



2011 ASSEMBLY BILL 660

March 5, 2012 – Introduced by Representatives WYNN, SPANBAUER and KNILANS.
Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT** *to renumber and amend* 302.113 (9) (am), 302.113 (9) (g), 302.114 (9)
2 (am), 302.114 (9) (b), 302.114 (9) (f) and 304.06 (3); **to amend** 302.113 (8m) (a),
3 302.113 (8m) (b), 302.114 (8m) (a), 302.114 (8m) (b), 302.33 (1), 303.08 (1)
4 (intro.), 303.08 (2), 303.08 (5) (intro.), 303.08 (6), 303.08 (12), 808.075 (4) (g) 3.
5 and 973.155 (1) (b); **to repeal and recreate** 973.10 (2); and **to create** 302.113
6 (8r), 302.113 (9) (am) 2., 302.113 (9) (em), 302.113 (9) (g) 2., 302.114 (8r), 302.114
7 (9) (am) 2., 302.114 (9) (b) 2., 302.114 (9) (dm), 302.114 (9) (f) 2., 304.06 (3) (a),
8 304.06 (3) (b) 2., 304.06 (3) (c), 304.06 (3g), 973.10 (2c), 973.10 (2e) and 973.10
9 (5) of the statutes; **relating to:** revocation of parole, probation, or extended
10 supervision.

Analysis by the Legislative Reference Bureau

Under current law, with some exceptions, a person who commits a crime may be allowed to serve all or a portion of his or her sentence in the community, but under the supervision of the Department of Corrections (DOC) and in the legal custody of DOC (supervised release). Current law offers three types of generally available supervised release: 1) release from prison to extended supervision, which is

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available to certain persons who are sentenced to imprisonment for a felony he or she committed on or after December 31, 1999, or for a misdemeanor he or she committed on or after February 1, 2003, 2) release from prison to parole, which is available to certain persons who are sentenced for a felony or a misdemeanor he or she committed before those dates, and 3) release to probation, which is available for certain persons for whom a court delays sentencing or imposes a sentence and stays its execution while the person serves his or her time on probation.

A person who is on supervised release must comply with rules and conditions set by DOC, or in the case of a probationer or some persons released to extended supervision, with rules and conditions set by DOC and the sentencing court. If the person violates a rule or condition of supervised release, DOC may initiate proceedings to revoke his or her release. In most cases, a person is entitled to a hearing to determine if he or she did violate a rule or condition of supervised release.

A person under supervised release who is accused of violating a rule or condition of supervised release may waive his or her right to a hearing; in that case, DOC determines whether revocation is warranted and, if revocation is warranted, the period of incarceration that may be appropriate for the violation. Current law provides that, if after a hearing before the Division of Hearings and Appeals in the Department of Administration, the person is found to have committed a violation, the person's supervised release may be revoked. Upon revocation, the person may be returned to a correctional facility for a period of time up to the time remaining on his or her sentence; if the person is a probationer, the person may be returned to court for sentencing or, if the original sentence was imposed but stayed, may be required to serve his or her original sentence. A revocation decision by the Division of Hearings and Appeals may be appealed by the person or, if revocation is denied, by DOC.

Under current law, the person has a right to due process with respect to the revocation hearing, but the rules of evidence that apply to court proceedings do not necessarily apply to revocation hearings. Also under current law, a person who has been charged with committing a felony is entitled to a preliminary examination at which the court must determine whether there is probable cause to believe that the defendant committed a felony. Witness testimony may be taken at both revocation hearings and preliminary examinations.

This bill changes aspects of the revocation proceedings for persons who are under supervised release for a felony and who violate a condition of supervised release by committing a new crime, violating a rule or condition that prohibits contact with a victim or witness, violating a rule or condition that prohibits contact with a minor if the person is serving a sentence for a crime against a child, or absconding from supervision for more than 180 days (supervised felon).

