

# HO-CHUNK NATION CODE (HCC)

## TITLE 9 – CRIMINAL CODE

### SECTION 973 – SENTENCING

ENACTED BY LEGISLATURE: May 23, 2017

CITE AS: 9 HCC § 973

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### 973.01 Bifurcated sentence of imprisonment and extended supervision.

(1) BIFURCATED SENTENCE REQUIRED. Whenever a court sentences a person to imprisonment for a felony or a misdemeanor, the court shall impose a bifurcated sentence under this section.

(2) STRUCTURE OF BIFURCATED SENTENCES. A bifurcated sentence is a sentence that consists of a term of confinement in prison followed by a term of extended supervision. The total length of a bifurcated sentence equals the length of the term of confinement in prison plus the length of the term of extended supervision. An order imposing a bifurcated sentence under this section shall comply 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 specified in s. 939.50, if the crime is a classified felony, or the maximum term of imprisonment provided by statute for the crime, if the crime is not a classified felony, plus additional imprisonment authorized by any applicable penalty enhancement statutes.

(b) *Confinement 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 and, except as provided in par. (c), may not exceed three years.

1. For any crime other than one of the following, the term of confinement in prison may not exceed 75% of the total length of the bifurcated sentence:

a. A felony specified in subds. 1. to 9.

b. An attempt to commit a classified felony if the attempt is punishable under s. 939.32 (1) (intro.).

(c) *Penalty enhancement.*

1. Subject to the minimum period of extended supervision required under par. (d), the maximum term of confinement specified in par. (b) may be increased by any applicable penalty enhancement statute. If the maximum term of confinement 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.

2. If more than one of the following penalty enhancement statutes apply to a crime, the court shall apply them in the order listed in calculating the maximum term of imprisonment for that crime:

a. Section 939.63.

b. Section 939.62 (1) or 961.48.

(d) *Minimum and maximum term of extended supervision.* The term of extended supervision may not be less than 25% of the length of the term of confinement imposed under par. (b) and, for a classified felony.

(3g) EARNED RELEASE 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, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 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 to participate in the earned release program, if available, during the term of confinement portion of the bifurcated sentence.

(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, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 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 a challenge incarceration program, if available, during the term of confinement 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 portion of the sentence without reduction for good behavior. The term of confinement portion is subject to extension under applicable law and, if applicable, to reduction under s. 973.195 (1r), or 973.198.

(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 under that sentence.

(7) NO DISCHARGE. Probation and parole 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 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 jail under the term of confinement in jail 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 applicable law.
4. That the amount of time the person must actually serve may be extended as provided under applicable law and that because of extensions the person could serve the entire bifurcated sentence in confinement.
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 confinement.

(ag) If the court provides under sub. (3g) that the person is eligible to participate in the earned release program, the court shall also inform the person of any provisions established by law which establish an earned release.

(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 the applicable statute.

(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.

### **973.013 Indeterminate sentence.**

(1)(a) If imprisonment 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 1 . jail/prison 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 probation/parole 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.

(2) Upon the recommendation of the probation and parole, the president may, discharge absolutely, or upon such conditions and restrictions and under such limitation as the president thinks proper. The discharge has the effect of an absolute or conditional pardon, respectively.

(3m) If a person who has not attained the age of 16 years is sentenced to jail/prison, probation and parole, shall place the person at a juvenile correctional facility or a secured residential care center for children and youth, unless probation and parole determines that placement in a prison or jail; 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 by rule. The probation and parole may not place any person under the age of 18 years in the correctional institution authorized for maximum security.

(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.

**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 one to three years.
2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 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), 943.32 (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.051, 948.06, 948.07, 948.075, 948.08, or 948.30 (2).
3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a felony.
4. A crime at any time under federal law or the law of any other state, 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 for a serious felony, 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 applicable law, if any.

(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 applicable law 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 3 years incarceration.

(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 the Nation.

**973.015 Special disposition.**

**(1m)(a) 1.** Subject to subd. 2. and except as provided in subd. 3., when a person is under the age of 25 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 period of imprisonment is 1 year or less, 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.** The court shall order at the time of sentencing that the record be expunged upon successful completion of the sentence if the offense was a violation of s. 942.08 (2) (b), (c), or (d), and the person was under the age of 18 when he or she committed it.

**3.** No court may order that a record of a conviction for any of the following be expunged:

**a.** A felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, meaning a crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (4) or (5), 940.195 (4) or (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.235, 940.285 (2) (a) 1. or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2., or 3., 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.30, 943.32, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, or 948.30, including a crime under federal law, the law of any other tribe or state that is comparable to a crime specified in this definition or is a violation of s. 940.32, or 948.03 (2) or (3).

**b.** A if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in subsec. a. above, or is a violation of s. 948.23 (1) (a).

**(b)** 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. If the person has been imprisoned, the detaining authority shall also forward a copy of the certificate of discharge to the department.

**(2m)** At any time after a person has been convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for a violation of s. 944.30, a court may, upon the motion of the person, vacate the conviction, adjudication, or finding, or may order that the record of the violation of s. 944.30 be expunged, if all of the following apply:

**(a)** The person was a victim of trafficking for the purposes of a commercial sex act, as defined in s. 940.302 (1) (a), under s. 940.302 or 948.051 or under 22 USC ss. 7101 to 7112.

**(b)** The person committed the violation of s. 944.30 as a result of being a victim of trafficking for the purposes of a commercial sex act.

**(c)** The person submitted a motion that complies with s. 971.30, that contains a statement of facts and, if applicable, the reason the person did not previously raise an affirmative defense under s. 939.46 or allege that the violation was committed as a result of being a victim of trafficking for the purposes of a commercial sex act, and that may include any of the following:

1. Certified records of federal or state court proceedings.
2. Certified records of approval notices, law enforcement certifications, or similar documents generated from federal immigration proceedings.
3. Official documentation from a tribal, federal, state, or local government agency.
4. Other relevant and probative evidence of sufficient credibility in support of the motion.

(d) The person made the motion with due diligence subject to reasonable concern for the safety of himself or herself, family members, or other victims of trafficking for the purposes of a commercial sex act or subject to other reasons consistent with the safety of persons.

(e) A copy of the motion has been served on the office of the tribal prosecutor that prosecuted the case that resulted in the conviction, adjudication, or finding except that failure to serve a copy does not deprive the court of jurisdiction and is not grounds for dismissal of the motion.

(f) The court in which the motion was made notified the tribal prosecutor's office of the motion and has given the tribal prosecutor's office an opportunity to respond to the motion.

(g) The court determines that the person will benefit and society will not be harmed by a disposition.

(3) A special disposition under this section is not a basis for a claim against the Nation.

**973.017 Bifurcated sentences; use of guidelines; consideration of aggravating and mitigating factors.**

(1) DEFINITION. In this section, "sentencing decision" means a decision as to whether to impose a bifurcated sentence under s. 973.01 or place a person on probation and a decision as to the length of a bifurcated sentence, including the length of each component of the bifurcated sentence, the amount of a fine, and the length of a term of probation.

(2) GENERAL REQUIREMENT. When a court makes a sentencing decision concerning a person convicted of a criminal offense, the court shall consider all of the following:

- (ad) The protection of the public.
- (ag) The gravity of the offense.
- (ak) The rehabilitative needs of the defendant.
- (b) Any applicable mitigating factors and any applicable aggravating factors, including the aggravating factors specified in subs. (3) to (8).
- (c) Any available alternatives to incarceration.

(3) AGGRAVATING FACTORS; GENERALLY. When making a sentencing decision for any crime, the court shall consider all of the following as aggravating factors:

(a) The fact that the person committed the crime while his or her usual appearance was concealed, disguised, or altered, with the intent to make it less likely that he or she would be identified with the crime.

