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## Chapter B

### Criminal Justice, Corrections, and Juvenile Justice

In the United States, criminal justice, corrections, and juvenile justice are generally under the jurisdiction of the state. Therefore, each state determines what constitutes a crime in that state and what the penalty for each crime is. Every state operates prisons and other facilities to house individuals who have committed criminal offenses in that state. Each state develops a juvenile justice system as well and determines if a minor who commits a criminal offense is treated as a child or as an adult for purposes of prosecution and consequences.

#### Criminal Justice

The most dramatic recent change to criminal justice law in Wisconsin is the adoption of "truth-in-sentencing" legislation. In 1997 Wisconsin Act 283, the Legislature enacted legislation which abolished parole and instead created a truth-in-sentencing system. Under truth-in-sentencing, courts are required, for offenses occurring on or after December 31, 1999, to impose a bifurcated sentence for those offenders sentenced to prison, other than offenders sentenced to life imprisonment, that consists of a term of confinement in prison of not less than one year, followed by a term of extended supervision (ES) of not less than 25% of the length of the term of confinement. Under truth-in-sentencing, a prisoner is required to serve 100% of the sentence. Because truth-in-sentencing applies only to sentences for crimes committed on or after December 31, 1999, the correctional system will, for many years, have offenders sentenced under the old sentencing system and eligible for parole along with offenders sentenced under the new bifurcated system. Upon release from prison, offenders sentenced under the previous system will be placed on parole supervision, while offenders released under truth-in-sentencing will be placed on ES.

Act 283 also created a Criminal Penalties Study Committee to study the classification of criminal offenses in the Criminal Code, the penalties for felonies, and issues relating to the implementation of the changes in sentencing made by the Act. Many of the recommendations of the committee were enacted in 2001 Wisconsin Act 109 and became effective on February 1, 2003.

**Misdemeanors and Felonies**

In Wisconsin, each criminal offense is either a misdemeanor or a felony. A crime punishable by imprisonment of one year or more is a felony. A crime punishable by imprisonment of less than one year is a misdemeanor.

Wisconsin first undertook the process of uniform crime classification more than 30 years ago. In legislation passed in 1977, and which took effect on June 1, 1978, crimes and forfeiture offenses codified in the Wisconsin Criminal Code were placed in one of several uniform penalty classes. Offenses codified elsewhere in the statutes were not affected by the law. The 1977 law created five classes of felonies, three classes of misdemeanors, and four classes of forfeitures. 1997 Wisconsin Act 283, which enacted "truth-in-sentencing," increased the penalties for all felonies by 50%, or one year, whichever is greater. The provisions of that Act apply to offenses committed on or after December 31, 1999, but before February 1, 2003. 2001 Wisconsin Act 109 modified the felony classification system so that, effective February 1, 2003, there are nine classes of felonies.

For purposes of the Criminal Code<sup>1</sup>, the classes of misdemeanors and their penalties are as follows:

**Maximum Penalties for Misdemeanors**

Misdemeanor	Fine	Term of Imprisonment
Class A	\$10,000	9 months
Class B	\$1,000	90 days
Class C	\$500	30 days

The classes of felonies and their penalties are as follows:

**Maximum Sentence for Felonies  
(Confinement in Prison Plus Parole or Extended Supervision)**

Crimes Committed 2/1/03 and After		Crimes Committed 12/31/99 to 1/31/03		Crimes Committed Before 12/31/99
Class	Sentence	Class	Sentence	Sentence
Class A	Life	Class A	Life	Life
Class B	60 years			
Class C	40 years	Class B	40 years	60 years
Class D	25 years	Class BC	20 years	30 years
Class E	15 years			
Class F	12.5 years	Class C	10 years	15 years
Class G	10 years			
Class H	6 years	Class D	5 years	10 years
Class I	3.5 years	Class E	2 years	5 years

**Maximum Fines for Felonies**

Class	Crimes Committed 2/1/03 and After	Class	Crimes Committed Before 2/1/03
Class A	N.A.	Class A	N.A.
Class B	N.A.		
Class C	\$100,000	Class B	N.A.
Class D	\$100,000	Class BC	\$10,000
Class E	\$50,000		
Class F	\$25,000	Class C	\$10,000
Class G	\$25,000		
Class H	\$10,000	Class D	\$10,000
Class I	\$10,000	Class E	\$10,000

**Sentencing**

**Bifurcated Sentences**

When a court sentences a person to imprisonment in the Wisconsin state prisons for a felony, the court must impose a bifurcated sentence that consists of a term of confinement in prison, followed by a term of ES. In general, the total length of the bifurcated sentence may not exceed the maximum period of imprisonment for the felony.

The portion of the bifurcated sentence that imposes a term of confinement in prison may not be less than one year, subject to any minimum sentence prescribed for the felony, and may not exceed the following:

**Maximum Confinement in Prison for a Maximum Sentence**

Class	Release to ES* for Crimes Committed 2/1/03 and After	Class	Release to ES* for Crimes Committed 12/31/99 to 1/31/03
Class A	ES eligibility date set by sentencing court	Class A	ES eligibility date set by sentencing court**
Class B	40 years		
Class C	25 years	Class B	40 years
Class D	15 years	Class BC	20 years
Class E	10 years		
Class F	7.5 years	Class C	10 years
Class G	5 years		
Class H	3 years	Class D	5 years
Class I	1.5 years	Class E	2 years

\*Extended supervision.

\*\*The person must serve at least 20 years in prison. The court may also order that the person is not eligible for release on ES.