Under the bill, if DOC alleges that a supervised felon committed one or more of the listed violations, DOC is required to take physical custody of the supervised felon and keep the person in its physical custody until any revocation issues are resolved. If DOC opts not to seek revocation of a supervised felon's release, DOC must notify the district attorney for the county where the felon was convicted of the alleged violation and its decision not to seek revocation. Under the bill, the district

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attorney has 30 days to initiate revocation proceedings against the supervised felon. The bill requires DOC to cooperate with a district attorney who initiates revocation proceedings. Under the bill, if a supervised felon is found to have committed the violation, he or she must be reincarcerated for not less than half of the time remaining on his or her sentence or, in the case of a person serving a life term, for not less than five years. If a supervised felon was on probation, the bill requires the person to be returned to court for sentencing or to be required to serve the sentence that had been stayed.

The bill also makes changes to revocation proceedings that apply to supervised felons and to persons who are under supervised release for a misdemeanor or for a felony but whose alleged violations are not among those listed for supervised felons. Under the bill, the standard of proof for determining whether a person committed a violation of a rule or condition of supervised release is a preponderance of evidence. The bill limits review of revocation proceedings to determining whether DOC or, in the case of a supervised felon, DOC or the district attorney, met that burden of proof.

The bill also provides that, if DOC or, in the case of a supervised felon, DOC or the district attorney, initiates proceedings to revoke a person's supervised release because the person has committed a new felony, the felony victim's testimony from the preliminary examination regarding the new felony is admissible at the hearing on revocation of extended supervision. The bill further provides that, if the victim testified at a preliminary examination regarding the felony and if a record of the testimony is available, a party to the revocation hearing may not subpoena the victim to appear at the revocation hearing unless that party shows good cause for requiring the victim's appearance.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 302.113 (8m) (a) of the statutes is amended to read:
2 302.113 **(8m)** (a) Every person released to extended supervision under this
3 section remains in the legal custody of the department. If the department alleges
4 that any condition or rule of extended supervision other than one listed in sub. (8r)
5 has been violated by ~~the~~ a person, the department may take physical custody of the
6 person for the investigation of the alleged violation and proceed under this
7 subsection.

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

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1 302.113 **(8m)** (b) If ~~a~~ the person released to extended supervision under this
2 section described in par. (a) signs a statement admitting a violation of a condition or
3 rule of extended supervision, the department may, as a sanction for the violation,
4 confine the person for up to 90 days in a regional detention facility or, with the
5 approval of the sheriff, in a county jail. If the department confines the person in a
6 county jail under this paragraph, the department shall reimburse the county for its
7 actual costs in confining the person from the appropriations under s. 20.410 (1) (ab)
8 and (b). Notwithstanding s. 302.43, the person is not eligible to earn good time credit
9 on any period of confinement imposed under this subsection.

10 **SECTION 3.** 302.113 (8r) of the statutes is created to read:

11 302.113 **(8r)** (a) If the department alleges that a person has violated any
12 condition or rule of extended supervision by committing a new crime, violating a rule
13 or condition that prohibits contact with a victim or witness, violating a rule or
14 condition that prohibits contact with a minor if the person is serving a sentence for
15 a violation of ch. 948, or absconding from supervision for more than 180 days, the
16 department shall take physical custody of the person for the investigation of the
17 alleged violation and proceed under this subsection.

18 (b) If the department is satisfied that a condition or rule of extended
19 supervision specified in par. (a) has been violated, it may initiate proceedings to
20 revoke the person's extended supervision. If the department does not initiate
21 proceedings to revoke the person's extended supervision, the department shall notify
22 the district attorney in the county where the person was convicted that it alleges the
23 person has committed a violation specified in par. (a) but does not wish to initiate
24 revocation proceedings.

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1 (c) Within 30 days of receiving notice under par. (b), the district attorney in the
2 county where the person was convicted may initiate revocation proceedings.

3 (d) Upon request of a district attorney who is proceeding under par. (c), the
4 department shall retain physical custody of the person until the conclusion of the
5 revocation proceedings and assist the district attorney in the revocation proceedings.
6 Assistance under this paragraph may include serving the person with notice of the
7 district attorney's intent to revoke extended supervision, providing records relating
8 to the person to the district attorney, and allowing a supervising agent to testify at
9 revocation proceedings.