(b) The fact that the person committed the crime using information that was disclosed to him or her due to their official capacity.

(c) The fact that the person committed the crime for the benefit of, at the direction of, or in association with any criminal gang, as defined in s. 939.22 (9), with the specific intent to promote, further, or assist in any criminal conduct by criminal gang members, as defined in s. 939.22 (9g).

(d) The fact that the person committed the felony while wearing a vest or other garment designed, redesigned, or adapted to prevent bullets from penetrating the garment.

(e) 1. Subject to subd. 2., the fact that the person committed the felony with the intent to influence the policy of a governmental unit or to punish a governmental unit for a prior policy decision, if any of the following circumstances also applies to the felony committed by the person:

a. The person caused bodily harm, great bodily harm, or death to another.

b. The person caused damage to the property of another and the total property damaged is reduced in value by \$25,000 or more. For the purposes of this subd. 1. b., property is reduced in value by the amount that it would cost either to repair or to replace it, whichever is less.

c. The person used force or violence or the threat of force or violence.

2. a. In this subdivision, "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

b. Subdivision 1. does not apply to conduct arising out of or in connection with a labor dispute.

**(4) AGGRAVATING FACTORS; SERIOUS SEX CRIMES COMMITTED WHILE INFECTED WITH CERTAIN DISEASES.**

(a) In this subsection:

1. "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

1m. "HIV test" has the meaning given in s. 968.38(1)(bc).

2. "Serious sex crime" means a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.085.

3. "Sexually transmitted disease" means syphilis, gonorrhea, hepatitis B, hepatitis C, or chlamydia.

4. "Significantly exposed" means sustaining a contact that carries a potential for transmission of a sexually transmitted disease or HIV by one or more of the following:

a. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

b. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

c. Exchange, into an eye, an open wound, an oozing lesion, or other place where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions;



cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

**(b)** When making a sentencing decision concerning a person convicted of a serious sex crime, the court shall consider as an aggravating factor the fact that the serious sex crime was committed under all of the following circumstances:

1. At the time that he or she committed the serious sex crime, the person convicted of committing the serious sex crime had a sexually transmitted disease or acquired immunodeficiency syndrome or had had a positive HIV test.

2. At the time that he or she committed the serious sex crime, the person convicted of committing the serious sex crime knew that he or she had a sexually transmitted disease or acquired immunodeficiency syndrome or that he or she had had a positive HIV test.

3. The victim of the serious sex crime was significantly exposed to HIV or to the sexually transmitted disease, whichever is applicable, by the acts constituting the serious sex crime.

**(5) AGGRAVATING FACTORS; VIOLENT FELONY COMMITTED AGAINST ELDER PERSON.**

**(a)** In this subsection:

1. "Elder person" means any individual who is 60 years of age or older.

2. "Violent felony" means any felony under s. 940.19 (2), (4), (5), or (6), 940.225 (1), (2), or (3), 940.23, or 943.32.

**(b)** When making a sentencing decision concerning a person convicted of a violent felony, the court shall consider as an aggravating factor the fact that the victim of the violent felony was an elder person. This paragraph applies even if the person mistakenly believed that the victim had not attained the age of 60 years.

**(6) AGGRAVATING FACTORS; CHILD SEXUAL ASSAULT OR CHILD ABUSE BY CERTAIN PERSONS.**

**(a)** In this subsection, "person responsible for the welfare of the child" includes the child's parent, stepparent, guardian, or foster parent; an employee of a public or private residential home, institution, or agency; any other person legally responsible for the child's welfare in a residential setting; or a person employed by one who is legally responsible for the child's welfare to exercise temporary control or care for the child.

**(b)** When making a sentencing decision concerning a person convicted of a violation of s. 948.02 (1) or (2), 948.025 (1), 948.03 (2) or (3), or 948.051, the court shall consider as an aggravating factor the fact that the person was a person responsible for the welfare of the child who was the victim of the violation.

**(6m) AGGRAVATING FACTORS; DOMESTIC ABUSE IN PRESENCE OF A CHILD.**

**(a)** In this subsection:

1. "Child" means an individual who has not attained the age of 18 years.

2. "Domestic abuse" has the meaning given in s. 968.075 (1) (a).

**(b)** When making a sentencing decision concerning a person convicted of a crime that involves an act of domestic abuse, the court shall consider as an aggravating factor the fact that the act was committed in a place or a manner in which the act was observable by or audible to a child or was in the presence of a child and the actor knew or had reason to know that the act was observable by or audible to a child or was in the presence of a child.

(7) **AGGRAVATING FACTORS; HOMICIDE OR INJURY BY INTOXICATED USE OF A VEHICLE.** When making a sentencing decision concerning a person convicted of a violation of s. 940.09 (1) or 940.25 (1), the court shall consider as an aggravating factor the fact that, at the time of the violation, there was a minor passenger under 16 years of age or an unborn child in the person's motor vehicle.

(8) **AGGRAVATING FACTORS; CONTROLLED SUBSTANCES OFFENSES.**

(a) *Distribution or delivery to prisoners.*

1. In this paragraph, "precinct" means a place where any activity is conducted by a prison, jail, or house of correction.

2. When making a sentencing decision concerning a person convicted of violating s. 961.41 (1) or (1m), the court shall consider as an aggravating factor the fact that the violation involved delivering, distributing, or possessing with intent to deliver or distribute a controlled substance or controlled substance analog to a prisoner within the precincts of any prison, jail, or house of correction.

3. When making a sentencing decision concerning a person convicted of violating s. 961.65, the court shall consider as an aggravating factor the fact that the person intended to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine to a prisoner within the precincts of any prison, jail, or house of correction.

(b) *Distribution or delivery on public transit vehicles.* When making a sentencing decision concerning a person convicted of violating s. 961.41 (1) or (1m), the court shall consider as an aggravating factor the fact that the violation involved delivering, distributing, or possessing with intent to deliver or distribute a controlled substance included in schedule I or II or a controlled substance analog of any controlled substance included in schedule I or II and that the person knowingly used a public transit vehicle during the violation.

(c) *Distribution or delivery of methamphetamine on public transit vehicles.* When making a sentencing decision concerning a person convicted of violating s. 961.65, the court shall consider as an aggravating factor the fact that the person intended to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine and that the person knowingly used a public transit vehicle during the violation.

(9) **AGGRAVATING FACTORS NOT AN ELEMENT OF THE CRIME.** The aggravating factors listed in this section are not elements of any crime. A prosecutor is not required to charge any aggravating factor or otherwise allege the existence of an aggravating factor in any pleading for a court to consider the aggravating factor when making a sentencing decision.

(10m) **STATEMENT OF REASONS FOR SENTENCING DECISION.**

(a) The court shall state the reasons for its sentencing decision and, except as provided in par. (b), shall do so in open court and on the record.

(b) If the court determines that it is not in the interest of the defendant for it to state the reasons for its sentencing decision in the defendant's presence, the court shall state the reasons for its sentencing decision in writing and include the written statement in the record.

**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, the sentence shall be to the jail or prison that maintains a valid agreement with the Nation, to provide such services.

### **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, the court may sentence the defendant to any suitable county jail in the state where the Nation maintains a cooperative agreement. The expenses of supporting the defendant there shall be borne by the Nation in which the crime was committed and may be recovered as a debt owed to the Nation by the defendant.

**(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). Except as provided in par. (am), 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.

