



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0392/1
CMH:all

ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO SENATE BILL 54

February 22, 2018 - Offered by Representatives GOYKE, BARCA, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, DOYLE, FIELDS, HEBL, HESSELBEIN, KESSLER, KOLSTE, MEYERS, NEUBAUER, POPE, SHANKLAND, SPREITZER, VRUWINK, YOUNG and ZAMARRIPA.

1 **AN ACT** *to renumber* 973.10 (2) (a) and (b); *to renumber and amend* 302.113
2 (9) (ag), 973.10 (2) (intro.) and 977.08 (3) (b); *to amend* 302.113 (8m) (a),
3 302.113 (9) (am), 302.113 (9) (b), 302.113 (9) (c), 302.114 (8m) (a), 304.06 (3),
4 808.075 (4) (g) 3., 977.02 (5) and 977.08 (3) (c); and *to create* 230.12 (11m),
5 302.113 (9) (ag) 1., 302.113 (9) (am) 2. a., 977.02 (7t), 977.08 (3) (b) 2. and 977.08
6 (4m) (d) of the statutes; **relating to:** recommendation to revoke parole,
7 probation, and extended supervision if a person is charged with a crime;
8 maximum period of imprisonment following revocation of extended supervision
9 or probation; district attorney positions; salary increases for offices of district
10 attorneys and state public defenders; Public Defender Board regulation and
11 pay of private bar attorneys; and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 230.12 (11m) of the statutes is created to read:

230.12 (11m) COST OF LIVING INCREASES FOR DEPUTY AND ASSISTANT DISTRICT ATTORNEYS AND ASSISTANT STATE PUBLIC DEFENDERS. In addition to any salary increases given in the pay progression plans established under subs. (10) and (11), beginning with the first pay period that occurs on or after July 1, 2019, and continuing on each subsequent July 1, the salaries of all deputy and assistant district attorneys and all assistant state public defenders shall be increased by a cost-of-living adjustment.

SECTION 2. 302.113 (8m) (a) of the statutes is amended to read:

302.113 (8m) (a) Every person released to extended supervision under this section remains in the legal custody of the department. If the department alleges that any condition or rule of extended supervision has been violated by the person, the department may take physical custody of the person for the investigation of the alleged violation. If the person is charged with a crime, the department shall recommend that the person's extended supervision be revoked. The department may revise its recommendation if the charges are subsequently dismissed or if the person is found not guilty of the crime.

SECTION 3. 302.113 (9) (ag) of the statutes is renumbered 302.113 (9) (ag) (intro.) and amended to read:

302.113 (9) (ag) (intro.) In this subsection “~~reviewing~~;

2. “Reviewing authority” means the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the person on extended supervision waives a hearing.

SECTION 4. 302.113 (9) (ag) 1. of the statutes is created to read:

302.113 (9) (ag) 1. “Crime” has the meaning given in s. 939.12.

SECTION 5. 302.113 (9) (am) of the statutes is amended to read:

1 302.113 (9) (am) 1. If a person released to extended supervision under this
2 section violates a condition of extended supervision, the reviewing authority may
3 revoke the extended supervision of the person.

4 2. If the extended supervision of the person is revoked, the reviewing authority
5 shall order the person to be returned to prison for any specified period of time that
6 does not exceed one of the following:

7 b. If the person has committed 3 or more independent violations during his or
8 her term of extended supervision, if the condition the person violated was a condition
9 that the person not contact any specified individual, if the person was required to
10 register as a sex offender under s. 301.45, or if, when the person violated the
11 condition of extended supervision, the person also allegedly committed a crime or the
12 person absconded, the time remaining on the bifurcated sentence. The time

13 (ag) 3. “Time remaining on the bifurcated sentence” is the total length of the
14 bifurcated sentence, less time served by the person in confinement under the
15 sentence before release to extended supervision under sub. (2) and less all time
16 served in confinement for previous revocations of extended supervision under the
17 sentence.

18 (am) 3. The order returning a person to prison under this paragraph subd. 2.
19 shall provide the person whose extended supervision was revoked with credit in
20 accordance with ss. 304.072 and 973.155.

21 **SECTION 6.** 302.113 (9) (am) 2. a. of the statutes is created to read:

22 302.113 (9) (am) 2. a. Except as provided in subd. 2. b., 30 days.