10 **SECTION 4.** 302.113 (9) (am) of the statutes, as affected by 2011 Wisconsin Act
11 38, is renumbered 302.113 (9) (am) 1. and amended to read:

12 302.113 (9) (am) 1. If a- Except as provided in subd. 2., if the department proves
13 by a preponderance of the evidence that the person released to extended supervision
14 under this section violates a condition of extended supervision, the reviewing
15 authority may revoke the extended supervision of the person. If the extended
16 supervision of the person is revoked, the reviewing authority shall order the person
17 to be returned to prison for any specified period of time that does not exceed the time
18 remaining on the bifurcated sentence. The time remaining on the bifurcated
19 sentence is the total length of the bifurcated sentence, less time served by the person
20 in confinement under the sentence before release to extended supervision under sub.
21 (2) and less all time served in confinement for previous revocations of extended
22 supervision under the sentence. The order returning a person to prison under this
23 paragraph subdivision shall provide the person whose extended supervision was
24 revoked with credit in accordance with ss. 304.072 and 973.155.

25 **SECTION 5.** 302.113 (9) (am) 2. of the statutes is created to read:

ASSEMBLY BILL 660**SECTION 5**

1 302.113 (9) (am) 2. If the department or the district attorney proceeding under
2 sub. (8r) (c) proves by a preponderance of the evidence that the person released to
3 extended supervision under this section violates a condition of extended supervision
4 specified in sub. (8r) (a), the reviewing authority shall revoke the extended
5 supervision of the person and order the person to be returned to prison for not less
6 than one-half of the time remaining on the bifurcated sentence. The time remaining
7 on the bifurcated sentence is the total length of the bifurcated sentence, less time
8 served by the person in confinement under the sentence before release to extended
9 supervision under sub. (2) and less all time served in confinement for previous
10 revocations of extended supervision under the sentence. The order returning a
11 person to prison under this subdivision shall provide the person whose extended
12 supervision was revoked with credit in accordance with ss. 304.072 and 973.155.

13 **SECTION 6.** 302.113 (9) (em) of the statutes is created to read:

14 302.113 (9) (em) A felony victim's or witness's testimony from a preliminary
15 examination regarding the felony is admissible in any administrative hearing held
16 under par. (am) to determine whether a person on extended supervision violated the
17 conditions of extended supervision by committing the felony. If such testimony is
18 available, a party to the administrative hearing may not subpoena the victim or
19 witness to appear at the administrative hearing unless the party shows good cause
20 for requiring the victim's or witness's appearance.

21 **SECTION 7.** 302.113 (9) (g) of the statutes is renumbered 302.113 (9) (g) 1. and
22 amended to read:

23 302.113 (9) (g) 1. In any case in which there is a hearing before the division of
24 hearings and appeals in the department of administration concerning whether to
25 revoke a person's extended supervision, the person on extended supervision may

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1 seek review of a decision to revoke extended supervision and the department of
2 corrections or the district attorney may seek review of a decision to not revoke
3 extended supervision. Review under this paragraph is limited to whether the
4 department or the district attorney met the burden of proof specified under par. (am).
5 Review of a decision under this paragraph may be sought only by an action for
6 certiorari. Except as provided in subd. 2., a writ of certiorari must be filed within 60
7 days of the revocation decision.

8 **SECTION 8.** 302.113 (9) (g) 2. of the statutes is created to read:

9 302.113 (9) (g) 2. If the department of corrections does not seek review of a
10 decision to not revoke extended supervision under subd. 1., the department shall
11 notify the district attorney in the county where the person was convicted that it does
12 not intend to seek review of the decision. The district attorney may, by filing a writ
13 of certiorari within 60 days after it receives notice from the department under this
14 subdivision, seek review of the decision.

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

16 302.114 (8m) (a) Every person released to extended supervision under this
17 section remains in the legal custody of the department. If the department alleges
18 that any condition or rule of extended supervision other than one listed in sub. (8r)
19 has been violated by the person, the department may take physical custody of the
20 person for the investigation of the alleged violation and proceed under this
21 subsection.