**(am)** If a court provides that a defendant may perform community service work pursuant to par. (a) and the defendant is sentenced to probation or imprisonment in a Huber facility or if a defendant has been ordered to perform community service work, a county may, with the approval of the chief judge, allow the defendant to perform community service work under pars. (b) and (c). The Nation may determine the rate at which all defendants in the Nation earn good time, except that a defendant may not earn less than one day of good time for every 3 days of work performed, nor more than one day of good time for each day of work performed. A day of work equals 8 hours of work performed.

**(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, to a county work camp or to a tribal jail.

**(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 listed in s. 969.08 (10) (b), but not including any crime specified in s. 943.10.

**(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.

### **973.032 Sentence to alternative to incarceration program.**

(1) SENTENCE. The court may sentence a person who is convicted of a crime to participate in an alternative to incarceration program, if available.

(2) ELIGIBILITY.

(a) A court may sentence a person under sub. (1) if probation and parole provides a presentence investigation report recommending that the person be sentenced to the program. If probation and parole does not make the recommendation, a court may order probation and parole to assess and evaluate the person. After that assessment and evaluation, the court may sentence the person to the program unless probation and parole 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 three years or has at any time been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violent offense, as defined in s. 973.015(1m)(a)3.a.

(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 an established intensive sanctions program, which may not exceed one year unless the defendant waives this requirement.

(c) The court may prescribe reasonable and necessary conditions of the sentence except that the court may not restrict probation and parole's authority as prescribed by law.

**(4) MODIFICATION.**

(a) The probation and parole may provide for sanction placements as authorized by applicable statute, for a shorter period than the maximum period specified by the court under sub. (3) (b).

(b) Probation and parole 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 sanction placements under applicable law, 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 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 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 applicable statutes.

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

**973.0335 Sentencing; restriction on possession of body armor.** Whenever a court imposes a sentence or places a defendant on probation for a conviction for a violent felony, as defined in s. 941.291 (1) (b), the court shall inform the defendant of the requirements and penalties under s. 941.291.

**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 Wisconsin State Statute s. 302.45 (1).

**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 probation and parole shall credit the defendant with confinement previously served.

**973.042 Child pornography surcharge.**

(1) In this section, "image" includes a video recording, a visual representation, a positive or negative image on exposed film, and data representing a visual image.

(2) If a court imposes a sentence or places a person on probation for a crime under s. 948.05 or 948.12 and the person was at least 18 years of age when the crime was committed, the court shall impose a child pornography surcharge of \$500 for each image or each copy of an image associated with the crime. The court shall determine the number of images or copies of images associated with the crime by a preponderance of the evidence and without a jury.

(4) After determining the amount due, the clerk of court shall collect and transmit the amount to the treasurer.

(6) 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 treasurer. The amount owed shall constitute a debt owed to the Nation and may also be deducted from a per capita distribution or wages.

**973.043 Drug offender diversion surcharge.**

(1) If a court imposes a sentence or places a person on probation for a crime under ch. 943, the court shall impose a drug offender diversion surcharge of \$10 for each conviction.

(2) After determining the amount due, the clerk of court shall collect and transmit the amount to the treasurer.

(3) All moneys collected from drug offender diversion surcharges shall be credited to the appropriation account and used for the purpose of funding AODA treatment or deposited in accordance with 9 HCC § 900, when applicable.

(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 treasurer. The amount owed shall constitute a debt owed to the Nation and may also be deducted from a per capita distribution or wages.

**973.045 Crime victim and witness assistance surcharge.**

(1) If a court imposes a sentence or places a person on probation, the court shall impose a crime victim and witness assistance surcharge. A surcharge imposed under this subsection may not be waived, reduced, or forgiven for any reason. The surcharge is the total amount calculated by adding up the amount for every misdemeanor count and every felony count as follows:

- (a) For each misdemeanor count on which a conviction occurred, \$67.
- (b) For each felony count on which a conviction occurred, \$92.

(1m)(a) In this subsection, "civil offense" means an offense punishable by a forfeiture.

(b) If all of the following apply, the court shall impose a crime victim and witness assistance surcharge in addition to any forfeiture that it imposes:

- 1. The person is charged with one or more crimes in a complaint.
- 2. As a result of the complaint being amended, the person is charged with a civil offense in lieu of one of those crimes.

(c) The amount of the surcharge imposed under par. (b) shall be the amount specified in sub. (1) (a) or (b), depending on whether the crime that was the subject of the amendment under par. (b) 2. was a misdemeanor or a felony.

(2) After the clerk determines the amount due, the clerk of court shall collect and transmit the amount to the treasurer.

(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 treasurer. The amount owed shall constitute a debt owed to the Nation and may also be deducted from a per capita distribution or wages.

**973.046 Deoxyribonucleic acid analysis surcharge.**

(1r) If a court imposes a sentence or places a person on probation, the court shall impose a deoxyribonucleic acid analysis surcharge, calculated as follows:

- (a) For each conviction for a felony, \$250.
- (b) For each conviction for a misdemeanor, \$200.

(2) After the clerk of court determines the amount due, the clerk shall collect and transmit the amount to the treasurer.

(3) All moneys collected from deoxyribonucleic acid analysis surcharges shall be deposited by the treasurer.

(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 treasurer. The amount owed shall constitute a debt owed to the Nation and may also be deducted from a per capita distribution or wages.

**973.047 Deoxyribonucleic acid analysis requirements.**

**(1f)** If a court imposes a sentence or places a person on probation, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. The court shall inform the person that he or she may request expungement.

**(1m)** If the laboratories receive a human biological specimen, the laboratories shall analyze the deoxyribonucleic acid in the specimen. The laboratories shall maintain a data bank based on data obtained from deoxyribonucleic acid analysis of those specimens. The laboratories may compare the data obtained from one specimen with the data obtained from other specimens. The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney or subject of the data. The data may be used in criminal and delinquency actions and proceedings.

**(2)** The department of justice shall promulgate rules to do all of the following:

**(a)** Establish procedures and time limits for obtaining and submitting biological specimens under this section.

**(b)** Specify whether an individual who is required under this section or s. 970.02 (8), 971.17 (1m) (a) or, 973.047, to provide a biological specimen for deoxyribonucleic acid analysis must provide a new biological specimen if the crime laboratories already have a biological specimen from the individual or if data obtained from deoxyribonucleic acid analysis of the individual's biological specimen are already included in the data bank.

**(c)** Allow a biological specimen, or data obtained from analysis of a biological specimen, obtained under this section, under s. 970.02 (8), 971.17 (1m) (a) or, 973.047, or to be submitted for inclusion in an index established under 42 USC 14132 (a) or in another national index system.

**(d)** Provide reimbursement to a person in charge of a law enforcement agency or tribal law enforcement agency at a rate of \$10 per specimen except that, if the department already has a biological specimen, or data obtained from analysis of a biological specimen, from the individual, the department may not reimburse the person in charge of the agency.

**(e)** Carry out the department's duties under this section.

**973.048 Sex offender reporting requirements.**

**(1m) (a)** 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 s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the person to comply with the reporting requirements if the court determines that the underlying conduct was sexually motivated, and that it would be in the interest of public protection to have the person report.

**(b)** If a court under par. (a) orders a person to comply with the reporting requirements in connection with a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09 and the person was under the age of 21 when he or she committed the offense, the court may provide that the person be released from the requirement to comply with the reporting requirements upon successfully completing the sentence or probation imposed for the offense. A person successfully completes a sentence if he or she is not convicted of a subsequent offense



during the term of the sentence. A person successfully completes probation if probation is not revoked and the person satisfies the conditions of probation.

**(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, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, 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, unless the court determines, after a hearing on a motion made by the person, that the person is not required to comply.