23 **SECTION 7.** 302.113 (9) (b) of the statutes is amended to read:

24 302.113 (9) (b) A person who is returned to prison after revocation of extended
25 supervision shall be incarcerated for the entire period of time specified by the order

1 under par. (am) 2. The period of time specified under par. (am) 2. may be extended
2 in accordance with sub. (3). If a person is returned to prison under par. (am) 2. for
3 a period of time that is less than the time remaining on the bifurcated sentence, the
4 person shall be released to extended supervision after he or she has served the period
5 of time specified by the order under par. (am) 2. and any periods of extension imposed
6 in accordance with sub. (3).

7 **SECTION 8.** 302.113 (9) (c) of the statutes is amended to read:

8 302.113 **(9)** (c) A person who is subsequently released to extended supervision
9 after service of the period of time specified by the order under par. (am) 2. is subject
10 to all conditions and rules under sub. (7) and, if applicable, sub. (7m) until the
11 expiration of the time remaining ~~extended supervision portion of~~ on the bifurcated
12 sentence. ~~The remaining extended supervision portion of the bifurcated sentence is~~
13 ~~the total length of the bifurcated sentence, less the time served by the person in~~
14 ~~confinement under the bifurcated sentence before release to extended supervision~~
15 ~~under sub. (2) and less all time served in confinement for previous revocations of~~
16 ~~extended supervision under the bifurcated sentence.~~

17 **SECTION 9.** 302.114 (8m) (a) of the statutes is amended to read:

18 302.114 **(8m)** (a) Every person released to extended supervision under this
19 section remains in the legal custody of the department. If the department alleges
20 that any condition or rule of extended supervision has been violated by the person,
21 the department may take physical custody of the person for the investigation of the
22 alleged violation. If the person is charged with a crime, the department shall
23 recommend that the person's extended supervision be revoked. The department may
24 revise its recommendation if the charges are subsequently dismissed or if the person
25 is found not guilty of the crime.

1 **SECTION 10.** 304.06 (3) of the statutes is amended to read:

2 304.06 (3) Every paroled prisoner remains in the legal custody of the
3 department unless otherwise provided by the department. If the department alleges
4 that any condition or rule of parole has been violated by the prisoner, the department
5 may take physical custody of the prisoner for the investigation of the alleged
6 violation. If the department is satisfied that any condition or rule of parole has been
7 violated it shall afford the prisoner such administrative hearings as are required by
8 law. If the person is charged with a crime, the department shall recommend that the
9 person's parole be revoked. The department may revise its recommendation if the
10 charges are subsequently dismissed or if the person is found not guilty of the crime.

11 Unless waived by the parolee, the final administrative hearing shall be held before
12 a hearing examiner from the division of hearings and appeals in the department of
13 administration who is licensed to practice law in this state. The hearing examiner
14 shall enter an order revoking or not revoking parole. Upon request by either party,
15 the administrator of the division of hearings and appeals shall review the order. The
16 hearing examiner may order that a deposition be taken by audiovisual means and
17 allow the use of a recorded deposition under s. 967.04 (7) to (10). If the parolee waives
18 the final administrative hearing, the secretary of corrections shall enter an order
19 revoking or not revoking parole. If the examiner, the administrator upon review, or
20 the secretary in the case of a waiver finds that the prisoner has violated the rules or
21 conditions of parole, the examiner, the administrator upon review, or the secretary
22 in the case of a waiver, may order the prisoner returned to prison to continue serving
23 his or her sentence, or to continue on parole. If the prisoner claims or appears to be
24 indigent, the department shall refer the prisoner to the authority for indigency
25 determinations specified under s. 977.07 (1).

SECTION 11. 808.075 (4) (g) 3. of the statutes is amended to read:

808.075 (4) (g) 3. Imposition of sentence upon revocation of probation under s. 973.10 (2) (a) (bm) 2. a.

SECTION 12. 973.10 (2) (intro.) of the statutes is renumbered 973.10 (2) (am) and amended to read:

973.10 (2) (am) 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. If the person is charged with a crime, the department shall recommend that the person's probation be revoked.

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.

(bm) 1. If probation is revoked, the probationer may not be ordered to prison for a period that exceeds 30 days except as provided in subd. 2.

2. If probation is revoked, the department shall do one of the following if the person has committed 3 or more independent violations during his or her term of probation, if the condition the person violated was a condition that the person not contact any specified individual, if the probationer was required to register as a sex offender under s. 301.45, or if, when the probationer violated the condition of probation, the probationer allegedly committed a crime, as defined in s. 939.12, or absconded:

1 **SECTION 13.** 973.10 (2) (a) and (b) of the statutes are renumbered 973.10 (2)
2 (bm) 2. a. and b.