22 **SECTION 10.** 302.114 (8m) (b) of the statutes is amended to read:

23 302.114 (8m) (b) If a person released to extended supervision under this section
24 subsection signs a statement admitting a violation of a condition or rule of extended
25 supervision, the department may, as a sanction for the violation, confine the person

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1 for up to 90 days in a regional detention facility or, with the approval of the sheriff,
2 in a county jail. If the department confines the person in a county jail under this
3 paragraph, the department shall reimburse the county for its actual costs in
4 confining the person from the appropriations under s. 20.410 (1) (ab) and (b).
5 Notwithstanding s. 302.43, the person is not eligible to earn good time credit on any
6 period of confinement imposed under this subsection.

7 **SECTION 11.** 302.114 (8r) of the statutes is created to read:

8 302.114 (8r) (a) If the department alleges that the person has violated any
9 condition or rule of extended supervision by committing a new crime, violating a rule
10 or condition that prohibits contact with a victim or witness, violating a rule or
11 condition that prohibits contact with a minor if the person is serving a sentence for
12 a violation of ch. 948, or absconding from supervision for more than 180 days, the
13 department shall take physical custody of the person for the investigation of the
14 alleged violation and proceed under this subsection.

15 (b) If the department is satisfied that a condition or rule of extended
16 supervision specified in par. (a) has been violated, it may initiate proceedings to
17 revoke the person's extended supervision. If the department does not initiate
18 proceedings to revoke the person's extended supervision, the department shall notify
19 the district attorney in the county where the person was convicted that it alleges the
20 person has committed a violation specified in par. (a) but does not wish to initiate
21 revocation proceedings.

22 (c) Within 30 days of receiving notice under par. (b), the district attorney in the
23 county where the person was convicted may initiate revocation proceedings.

24 (d) Upon request of a district attorney who is proceeding under par. (c), the
25 department shall retain physical custody of the person until the conclusion of the

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1 revocation proceedings and assist the district attorney in the revocation proceedings.
2 Assistance under this paragraph may include serving the person with notice of the
3 district attorney's intent to revoke extended supervision, providing records relating
4 to the person to the district attorney, and allowing a supervising agent to testify at
5 revocation proceedings.

6 **SECTION 12.** 302.114 (9) (am) of the statutes, as affected by 2011 Wisconsin Act
7 38, is renumbered 302.114 (9) (am) 1. and amended to read:

8 302.114 (9) (am) 1. ~~If a~~ Except as provided in subd. 2., if the department proves
9 by a preponderance of the evidence that the person released to extended supervision
10 under this section violates a condition of extended supervision, the reviewing
11 authority may revoke the extended supervision of the person. If the extended
12 supervision of the person is revoked, the person shall be returned to the circuit court
13 for the county in which the person was convicted of the offense for which he or she
14 was on extended supervision, and the court shall order the person to be returned to
15 prison for a specified period of time before he or she is eligible for being released again
16 to extended supervision. The period of time specified under this paragraph
17 subdivision may not be less than 5 years and may be extended in accordance with
18 sub. (3).

19 **SECTION 13.** 302.114 (9) (am) 2. of the statutes is created to read:

20 302.114 (9) (am) 2. If the department or the district attorney proceeding under
21 sub. (8r) (c) proves by a preponderance of the evidence that the person released to
22 extended supervision under this section violates a condition of extended supervision
23 specified in sub. (8r) (a), the reviewing authority shall revoke the extended
24 supervision of the person. The person shall be returned to the circuit court for the
25 county in which the person was convicted of the offense for which he or she was on

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1 extended supervision, and the court shall order the person to be returned to prison
2 for not less than 5 years. The period of time specified under this subdivision may be
3 extended in accordance with sub. (3).

4 **SECTION 14.** 302.114 (9) (b) of the statutes is renumbered 302.114 (9) (b) 1. and
5 amended to read:

6 302.114 (9) (b) 1. When a person is returned to court under par. (am) 1. after
7 revocation of extended supervision, the reviewing authority shall make a
8 recommendation to the court concerning the period of time for which the person
9 should be returned to prison before being eligible for release to extended supervision.
10 The period of time recommended under this ~~paragraph~~ subdivision may not be less
11 than 5 years.