**(3)** In determining under sub. (1m) (a) whether it would be in the interest of public protection to have the person report, 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.

**(4)** If the court orders a person to comply with the reporting requirements, the court may order the person to continue to comply with the reporting requirements until his or her death.

**(5)** If the court orders a person to comply with the reporting requirements, the clerk of the court in which the order is entered shall promptly forward a copy of the order to probation and parole. If the conviction on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to probation and parole a certificate stating that the conviction has been reversed, set aside or vacated.

#### **973.049 Sentencing; restrictions on contact.**

**(1)** In this section:

**(a)** "Co-actor" means any individual who was a party to a crime considered at sentencing, whether or not the individual was charged with or convicted of the crime considered at sentencing.

**(b)** "Crime considered at sentencing" means any crime for which the defendant was convicted or any read-in crime, as defined in s. 973.20 (1g) (b).

**(2)** When a court imposes a sentence on an individual or places an individual on probation for the conviction of a crime, the court may prohibit the individual from contacting victims of, witnesses to, or co-actors in, a crime considered at sentencing during any part of the individual's sentence or period of probation if the court determines that the prohibition would be in the

interest of public protection. For purposes of the prohibition, the court may determine who are the victims of or witnesses to any crime considered at sentencing.

**(3)** If a court issues an order under sub. (2), the court shall inform the individual of the prohibition and include the prohibition in the judgment of conviction for the crime.

**973.05 Fines.**

**(1)** When a defendant is sentenced to pay a fine, the court may grant permission for the payment of the fine, plus costs, fees, and surcharges, to be made within a period not to exceed 90 days. If no such permission is embodied in the sentence, the fine, plus costs, fees, and surcharges imposed will constitute a debt owed to the Nation, which shall be payable immediately and may be deducted from a tribal member's per capita distribution.

**(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, plus costs, fees, and surcharges, a condition of probation.

**(2m)** Payments under this section shall be applied as applicable in the following order:

- (a)** To payment of the allocation established in 9 HCC § 900.5.
- (b)** To payment of the jail surcharge until paid in full.
- (c)** To payment of the crime victim and witness assistance surcharge imposed until paid in full.
- (e)** To payment of the crime laboratories and drug law enforcement surcharge until paid in full.
- (f)** To payment of the deoxyribonucleic acid analysis surcharge until paid in full.
- (fm)** To payment of the child pornography surcharge until paid in full.
- (g)** To payment of the drug abuse program improvement surcharge until paid in full.
- (gm)** To payment of the drug offender diversion surcharge until paid in full.
- (j)** To payment of the domestic abuse surcharge until paid in full.
- (jm)** To payment of the global positioning system tracking surcharge until paid in full.
- (l)** To payment of the natural resources surcharge until paid in full.
- (m)** To payment of the natural resources restitution surcharge until paid in full.
- (n)** To payment of the environmental surcharge until paid in full.
- (o)** To payment of the wild animal protection surcharge until paid in full.
- (om)** To the payment of the wildlife violator compact surcharge until paid in full.
- (p)** To payment of the weapons surcharge until paid in full.
- (rm)** To the payment of the ignition interlock surcharge until paid in full.
- (s)** To payment of the fine and the other costs and fees imposed.

**(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). Any applicable driver improvement surcharge or any domestic abuse surcharge under 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.

**(4)** If a defendant fails to pay the fine, surcharge, costs, or fees 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, surcharge, costs, or fees.

**(b)** Issue an order assigning not more than 25% of the defendant's commissions, earnings, salaries, wages, pension benefits, benefits, and other money due or to be due in the future to the clerk of court for payment of the unpaid fine, surcharge, costs, or fees. In this paragraph, "employer" includes the Nation, 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 court, for payment of the unpaid fine, surcharge, costs, or fees.

**(d)** Issue an order deducting the amount owed from a tribal member's per capita distribution.

**(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 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 court that sent the subsequent notice of assignment that another assignment has already been received. A notice of assignment shall include a form permitting the recipient to designate on the form that another assignment has already been received.

**2.** If, the clerk of 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 court shall send the notice of that order to the administrator of the lottery division of the Wisconsin 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 Wisconsin 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 court that sent the notice that the person has received a prior notice of an assignment under sub. (4) (b).

**(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 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 employee is terminated or otherwise temporarily or permanently leaves the employer's employment, the employer may be proceeded against under 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 employee or any disciplinary action against an employee. An employer who denies employment or discharges or disciplines an employee 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 prosecutor

**(i) 1.** In this paragraph, "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his or her employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual payroll period.

**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.

### **973.055 Domestic abuse surcharges.**

(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 surcharge of \$100 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, 940.235, 940.285, 940.30, 940.305, 940.31, 940.32, 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 (1), 947.012 or 947.0125 or s. 940.201, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01 (1), 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 4 HCC § 5.38 or a conforming ordinance.

(2)(a) If the surcharge 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 treasurer.

(3) All moneys collected from domestic abuse surcharges shall be deposited and utilized in accordance with 9 HCC § 900.

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

### **973.057 Global positioning system tracking surcharge.**

(1) If a court convicts a person under 4 HCC § 5, the court may impose a global positioning system tracking surcharge of \$200 for each offense.

(2)(a) If the surcharge is imposed, after the court determines the amount due, the clerk of the court shall collect and transmit the amount to the treasurer.

(3) All moneys collected from global positioning system tracking surcharges shall be deposited and utilized in accordance with legislative directives.

(4) If the moneys collected under this section prove inadequate to fund the global positioning system tracking program, probation and parole may, increase the surcharge under sub. (1) by not more than 5 percent each year to cover the costs of the global positioning system tracking program.

### **973.06 Costs, fees, and surcharges.**

(1) The costs, fees, and surcharges 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 tribe, 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.

**(ar)** If the defendant violated s. 947.017, the moneys expended by the Nation, a state or local government agency for the following activities in connection with a threat under s. 947.017 (2):

1. The response to the threat by emergency medical personnel, as defined in s. 941.37 (1) (c).
2. The analysis of any substance alleged to be a harmful substance, as defined in s. 947.017 (1).
3. The medical treatment of persons who are alleged to have been exposed to an alleged harmful substance, as defined in s. 947.017 (1).

**(av)** 1. Except as provided in subd. 2., if the defendant violated s. 946.41 by obstructing an officer, the reasonable costs expended by law enforcement or emergency response agency to respond to or investigate the false information that the defendant provided or the physical evidence that the defendant placed. Costs allowable under this paragraph may include personnel costs and costs associated with the use of police or emergency response vehicles.

2. No costs may be taxable against a defendant under this paragraph if any of the following applies:

**a.** The defendant was charged under s. 946.41 solely because he or she recanted a report of abusive conduct, including interspousal battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, harassment, sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225, or child abuse under ss. 948.02 to 948.11.

**b.** The defendant was a victim of abusive conduct, including interspousal battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, harassment, sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225, or child abuse under ss. 948.02 to 948.11, and he or she was charged under s. 946.41 based on information he or she omitted or false information he or she provided during the course of an investigation into the crime committed against him or her.

**c.** The defendant was charged under s. 946.41 solely because his or her report did not lead to criminal charges against, or a conviction of, another person.

**(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.

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

(e) Attorney fees payable to the defense attorney. 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. 977.307.

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

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

(j) If the defendant violated s. 940.09 (1), or 940.25 or any additional law requiring a blood draw, any costs charged to or paid by a law enforcement agency for the withdrawal of the defendant's blood, except that the court may not impose on the defendant any cost for an alternative test provided free of charge. If at the time the court finds that the defendant committed the violation, the law enforcement agency has not paid or been charged with the costs of withdrawing the person's blood, the court shall impose and collect the costs the law enforcement agency reasonably expects to be charged for the withdrawal, based on the current charges for this procedure. Notwithstanding sub. (2), the court may not remit these costs.