3 **SECTION 14.** 977.02 (5) of the statutes is amended to read:

4 977.02 (5) Promulgate rules establishing procedures to assure that
5 representation of indigent clients by the private bar at the initial stages of cases
6 assigned under this chapter is at the same level as the representation provided by
7 the state public defender, including setting standards for and imposing conditions
8 upon private bar attorney certification, decertification, or recertification to represent
9 clients under this chapter.

10 **SECTION 15.** 977.02 (7t) of the statutes is created to read:

11 977.02 (7t) Promulgate rules to distribute case types into pay rate
12 classifications as required in s. 977.08 (4m) (d).

13 **SECTION 16.** 977.08 (3) (b) of the statutes is renumbered 977.08 (3) (b) 1. and
14 amended to read:

15 977.08 (3) (b) 1. A final set of lists for each county shall be prepared, certified,
16 and annually updated by the state public defender. Persons may not be excluded
17 from any a list ~~unless~~ only if the state public defender states in writing the reasons
18 for such action in the ~~context of~~ accordance with subd. 2. and existing rules adopted
19 by the state public defender board. Any attorney thus excluded ~~shall then have the~~
20 ~~opportunity to~~ may appeal the state public defender's decision to the board, which
21 shall issue a final decision in writing.

22 **SECTION 17.** 977.08 (3) (b) 2. of the statutes is created to read:

23 977.08 (3) (b) 2. An attorney may be excluded from a list under subd. 1. if any
24 of the following applies:

1 a. The attorney fails or has failed to meet minimum attorney performance
2 standards adopted by the state public defender.

3 b. The attorney fails or has failed to comply with SCR chapter 20.

4 c. The attorney engages in conduct that is contrary to the interests of clients,
5 the interests of justice, or the interests of the state public defender.

6 d. The state public defender learns of any information that raises a concern
7 about the attorney's character, performance, ability, or behavior.

8 **SECTION 18.** 977.08 (3) (c) of the statutes is amended to read:

9 977.08 (3) (c) A person appointed from the set of lists prepared under par. (b)
10 1. shall be appointed in order from the top of each list; if any attorney thus appointed
11 states in writing that he or she cannot accept the appointment, he or she shall be
12 placed on the bottom of the list, and the attorney thus elevated to the top of the list
13 shall be appointed.

14 **SECTION 19.** 977.08 (4m) (d) of the statutes is created to read:

15 977.08 (4m) (d) Unless otherwise provided by a rule promulgated under s.
16 977.02 (7r) or by a contract authorized under sub. (3) (f), for cases assigned on or after
17 January 1, 2019, private local attorneys shall be paid a rate of \$55, \$60, or \$70 per
18 hour, based upon the case type, for time spent related to a case, excluding travel.

19 **SECTION 20. Nonstatutory provisions.**

20 (1) The authorized FTE positions for the department of administration are
21 increased by 53.75 GPR positions on July 1, 2019, to be funded from the
22 appropriation under section 20.475 (1) (d) of the statutes, for the purpose of
23 increasing the number of district attorney positions as follows:

24 (a) In Iowa County, 0.25 positions.

25 (b) In each Green, Marquette, and Pierce counties, 0.5 positions.

1 (c) In Jefferson County, 0.7 positions.

2 (d) In each Burnett and Columbia counties, 0.75 positions.

3 (e) In Adams County, 0.8 positions.

4 (f) In each Ashland, Barron, Bayfield, Chippewa, Dodge, Forest, Jackson,
5 Langlade, Lincoln, Marathon, Ozaukee, Shawano, Taylor, Walworth, and
6 Washington counties, 1.0 positions.

7 (g) In each Brown, Douglas, Dunn, Eau Claire, Fond du Lac, Kenosha, La
8 Crosse, Manitowoc, Monroe, Outagamie, Polk, Portage, Racine, Sheboygan,
9 Waukesha, Winnebago, and Wood counties, 2.0 positions.

10 (2) The authorized FTE positions for the department of administration are
11 increased by 0.4 GPR positions on January 1, 2020, to be funded from the
12 appropriation under section 20.475 (1) (d) of the statutes, for the purpose increasing
13 the number of district attorney positions in Marinette County to replace a 0.4 GPR
14 project position that expires on December 31, 2019.

15 **SECTION 21. Fiscal changes.**

16 (1) PUBLIC DEFENDER PAY INCREASE. In the schedule under section 20.005 (3) of
17 the statutes for the appropriation to the public defender board under section 20.550
18 (1) (a) of the statutes, the dollar amount for fiscal year 2018-19 is increased by
19 \$6,475,500 to fund pay increases for private local attorneys.

20 (END)