12 **SECTION 15.** 302.114 (9) (b) 2. of the statutes is created to read:

13 302.114 (9) (b) 2. When a person is returned to court under par. (am) 2. after
14 revocation of extended supervision, the reviewing authority shall make a
15 recommendation to the court concerning the period of time for which the person
16 should be returned to prison before being eligible for release to extended supervision.
17 The period of time recommended under this subdivision may not be less than
18 one-half of the time remaining on the person's sentence, or less than 5 years,
19 whichever is greater.

20 **SECTION 16.** 302.114 (9) (dm) of the statutes is created to read:

21 302.114 (9) (dm) A felony victim's or witness's testimony from a preliminary
22 examination regarding the felony is admissible in any administrative hearing held
23 under par. (am) to determine whether a person on extended supervision violated the
24 conditions of extended supervision by committing the felony. If such testimony is
25 available, a party to the administrative hearing may not subpoena the victim or

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1 witness to appear at the administrative hearing unless the party shows good cause
2 for requiring the victim's or witness's appearance.

3 **SECTION 17.** 302.114 (9) (f) of the statutes is renumbered 302.114 (9) (f) 1. and
4 amended to read:

5 302.114 (9) (f) 1. In any case in which there is a hearing before the division of
6 hearings and appeals in the department of administration concerning whether to
7 revoke a person's extended supervision, the person on extended supervision may
8 seek review of a decision to revoke extended supervision and the department of
9 corrections or the district attorney may seek review of a decision to not revoke
10 extended supervision. Review under this paragraph is limited to whether the
11 department or the district attorney met the burden of proof specified under par. (am).
12 Review of a decision under this paragraph may be sought only by an action for
13 certiorari. Except as provided in subd. 2., a writ of certiorari must be filed within 60
14 days of the revocation decision.

15 **SECTION 18.** 302.114 (9) (f) 2. of the statutes is created to read:

16 302.114 (9) (f) 2. If the department of corrections does not seek review of a
17 decision to not revoke extended supervision under subd. 1., the department shall
18 notify the district attorney in the county where the person was convicted that it does
19 not intend to seek review of the decision. The district attorney may, by filing a writ
20 of certiorari within 60 days after it receives notice from the department under this
21 subdivision, seek review of the decision.

22 **SECTION 19.** 302.33 (1) of the statutes is amended to read:

23 302.33 (1) The maintenance of persons who have been sentenced to the state
24 penal institutions; persons in the custody of the department, except as provided in
25 sub. (2) and ss. 301.048 (7), 302.113 (8m) or (8r), and 302.114 (8m) or (8r); persons

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1 accused of crime and committed for trial; persons committed for the nonpayment of
2 fines and expenses; and persons sentenced to imprisonment therein, while in the
3 county jail, shall be paid out of the county treasury. No claim may be allowed to any
4 sheriff for keeping or boarding any person in the county jail unless the person was
5 lawfully detained therein.

6 **SECTION 20.** 303.08 (1) (intro.) of the statutes is amended to read:

7 303.08 (1) (intro.) Any person sentenced to a county jail for crime, nonpayment
8 of a fine or forfeiture, or contempt of court or subject to a confinement sanction under
9 s. 302.113 (8m) or (8r) or 302.114 (8m) or (8r) may be granted the privilege of leaving
10 the jail during necessary and reasonable hours for any of the following purposes:

11 **SECTION 21.** 303.08 (2) of the statutes is amended to read:

12 303.08 (2) Unless such privilege is expressly granted by the court or, in the case
13 of a person subject to a confinement sanction under s. 302.113 (8m) or (8r) or 302.114
14 (8m) or (8r), the department, the person is sentenced to ordinary confinement. A
15 prisoner, other than a person subject to a confinement sanction under s. 302.113 (8m)
16 or (8r) or 302.114 (8m) or (8r), may petition the court for such privilege at the time
17 of sentence or thereafter, and in the discretion of the court may renew the prisoner's
18 petition. The court may withdraw the privilege at any time by order entered with
19 or without notice.