(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.

**973.07 Failure to pay fine, fees, surcharges, or costs or to comply with certain community service work.** If the fine, plus costs, fees, and surcharges imposed, 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 jail until the fine, costs, fees, and surcharges 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.

**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, used in the course of, intended for use in the course of, or 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. 940.302, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.09, 948.10, 948.12, or 948.14.

d. In the commission of a crime relating to a cultural resource.

e. To cause more than \$2,500 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 4 HCC § 5 or s. 940.32.

g. In the commission of a crime under s. 943.75 (2) or (2m).

**h.** In the commission of a crime under s. 948.07.

**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.

**(bg)** Any property used or to be used in the commission of a crime under s. 943.75 (2) or (2m), or 948.07, but if the property 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.

**(bm)** Any property used in the commission of a crime under 4 HCC § 5 or s. 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 cultural resource in violation.

**(e)** Any recording, as defined in s. 943.206 (5), created, advertised, offered for sale or rent, sold, rented, transported or possessed in violation of ss. 943.207 to 943.209 and any electronic, mechanical or other device for making a recording or for manufacturing, reproducing, packaging or assembling a recording that was used to facilitate a violation of ss. 943.207 to 943.209, regardless of the knowledge or intent of the person from whom the recording or device is seized. If a device subject to forfeiture under this paragraph 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. 940.302, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.09, 948.10, 948.12, or 948.14, 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 Nation.

(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 was used in a crime under s. 948.07, 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 cultural resource, which was used in the commission of a crime under s. 948.07, or which was used to cause more than \$2,500 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), proceedings under s. 973.076 shall be instituted. Property seized under this section is not subject to replevin, but is deemed to be in the custody of the police department 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, 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 chief of police or sheriff 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., (bg), (bm), (d) and (e). Except as provided in sub. (5m), 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 as soon as practically possible 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.

(5m) (a) In this subsection:

1. "Forfeiture action deadline" means the 30th day after the seizure of the property or, if the property was seized as a result of a criminal conviction, the 30th day after the date of the conviction.

2. "Prosecutor" means the tribal prosecutor.

3. "Victim" means the owner, as defined in s. 943.206 (2), of the sounds in a recording described in sub. (1) (e) or, if the recording is seized in connection with an investigation or prosecution of a violation of s. 943.208, the performance owner.

(b) If a recording involved in a violation of ss. 943.207 to 943.209 is forfeited, law enforcement which the recording was seized shall destroy it after the completion of all proceedings in which the recording might be required as evidence.

(c) If, by the forfeiture action deadline, a summons, complaint and affidavit have not been filed under s. 973.076 (1) (b) 1. with respect to property seized under sub. (1) (e), the prosecutor shall notify the victim, if known, by certified mail no later than 7 days after the forfeiture action deadline. The prosecutor shall then return the property to the person from whom it was seized no earlier than 60 days and no later than 90 days after the forfeiture action deadline unless one of the following applies:

1. A court has entered an order prohibiting the return of the property or requiring it to be conveyed to another person.

2. The property is needed as evidence in a criminal proceeding and is likely to be unavailable for use as evidence if returned to the person from whom it was seized.

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

### **973.076 Forfeiture proceedings.**

#### **(1) CIVIL FORFEITURES.**

(a) *Type of action; where brought.* In an action brought to cause the forfeiture of any property specified s. 973.075 (1), the court may render a judgment in rem or against a party personally, or both. The court in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced. Any property seized may be the subject of a federal forfeiture action.

#### **(b) Commencement.**

1. The tribal prosecutor 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 court, provided service of authenticated copies of those papers is made in accordance with the *Rules of Civil Procedure*, if applicable, 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.

2. 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.

3. 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 *HCN R. Civ. Pro*, Rule 54.

**(2m) CRIMINAL FORFEITURES.**

**(a)** In addition to any penalties under this chapter, the court shall, with due provision for the rights of innocent persons, order forfeiture of any property specified in s. 973.075 (1) in accordance with pars. (b), (c), and (d).

**(b)** A criminal complaint must allege the extent of property subject to forfeiture under this subsection. At trial, the court or the jury shall return a special verdict determining the extent of property, if any, that is subject to forfeiture under this subsection. When a special verdict contains a finding of property subject to a forfeiture under this subsection, a judgment of criminal forfeiture shall be entered along with the judgment of conviction under s. 972.13.

**(c)** An injured person has a right or claim to forfeited property or the proceeds derived from forfeited property under this subsection that is superior to any right or claim the state has in the property or proceeds. This paragraph does not grant the injured person priority over state claims or rights by reason of a tax lien or other basis not covered by this section or by s. 973.075 or 973.077. All rights, titles, and interest in property specified in s. 973.075 (1) vest in the state upon the commission of the act giving rise to forfeiture under this subsection.

**(d)** An injured or innocent person may petition the court for relief from the judgment of criminal forfeiture entered under par. (b) within 30 days after it is entered. The person filing the petition has the burden of satisfying or convincing to a reasonable certainty by the greater weight of the evidence that the person has a bona fide perfected security interest in the property subject to forfeiture in s. 973.075 (1) or any other property subject to forfeiture in sub. (4). The court may order that a person with a bona fide perfected security interest be paid from the proceeds of the forfeiture or any other equitable relief necessary so as to do substantial justice to the person.

**(3) BURDEN OF PROOF.** The Nation 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.

**973.077 Burden of proof; liabilities.**

**(1)** It is not necessary for the Nation 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 employee engaged in the lawful performance of duties.

### **973.08 Records accompanying prisoner.**

(1) When any defendant is sentenced to 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 probation and parole within 120 days of its request.

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

### **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 a term of probation under sub. (2) (a) 1. or 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 subch. I of ch. 949.

(c) When a person is convicted of any crime which is punishable by the maximum incarceration penalty, 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 Wisconsin Statute s. 302.43 regarding the period of confinement.

**(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.

**(1d)** If a person is placed on probation for a felony or for any violation of ch. 940, 948, or 961, the person, his or her residence, and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of probation. Any search conducted pursuant to this subsection shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing. A law enforcement officer who conducts a search pursuant to this subsection shall, as soon as practicable after the search, notify the department of corrections.

**(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 Nation, as applicable, for any costs for legal representation to the Nation for the defense of the case. In order to receive this reimbursement, the 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.

**(2)** The original term of probation shall be:

**(a) 1.** Except as provided in subd. 2., for any of the following misdemeanors, not less than 6 months nor more than 2 years:

**a.** A misdemeanor that the defendant committed while possessing a firearm.

**b.** A misdemeanor that was an act of domestic abuse, as defined in s. 968.075 (1) (a).

**c.** A misdemeanor under s. 940.225 (3m) or ch. 948.

**1m.** Except as provided in subd. 2., for Class A misdemeanors not covered by subd. 1., not less than 6 months nor more than one year.

**1r.** Except as provided in subd. 2., for misdemeanors not covered by subd. 1. or 1m., not more than one year.

**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.

**(ar) 1.** Notwithstanding par. (a) 1r., and except as provided in par. (a) 2., for a violation punishable under 4 HCC § 5, not less than 6 months or more than the period of the injunction issued under 4 HCC § 5.

**(b) 1.** Except as provided in subd. 2., for felonies, not less than one year nor more than either the maximum term of confinement in prison 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)** Probation and parole shall notify the sentencing court, any person to whom unpaid restitution is owed and the tribal prosecutor 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 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.

