by the victim paid out because of the crime. State v. Behnke, 203 W (2d) 43, 553 NW (2d) 265 (Ct. App. 1996).

The term "any defense" in sub. (14) (b) does not mean all defenses available in a civil suit, but rather all defenses relating to the determination of loss sought to be compensated. Therefore, the civil statute of limitations does not apply. State v. Sweat, 208 W (2d) 409, 561 NW (2d) 695 (1997).

When a defendant defrauds people, reasonable attorney fees expended to recover their losses from parties who are civilly or criminally liable may be awarded as restitution. State v. Anderson, 215 W (2d) 667, 573 NW (2d) 872 (Ct. App. 1997)

That sub. (12) (a) requires issuing a single order covering all fines, assessments, costs and restitution after a restitution hearing does not authorize the court to hold open all other financial terms of a previously imposed sentence while restitution is being imposed. State v. Perry, 215 W (2d) 690, 573 NW (2d) 876 (Ct. App. 1997).

A governmental entity may be a "victim" under sub. (1r) entitled to collect restitution. State v. Howard−Hastings, 218 W (2d) 152, 579 NW (2d) 290 (Ct. App. 1998).