20 **SECTION 22.** 303.08 (5) (intro.) of the statutes is amended to read:

21 303.08 (5) (intro.) By order of the court or, for a person subject to a confinement
22 sanction under s. 302.113 (8m) or (8r) or 302.114 (8m) or (8r), by order of the
23 department, the wages, salary and unemployment insurance and employment
24 training benefits received by prisoners shall be disbursed by the sheriff for the
25 following purposes, in the order stated:

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1 **SECTION 23.** 303.08 (6) of the statutes is amended to read:

2 303.08 **(6)** The department, for a person subject to a confinement sanction
3 under s. 302.113 (8m) or (8r) or 302.114 (8m) or (8r), or the sentencing court, by order,
4 may authorize the sheriff to whom the prisoner is committed to arrange with another
5 sheriff for the employment or employment training of the prisoner in the other's
6 county, and while so employed or trained to be in the other's custody but in other
7 respects to be and continue subject to the commitment.

8 **SECTION 24.** 303.08 (12) of the statutes is amended to read:

9 303.08 **(12)** In counties having a house of correction, any person violating the
10 privilege granted under sub. (1) may be transferred by the county jailer to the house
11 of correction for the remainder of the term of the person's sentence or, if applicable,
12 the remainder of the person's confinement sanction under s. 302.113 (8m) or (8r) or
13 302.114 (8m) or (8r).

14 **SECTION 25.** 304.06 (3) of the statutes, as affected by 2011 Wisconsin Act 38,
15 is renumbered 304.06 (3) (b) 1. and amended to read:

16 304.06 **(3)** (b) 1. Every paroled prisoner remains in the legal custody of the
17 department unless otherwise provided by the department. If the department alleges
18 that any condition or rule of parole has been violated by ~~the prisoner~~ a misdemeanor
19 parolee or that a condition or rule of parole other than one listed in subd. 2. has been
20 violated by a felony parolee, the department may take physical custody of the
21 prisoner for the investigation of the alleged violation and proceed under this
22 subdivision. If the department is satisfied that any condition or rule of parole has
23 been violated it shall afford the prisoner such administrative hearings as are
24 required by law. Unless waived by the parolee, the final administrative hearing shall
25 be held before a hearing examiner from the division of hearings and appeals in the

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1 department of administration who is licensed to practice law in this state. The
2 hearing examiner shall enter an order revoking or not revoking parole. Upon request
3 by either party, the administrator of the division of hearings and appeals shall review
4 the order. ~~The hearing examiner may order that a deposition be taken by audiovisual~~
5 ~~means and allow the use of a recorded deposition under s. 967.04 (7) to (10).~~ If the
6 parolee waives the final administrative hearing, the secretary of corrections shall
7 enter an order revoking or not revoking parole. If the examiner, the administrator
8 upon review, or the secretary in the case of a waiver finds, by a preponderance of the
9 evidence, that the prisoner has violated the rules or conditions of parole, the
10 examiner, the administrator upon review, or the secretary in the case of a waiver,
11 may order the prisoner returned to prison to continue serving his or her sentence, or
12 to continue on parole. ~~If the prisoner claims or appears to be indigent, the~~
13 ~~department shall refer the prisoner to the authority for indigency determinations~~
14 ~~specified under s. 977.07 (1).~~

15 **SECTION 26.** 304.06 (3) (a) of the statutes is created to read:

16 304.06 (3) (a) In this subsection:

17 1. "Felony parolee" means a person who is released to parole and who is serving
18 a sentence for committing a felony.

19 2. "Misdemeanor parolee" means a person who is released to parole and who
20 is serving a sentence for committing a misdemeanor and who is not a felony parolee.

21 **SECTION 27.** 304.06 (3) (b) 2. of the statutes is created to read:

22 304.06 (3) (b) 2. a. If the department alleges a felony parolee has violated a rule
23 or condition of parole by committing a new crime, violating a rule that prohibits
24 contact with a victim or a witness, violating a rule that prohibits contact with a minor
25 if the felony parolee is serving a sentence for a violation of ch. 948, or absconding from

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1 supervision for more than 180 days, the department shall take physical custody of
2 the prisoner for the investigation of the alleged violation.

3 b. If the department is satisfied that a condition or rule of parole specified in
4 subd. 2. a. has been violated, it may initiate proceedings to revoke the parolee's parole
5 and shall afford the prisoner such administrative hearings as are required by law.
6 If the department does not initiate proceedings to revoke the parolee's parole, the
7 department shall notify the district attorney in the county where the parolee was
8 convicted that it alleges the parolee has committed a violation specified in subd. 2.
9 a. but does not wish to initiate revocation proceedings.