**(bg) 1.** At least 90 days before the expiration date of a probationer's period of probation, probation and parole shall notify the sentencing court and tribal attorney that a probationer owes an unpaid surcharge imposed under s. 973.045. Upon receiving notice from probation and parole, 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 unpaid surcharge before the scheduled hearing date or voluntarily waives the hearing. A waiver of a probation review hearing under this paragraph must include an acknowledgment by the probationer that waiver may result in an extension of the probation period, a modification of the terms and conditions of probation, a revocation of probation, or deduction from a tribal member's per capita distribution.

2. If the court does not extend probation, the court shall issue a judgment for the unpaid surcharge and direct the clerk of court to file and enter the judgment in the judgment and lien docket or enforce the judgment against a tribal member's per capita distribution.

3. At a probation review hearing scheduled under subd. 1., probation and parole has the burden of proving that the probationer owes an unpaid surcharge imposed under s. 973.045 and the amount of the unpaid surcharge. If probation and parole proves by a preponderance of the evidence that the probationer owes an unpaid surcharge under s. 973.045, 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., the court shall issue a judgment for the unpaid surcharge and direct the clerk of court to file and enter the judgment in the judgment and lien docket without fee or order the amount be deducted from a tribal member's per capita distribution. If the court issues a judgment for the unpaid surcharge, the court shall send to probation and parole a written notification that a civil judgment has been issued for the unpaid fees.

**(bm) 1.** At least 90 days before the expiration date of a probationer's period of probation, probation and parole may notify the sentencing court and the tribal prosecutor that a probationer owes unpaid fees to probation and parole.

**2.** Upon receiving notice from probation and parole 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., probation and parole has the burden of proving that the probationer owes unpaid fees and the amount of the unpaid fees. If probation and parole proves by a preponderance of the evidence that the probationer owes unpaid fees, 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 court to file and enter the judgment in the judgment and lien docket, without fee or order the amount be deducted from a tribal member's per capita distribution.. If the court issues a judgment for the unpaid fees, the court shall send to probation and parole a written notification that a civil judgment has been issued for the unpaid fees.

**(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.

**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.

**(d)** The court may modify a person's period of probation and discharge the person from probation if all of the following apply:

**1.** Probation and parole petitions the court to discharge the person from probation.

**2.** The probationer has completed 50 percent of his or her period of probation.

**3.** The probationer has satisfied all conditions of probation that were set by the sentencing court.

**4.** The probationer has satisfied all rules and conditions of probation that were set by probation and parole.

**5.** The probationer has fulfilled all financial obligations to his or her victims, the court, and probation and parole, including the payment of any fine, forfeiture, fee or surcharge, or order of restitution.

**6.** The probationer is not required to register pursuant to any sex offender statutes.

**(3m) (a)** In this subsection, "victim" has the meaning given in s. 950.02 (4).

**(b)** When a court receives a petition under sub. (3) (d), the clerk of the court shall send a notice of hearing to the victim of the crime committed by the probationer, if the victim has submitted a card under par. (c) requesting notification. The notice shall inform the victim that he or she may appear at any hearing scheduled under sub. (3) (d) and shall inform the victim of the manner in which he or she may provide a statement concerning the modification of the probationer's term of probation. The clerk of the court shall make a reasonable attempt to send the notice of hearing to the last-known address of the victim, postmarked at least 10 days before the date of the hearing.

**(c)** The clerk of court shall design and prepare cards for a victim to send notice for the hearing where the probationer was convicted and sentenced. The cards shall have space for a victim to provide his or her name and address, the name of the applicable probationer, and any other information that the clerk determines is necessary. The court shall provide the cards, without charge, to victims. Victims may send completed cards to the clerk of the court in which the probationer was convicted and sentenced. The mailing address of the victim shall remain confidential and shall not be part of the court file or discoverable under 2 HCC § 3.

**(4) (a)** 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 jail, Huber facility, work camp, or tribal jail during the hours or periods of employment or other activity while confined under this subsection, only when such privilege is available at the housing facility. 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. In those counties without a Huber facility under Wisconsin Statute s. 303.09, a work camp under Wisconsin Statute s. 303.10, or an agreement under Wisconsin Statute s. 302.445, the probationer shall be confined in the jail. In those counties with a Huber facility under Wisconsin Statute 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 Wisconsin Statute 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 Wisconsin Statute s. 302.445, the sheriff shall determine whether a person who is confined under this subsection but who is not subject to an order under par. (b) is to be confined 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. In those counties where the Nation has entered into an agreement, the agreement shall be utilized to determine how inmates will be housed.

**(b)** With the consent of probation and parole and when recommended in the presentence investigation, the court may order that a felony offender subject to this subsection be confined in a facility located in the city of Milwaukee under Wisconsin Statutes ss. 301.13 or 301.16 (1q), for the purpose of allowing the offender to complete an alcohol and other drug abuse treatment program.

**(c)** While subject to this subsection, the probationer is subject to Wisconsin Statute s. 303.08 (1), (3) to (6), (8) to (12), and (14) or to Wisconsin Statute s. 303.10, whichever is



applicable, to all the rules of the facility to which the probationer is confined, and to the discipline of the department of corrections, if confined to a facility under par. (b), or the sheriff.

**(4m)** Probation and parole shall inform each probationer who is disqualified from voting that he or she may not vote in any election until his or her civil rights are restored. Probation and parole shall use the form designed by that department to inform the probationer, and the probationer and a witness shall sign the form.

**(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.

#### **973.10 Control and supervision of probationers.**

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

**(1m) (a)** Probation and parole 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. Probation and parole 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. Probation and parole 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, probation and parole may initiate a proceeding before the trial court. Unless waived by the probationer, a Judge shall conduct a hearing and enter an order either revoking or not revoking probation. If the probationer waives the final review hearing, the court 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 tribal prosecutor shall disclose to a defendant the existence of any audiovisual recording of an oral statement of a child, which is within the possession, custody or control of the Nation and shall make reasonable arrangements for the defendant and defense counsel to view the statement. If, after compliance with this subsection, the Nation obtains possession, custody or control of such a statement, the tribal attorney shall promptly notify the defendant of that fact and make reasonable arrangements for the defendant and defense counsel to view the statement.

**(2m)** In any hearing under sub. (2), the hearing examiner may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10).

**(2s)** If a probationer signs a statement admitting a violation of a condition or rule of probation, probation and parole may, as a sanction for the violation, confine the probationer for up to 90 days in a regional detention facility or, with the approval of the sheriff, in a county jail. If probation and parole confines the probationer in a county jail under this subsection, probation and parole shall reimburse the county for its actual costs in confining the probationer.

**(3)** A copy of the order of probation and parole in the case of a waiver 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 court shall make either an electronic or stenographic record of all testimony at each probation revocation hearing. The court shall prepare a written transcript of the testimony only at the request of a judge who is presiding over the revocation hearing. 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.

**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 either mandatory periods of imprisonment are not required or if the chief judge has approved a volunteers in a probation program, 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. A person's participation in the program may not be used to conceal, withhold, or mask information regarding the judgment of conviction. 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), (4), and (7m).

(2) **APPROVAL OF PROGRAMS.** The chief judge of the trial court may approve volunteers in probation programs established 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 probation and parole 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 tribal prosecutor requests a hearing.

### **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 tribal 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 Nation, 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 Nation or any other state or tribe 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, states, and tribes 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.

### **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 tribal prosecutor, 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.

**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.

**973.135 Courts to report convictions to the state superintendent of public instruction.**

(1) In this section:

(a) "Educational agency" means a school district, cooperative educational service agency, state correctional institution, juvenile correctional facility, secured residential care center for children and youth, the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, a state center for the developmentally disabled, a private school, or a private, nonprofit, nonsectarian agency under contract with a school board under, any school operated by the Ho-Chunk Nation.