10 c. Within 30 days of receiving notice under subd. 2. b., the district attorney in
11 the county where the parolee was convicted may initiate revocation proceedings and
12 shall afford the prisoner such administrative hearings as are required by law.

13 d. Upon request of a district attorney who is proceeding under subd. 2. c., the
14 department shall retain physical custody of the parolee until the conclusion of the
15 revocation proceedings and assist the district attorney in the revocation proceedings.
16 Assistance under this subd. 2. d. may include serving the parolee with notice of the
17 district attorney's intent to revoke parole, providing records relating to the parolee
18 to the district attorney, and allowing a supervising agent to testify at revocation
19 proceedings.

20 e. Unless waived by the parolee, the final administrative hearing shall be held
21 before a hearing examiner from the division of hearings and appeals in the
22 department of administration who is licensed to practice law in this state. If the
23 department or the district attorney proves by a preponderance of the evidence that
24 the parolee committed a violation set forth in subd. 2. a., the hearing examiner shall
25 enter an order revoking parole and the parolee shall be returned to prison for not less

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1 than one-half of the time remaining on his or her sentence. Review of a revocation
2 under this subdivision is limited to whether the department or the district attorney
3 proved a violation by a preponderance of the evidence.

4 **SECTION 28.** 304.06 (3) (c) of the statutes is created to read:

5 304.06 (3) (c) In any proceeding under par. (b):

6 1. The hearing examiner may order that a deposition be taken by audiovisual
7 means and allow the use of a recorded deposition under s. 967.04 (7) to (10).

8 2. The hearing examiner shall grant a continuance sought by any party, not to
9 exceed 30 days, for the purpose of gathering evidence, holding a preliminary hearing
10 for a felony relating to the alleged violation of a rule or condition, or preparing a
11 transcript or other record of a preliminary hearing or other proceeding.

12 3. If the parolee allegedly violated a rule or condition or parole by committing
13 a felony, the felony victim's or witness's testimony from a preliminary examination
14 regarding the felony is admissible to determine whether the parolee violated the
15 conditions of his or her parole by committing the felony. If such testimony is
16 available, a party to the administrative hearing may not subpoena the victim or
17 witness to appear at the administrative hearing unless the party shows good cause
18 for requiring the victim's or witness's appearance.

19 4. If the parolee claims or appears to be indigent, the department shall refer
20 the parolee to the authority for indigency determinations specified under s. 977.07
21 (1).

22 **SECTION 29.** 304.06 (3g) of the statutes is created to read:

23 304.06 (3g) If the department of corrections does not seek review of a decision
24 to not revoke parole in a proceeding brought under sub. (3) (b) 2., the department
25 shall notify the district attorney in the county where the person was convicted that

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1 it does not intend to seek review of the decision. The district attorney may, within
2 60 days after it receives notice from the department under this subsection, seek
3 review of the decision.

4 **SECTION 30.** 808.075 (4) (g) 3. of the statutes is amended to read:

5 808.075 (4) (g) 3. Imposition of sentence upon revocation of probation under s.
6 973.10 (2) ~~(a)~~ (c) 1.

7 **SECTION 31.** 973.10 (2) of the statutes is repealed and recreated to read:

8 973.10 (2) (a) In this subsection:

9 1. "Felony probationer" means a person who is placed on probation for
10 committing a felony.

11 2. "Misdemeanor probationer" means a person who is placed on probation for
12 committing a misdemeanor and who is not a felony probationer.

13 (b) 1. If the department of corrections alleges that a misdemeanor probationer
14 has violated a condition of probation or that a felony probationer has violated a
15 condition of probation other than one listed in subd. 2., the department shall proceed
16 under this subdivision and may initiate revocation proceedings before the division
17 of hearings and appeals in the department of administration. Unless waived by the
18 probationer, a hearing examiner for the division shall conduct an administrative
19 hearing and upon finding, by a preponderance of the evidence, that the probationer
20 violated a condition of probation, shall enter an order either revoking or not revoking
21 probation. Upon request of either party, the administrator of the division shall
22 review the order. If the probationer waives the final administrative hearing, the
23 secretary of corrections shall enter an order either revoking or not revoking parole.

24 2. a. If the department of corrections alleges that a felony probationer has
25 violated a condition of probation by committing a new crime, violating a condition

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1 that prohibits contact with a victim or a witness, violating a condition that prohibits
2 contact with a minor if the felony probationer is on probation for a violation of ch. 948,
3 or absconding from supervision for more than 180 days, the department shall take
4 physical custody of the probationer for the investigation of the alleged violation and
5 proceed under this subdivision.

6 b. If the department is satisfied that a condition of probation specified in subd.
7 2. a. has been violated, it may initiate revocation proceedings before the division of
8 hearings and appeals in the department of administration. If the department does
9 not initiate proceedings, the department shall notify the district attorney in the
10 county where the probationer was convicted that it alleges the probationer has
11 committed a violation specified in subd. 2. a. but does not wish to initiate revocation
12 proceedings.

13 c. Within 30 days of receiving notice under subd. 2. b., the district attorney in
14 the county where the probationer was convicted may initiate revocation proceedings.

15 d. Upon request of a district attorney who is proceeding under subd. 2. c., the
16 department shall retain physical custody of the probationer until the conclusion of
17 the revocation proceedings and assist the district attorney in the revocation
18 proceedings. Assistance under this subd. 2. d. may include serving the probationer
19 with notice of the district attorney's intent to revoke probation, providing records
20 relating to the probation to the district attorney, and allowing a supervising agent
21 to testify at revocation proceedings.

22 e. Unless waived by the probationer, a hearing examiner for the division shall
23 conduct an administrative hearing. If the department or the district attorney proves
24 by a preponderance of the evidence that the probationer committed a violation set
25 forth in subd. 2. a., the hearing examiner shall enter an order revoking probation.

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1 (c) If probation is revoked, the department shall:

2 1. If the probationer has not already been sentenced, order the probationer
3 brought before the court for sentence which shall then be imposed without further
4 stay under s. 973.15.

5 2. If the probationer has already been sentenced, order the probationer to
6 prison, and the term of the sentence shall begin on the date the probationer enters
7 the prison.

8 **SECTION 32.** 973.10 (2c) of the statutes is created to read:

9 973.10 (2c) A felony victim's or witness's testimony from a preliminary
10 examination regarding the felony is admissible in any administrative hearing held
11 under sub. (2) (b) 2. to determine whether a probationer violated a condition of
12 probation by committing the felony. If such testimony is available, a party to the
13 administrative hearing may not subpoena the victim or witness to appear at the
14 administrative hearing unless the party shows good cause for requiring the victim's
15 or witness's appearance.

16 **SECTION 33.** 973.10 (2e) of the statutes is created to read:

17 973.10 (2e) Review of an order to revoke probation is limited to whether the
18 department of corrections or, in an action brought under sub. (2) (b) 2., the district
19 attorney proved by a preponderance of the evidence that the probationer violated a
20 condition of probation.

21 **SECTION 34.** 973.10 (5) of the statutes is created to read:

22 973.10 (5) If the department of corrections does not seek review of a decision
23 to not revoke probation in proceedings brought under sub. (2) (b) 2., the department
24 shall notify the district attorney in the county where the person was convicted that
25 it does not intend to seek review of the decision. The district attorney may, within

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1 60 days after it receives notice from the department under this subdivision, seek
2 review of the decision.

3 **SECTION 35.** 973.155 (1) (b) of the statutes is amended to read:

4 973.155 (1) (b) The categories in par. (a) and sub. (1m) include custody of the
5 convicted offender which is in whole or in part the result of a probation, extended
6 supervision or parole hold under s. 302.113 (8m) or (8r), 302.114 (8m) or (8r), 304.06
7 (3), or 973.10 (2) placed upon the person for the same course of conduct as that
8 resulting in the new conviction.

9 **SECTION 36. Initial applicability.**

10 (1) This act first applies to a violation of a rule or condition that occurs on the
11 effective date of this subsection.

12 (END)