(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 3 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.

**973.137 Courts to report convictions to the department of transportation.** Upon conviction of a person for any of the following offenses, the clerk of the court in which such conviction occurred shall promptly forward the record of conviction to the Ho-Chunk Nation Transportation Department and the Wisconsin department of transportation:

(1) A violation of s. 941.235.

**(1m)** A violation of s. 947.015, if the property involved is owned or leased by the Nation or any political subdivision of the Nation, or if the property involved is a school premises, as defined in s. 948.61 (1) (c).

**(2)** A violation of s. 948.605.

**973.14 Sentence to house of correction.**

**(1)** In addition to the authority possessed through the state or additional provisions of made in the intergovernmental agreements between the Nation and county, prisoners sentenced to a 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 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.

**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.

**(2m)(a) Definitions.** In this subsection:

**1.** "Determinate sentence" means a bifurcated sentence imposed under s. 973.01 or a sentence where a person is eligible for release to extended supervision under s. 973.014 (1g) (a) 1. or 2.

**2.** "Indeterminate sentence" means a sentence to the Wisconsin state prisons other than one of the following:

**a.** A determinate sentence.

**b.** A sentence under which the person is not eligible for release on parole under s. 939.62 (2m) (c) or 973.014 (1) (c).

3. "Period of confinement in prison," with respect to any sentence to the Wisconsin state prisons, means any time during which a person is incarcerated under that sentence, including any extensions imposed and any period of confinement in prison required to be served.

**(b)** *Determinate sentences imposed to run concurrent with or consecutive to determinate sentences.*

1. If a court provides that a determinate sentence is to run concurrent with another determinate sentence, the person sentenced shall serve the periods of confinement in prison under the sentences concurrently and the terms of extended supervision under the sentences concurrently.

2. If a court provides that a determinate sentence is to run consecutive to another determinate sentence, the person sentenced shall serve the periods of confinement in prison under the sentences consecutively and the terms of extended supervision under the sentences consecutively and in the order in which the sentences have been pronounced.

**(c)** *Determinate sentences imposed to run concurrent with or consecutive to indeterminate sentences.*

1. If a court provides that a determinate sentence is to run concurrent with an indeterminate sentence, the person sentenced shall serve the period of confinement in prison under the determinate sentence concurrent with the period of confinement in prison under the indeterminate sentence and the term of extended supervision under the determinate sentence concurrent with the parole portion of the indeterminate sentence.

2. If a court provides that a determinate sentence is to run consecutive to an indeterminate sentence, the person sentenced shall serve the period of confinement in prison under the determinate sentence consecutive to the period of confinement in prison under the indeterminate sentence.

**(d)** *Indeterminate sentences imposed to run concurrent with or consecutive to determinate sentences.*

1. If a court provides that an indeterminate sentence is to run concurrent with a determinate sentence, the person sentenced shall serve the period of confinement in prison under the indeterminate sentence concurrent with the period of confinement in prison under the determinate sentence and the parole portion of the indeterminate sentence concurrent with the term of extended supervision required under the determinate sentence.

2. If a court provides that an indeterminate sentence is to run consecutive to a determinate sentence, the person sentenced shall serve the period of confinement in prison under the indeterminate sentence consecutive to the period of confinement in prison under the determinate sentence.

**(e)** *Revocation in multiple sentence cases.* If a person is serving concurrent determinate sentences and extended supervision is revoked in each case, or if a person is serving a determinate sentence concurrent with an indeterminate sentence and both extended supervision and parole are revoked, the person shall concurrently serve any periods of confinement in prison required under those sentences.

**(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 tribe, state or county.

**(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 tribe or state:

**(a)** The court shall order probation and parole 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.

**(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, except that the court may not stay execution of a person's sentence of imprisonment or to the intensive sanctions program under this subdivision if the sentence is for a 3rd or subsequent violation that is counted as a suspension, revocation, or conviction under Wisconsin Statute s. 343.307, or a violation of s. 940.09 (1) or 940.25 in the person's lifetime, or a combination thereof.

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

### **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) and sub. (1m) include custody of the convicted offender which is in whole or in part the result of a probation, extended supervision or parole hold or



973.10 (2) placed upon the person for the same course of conduct as that resulting in the new conviction.

**(1m)** A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody as part of an approved substance abuse treatment, for any offense arising out of the course of conduct that led to the person's placement in that program.

**(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 judgment of conviction. In the case of revocation of probation, extended supervision or parole, probation and parole, if the hearing is waived, or the trial court, 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) or (1m) 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 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 probation and parole 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 probation and parole 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 the *Rules of Appellate Procedures*.

**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.

**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.

**973.176 Notice of restrictions.**

(1) 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.

(2) VOTING. Whenever a court imposes a sentence or places a defendant on probation for a conviction that disqualifies the defendant from voting, the court shall inform the defendant in writing that he or she may not vote in any election until his or her civil rights are restored. The court shall use the form designed by probation and parole to inform the defendant, and the defendant and a witness shall sign the form.

(3) 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, a conviction under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or a conviction under s. 948.02 (1) or (2), 948.025 (1), 948.05 (1) or (1m), 948.051, 948.06, 948.07 (1), (2), (3), or (4), 948.075, or 948.085, the court shall inform the defendant of the requirements and penalties under s. 948.13.

**973.18 Notice of rights to appeal and representation.**

(1) In this section, "postconviction relief" means an appeal or a motion for postconviction relief in a criminal case, other than an appeal, motion, or petition under ss. 973.19, 973.195, 973.198, 974.06, or 974.07 (2).

(1m) In this section, "sentencing" means the imposition of a sentence, a fine, or probation in a criminal case.

(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 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 the *Rules of Appellate Procedure*, Rule 11.

**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 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 may move for modification of a sentence or fine under the *Rules of Appellate Procedure*.

**(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 the *Rules of Appellate Procedure*.

**973.195 Sentence adjustment.**

**(1g)** DEFINITION. In this section, "applicable percentage" means 85% for a felony.

**(1r)** CONFINEMENT IN PRISON.

**(a)** Except as provided in s. 973.198, an inmate who is serving a sentence imposed under s. 973.01 for a crime other than a three-year mandatory felony may petition the sentencing court to adjust the sentence if the inmate has served at least the applicable percentage of the term of confinement in prison portion of the sentence. If an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually for purposes of sentence adjustment under this subsection.

**(b)** Any of the following is a ground for a petition under par. (a):

**1.** The inmate's conduct, efforts at and progress in rehabilitation, or participation and progress in education, treatment, or other correctional programs since he or she was sentenced.

**3.** A change in law or procedure related to sentencing or revocation of extended supervision effective after the inmate was sentenced that would have resulted in a shorter term of confinement in prison or, if the inmate was returned to prison upon revocation of extended supervision, a shorter period of confinement in prison upon revocation, if the change had been applicable when the inmate was sentenced.

**4.** The inmate is subject to a sentence of confinement in another tribe or state or the inmate is in the United States illegally and may be deported.

**5.** Sentence adjustment is otherwise in the interests of justice.

**(c)** Upon receipt of a petition filed under par. (a), the sentencing court may deny the petition or hold the petition for further consideration. If the court holds the petition for further consideration, the court shall notify the tribal prosecutor of the inmate's petition. If the tribal prosecutor objects to adjustment of the inmate's sentence within 45 days of receiving notification under this paragraph, the court shall deny the inmate's petition.

**(d)** If the sentence for which the inmate seeks adjustment is for an offense under s. 940.225 (2) or (3), 948.02 (2), 948.08, or 948.085, and the tribal attorney does not object to the petition within 10 days of receiving notice under par. (c), the tribal attorney shall notify the victim, as defined under s. 950.02 (4), of the inmate's petition. The notice to the victim shall include information on the sentence adjustment petition process under this subsection, including information on how to object to the inmate's petition. If the victim objects to adjustment of the inmate's sentence within 45 days of the date on which the tribal attorney received notice under par. (c), the court shall deny the inmate's petition.

**(e)** Notwithstanding the confidentiality of victim address information obtained, a tribal attorney who is required to send notice to a victim under par. (d) may obtain from the clerk of the court victim address information that the victim provided to the clerk.

**(f)** If the sentencing court receives no objection to sentence adjustment from the tribal prosecutor under par. (c) or the victim under par. (d) and the court determines that sentence adjustment is in the public interest, the court may adjust the inmate's sentence as provided under par. (g). The court shall include in the record written reasons for any sentence adjustment granted under this subsection.

**(g)** Except as provided under par. (h), the only sentence adjustments that a court may make under this subsection are as follows:

**1.** If the inmate is serving the term of confinement in prison portion of the sentence, a reduction in the term of confinement in prison by the amount of time remaining in the term of confinement in prison portion of the sentence, less up to 30 days, and a corresponding increase in the term of extended supervision.

**2.** If the inmate is confined in prison upon revocation of extended supervision, a reduction in the amount of time remaining in the period of confinement in prison imposed upon revocation, less up to 30 days, and a corresponding increase in the term of extended supervision.

**(h) 1.** If the court adjusts a sentence under par. (g) on the basis of a change in law or procedure as provided under par. (b) 3. and the total sentence length of the adjusted sentence is greater than the maximum sentence length that the offender could have received if the change in law or procedure had been applicable when the inmate was originally sentenced, the court may reduce the length of the term of extended supervision so that the total sentence length does not exceed the maximum sentence length that the offender could have received if the change in law or procedure had been applicable when the inmate was originally sentenced.

**2.** If the court adjusts a sentence under par. (g) on the basis of a change in law or procedure as provided under par. (b) 3. and the adjusted term of extended supervision is greater than the maximum term of extended supervision that the offender could have received if the change in law or procedure had been applicable when the inmate was originally sentenced, the court may reduce the length of the term of extended supervision so that the term of extended supervision does not exceed the maximum term of extended supervision that the offender could have received if the change in law or procedure had been applicable when the inmate was originally sentenced.

**(i)** An inmate may submit only one petition under this subsection for each sentence imposed under s. 973.01.

**973.198 Sentence adjustment; positive adjustment time.**

(1) When an inmate who is serving a sentence imposed under s. 973.01 and who has earned positive adjustment time, has served the confinement portion of his or her sentence less positive adjustment time earned, he or she may petition the sentencing court to adjust the sentence under this section, based on the number of days of positive adjustment time the inmate claims that he or she has earned.

(3) Within 60 days of receipt of a petition filed under sub. (1), the sentencing court shall either deny the petition or hold a hearing and issue an order relating to the inmate's sentence adjustment and release to extended supervision.

(5) If the court determines that the inmate has earned positive adjustment time, the court may reduce the term of confinement in prison by the amount of time remaining in the term of confinement in prison portion of the sentence, less up to 30 days, and shall lengthen the term of extended supervision so that the total length of the bifurcated sentence originally imposed does not change.

(6) An inmate who submits a petition under this section may not apply for adjustment of the same sentence under s. 973.195 for a period of one year from the date of the petition.

**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, other than a crime involving conduct that constitutes domestic abuse under s. 4 HCC § 5 or 968.075 (1) (a), 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. When imposing sentence or ordering probation for a crime involving conduct that constitutes domestic abuse under 4 HCC § 5 or 968.075 (1) (a) for which the defendant was convicted or that was considered at sentencing, 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 or, if the victim is deceased, to his or her estate, unless the court finds that imposing full or partial restitution will create an undue hardship on the defendant or victim and describes the undue hardship 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 a contempt of court proceeding.

**(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.

**(4m)** If the defendant violated s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, or 948.085, or s. 940.302 (2), if the court finds that the crime was sexually motivated, as defined in s. 971.17(1m)(b), 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.

**(4o)** If the defendant violated s. 940.302 (2) or 948.051, and sub. (2) or (3) does not apply, the restitution order may require that the defendant pay an amount equal to any of the following:

**(a)** The costs of necessary transportation, housing, and child care for the victim.

**(b)** The greater of the following:

**1.** The gross income gained by the defendant due to the services of the victim.

**2.** The value of the victim's services as provided under the Nation's minimum wage.

**(c)** Any expenses incurred by the victim if relocation for personal safety is determined to be necessary by the tribal prosecutor.

**(d)** The costs of relocating the victim to his or her city, state, or country of origin.

**(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, probation and parole 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 subch. I of ch. 949 for any loss arising out of a criminal act, the Nation is subrogated to the rights of the victim to any restitution required by the court. The rights of the Nation 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 subch. I of 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 subch. I of ch. 949, the restitution shall be credited to an appropriation account established by treasury. If the restitution ordered is greater than the award under subch. I of ch. 949, an amount equal to the

award under subch. I of ch. 949 shall be credited to the appropriation account and the balance shall be paid to the victim.

**(9m)** When restitution is ordered, the court shall inquire to see if recompense has been made under s. 969.13 (5) (a). If recompense has been made and the restitution ordered is less than or equal to the recompense, the restitution shall be applied to the payment of costs and, if any restitution remains after the payment of costs, to the payment of the judgment. If recompense has been made and the restitution ordered is greater than the recompense, the victim shall receive an amount equal to the amount of restitution less the amount of recompense and the balance shall be applied to the payment of costs and, if any restitution remains after the payment of costs, to the payment of the judgment. This subsection applies without regard to whether the person who paid the recompense is the person who is convicted of the crime.

**(10)** The court may require that restitution be paid immediately, within a specified period or in specified installments. 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 of justice or probation and parole 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 impose on the defendant a restitution surcharge equal to 5% of the total amount of any restitution, costs, attorney fees, court fees, fines, and surcharges ordered under s. 973.05 (1), which shall be paid to probation and parole or the clerk of court for administrative expenses under this section.

**(b)** Probation and parole 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, costs, fees, and surcharges under ss. 973.05 and 973.06, it shall set the amount of fines, costs, fees, and surcharges 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, 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 surcharges under s. 973.05, then to pay costs, fees, and surcharges other than attorney fees and finally to reimburse the Nation 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, probation and parole 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 tribal attorney shall attempt to obtain from the victim prior to sentencing information pertaining to the factor specified in par. (a) 1. Law enforcement agencies, probation and parole and any agency providing services under ch. 950 shall extend full cooperation and assistance to the tribal prosecutor in discharging this responsibility.

**(c)** The court, before imposing sentence or ordering probation, shall inquire of the tribal 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, tribal prosecutor, 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 the trial court, 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. Discovery is not available except for good cause shown. If the defendant is incarcerated, he or she may participate by telephone unless the court issues a writ or subpoena compelling the defendant to appear in person.

(15) If misappropriation, from a cemetery, of an object that indicates that a deceased was a veteran, is a crime considered at sentencing, the restitution order shall require that the defendant reimburse an individual, organization, or governmental entity for the cost of replacing the object.

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Legislative History:

05/23/17      Legislature places the draft Sentencing Code out for 45 day public comment through Resolution 02-21-17S.

05/23/17      Legislature enacts the Sentencing Code through Resolution 05/23/17J.