The term of ES may not be less than 25% of the length of the imposed prison term. For offenses committed February 1, 2003 and after, the maximum term of ES is as follows:

- Class B: 20 years
- Class C: 15 years
- Class D: 10 years
- Classes E, F, and G: 5 years
- Class H: 3 years
- Class I: 2 years<sup>2</sup>

## Indeterminate Sentences

**Sentence Other Than to Life in Prison.** Persons serving a sentence for an act committed before December 31, 1999 are serving an indeterminate sentence. Under indeterminate sentencing, the term of imprisonment is generally the maximum period of confinement in prison. A person serving an indeterminate sentence in a state prison usually has two possible ways of being released on parole<sup>3</sup> (after release, an offender is placed on parole supervision for the remainder of his or her sentence).<sup>4</sup> Parole release may or must occur as follows:

- **Discretionary parole on parole eligibility date.** An offender is generally eligible for parole after serving 25% of the court-imposed sentence or six months, whichever is greater. The Parole Commission determines whether the offender is released on discretionary parole.<sup>5</sup>
- **Mandatory release.** An offender, unless subject to additional time for misconduct, is required to be released after serving 2/3rds of his or her sentence. This is termed the offender’s mandatory release, or MR, date.<sup>6</sup>

For indeterminate sentences, eligibility for parole and MR are as follows if a person is sentenced to the maximum term of imprisonment:

Class	Eligible for Parole	Mandatory Release
Class A	Set by sentencing court	N.A.
Class B	10 years	26.6 years
Class BC	5 years	13.3 years
Class C	2.5 years	6.6 years
Class D	1.25 years	3.3 years
Class E	0.5 year	1.3 years

There are also the following different parole eligibility provisions for certain serious felony offenders<sup>7</sup> who are serving an indeterminate sentence:

- **Discretionary parole.** If a serious felony offender has one or more prior convictions for a serious felony, a judge may set a discretionary parole eligibility date for the offender that is later than 25% of the sentence or six months but that is not later than the MR date of 2/3rds of the sentence.<sup>8</sup>
- **No automatic release on MR date.** Certain serious felony offenders need not be automatically released when they reach their MR dates. Instead, the Parole

Commission may deny MR to such an offender in order to protect the public or because the offender refused to participate in counseling or treatment.<sup>9</sup>

**Life Sentences.** No person serving a sentence of life in prison for an act committed before December 31, 1999 is entitled to MR. Instead, a person serving a life sentence usually must serve 20 years minus time calculated under the MR formula before he or she is eligible for release on parole. Unless the person receives an extension due to violation of prison rules, he or she reaches discretionary parole eligibility after serving 13 years and four months. However, the parole eligibility date for a person serving a life sentence may have been set later than the usual parole eligibility date (e.g., 35, 75, or 100 years from the date of sentencing) or the person may have been declared ineligible for parole by the sentencing court.<sup>10</sup>

## Positive Adjustment Time and Early Release

2009 Wisconsin Act 28 (the Biennial Budget Act) made several changes to current sentencing laws, as follows:

- Certain inmates serving a bifurcated sentence are eligible to earn positive adjustment time if they do not violate the rules and regulations of the prison or refuse or neglect to perform required or assigned duties. Depending upon the offense for which the inmate is serving his or her sentence, an inmate may earn one day of positive adjustment time for every two to 5.7 days that the inmate serves with good conduct. The time an inmate earns through positive adjustment time is added to his or her term of ES.<sup>11</sup>
- An inmate who is serving the confinement portion of a bifurcated sentence for a misdemeanor or a Class F to I nonviolent felony who will be eligible for ES within 12 months may be released to ES at the discretion of the Department of Corrections (DOC). If the inmate is released prior to serving his or her entire period of confinement in prison, that time is added to the inmate's term of ES.<sup>12</sup>
- An inmate may petition the Earned Release Commission to modify his or her sentence and release the inmate to ES if the inmate: (a) is at least 65 years of age and has served at least five years of the term of confinement in prison of a bifurcated sentence or of a life sentence imposed under s. 973.014, Stats.; (b) is at least 60 years of age and has served at least 10 years of the term of confinement in prison of a bifurcated sentence or of a life sentence imposed under s. 973.014, Stats.; or (c) has an extraordinary health condition (i.e., a condition afflicting a person, such as advanced age, infirmity, or disability of the person or a need for medical treatment or services not available within a correctional institution). If the inmate is released, the period of time not served on his or her term of confinement in prison is added to his or her term of ES.<sup>13</sup>
- The Challenge Incarceration Program ("boot camp") and the Earned Release Program are expanded so that certain inmates with a treatment need that is not necessarily a substance abuse problem may participate in the program.<sup>14</sup>
- Beginning on October 1, 2009, a court may impose a risk reduction sentence for individuals who meet certain criteria. Under this sentencing option, an inmate may be released to ES after serving 75% of his or her term of confinement in prison if the inmate completes required programming and treatment.<sup>15</sup>

### Expungement of Criminal Court Record

Under certain circumstances, a person's criminal conviction **may** be removed from his or her court record through a process known as expunction. A person's criminal court record may be expunged by the sentencing court if all of the following apply:

- The person was under the age of 25 at the time of the commission of the offense.
- The offense for which the person was found guilty has a maximum penalty of six years or less (this includes Class A, B, and C misdemeanors, and Class H and I felonies).
- The sentencing court determines that the person will benefit from having his or her record expunged.
- The sentencing court determines that society will not be harmed by having the person's record expunged.
- The sentencing court orders at the sentencing hearing that the offense be expunged upon the person's successful completion of the sentence.
- The person successfully completed his or her sentence.

There are some cases in which a Class H or I felony conviction may not be expunged from a person's criminal court record. A Class H felony may not be expunged if either of the following apply:

- The person has a prior felony conviction.
- The current offense is defined as a violent offense, or is a violation of stalking, intentional or reckless physical abuse of a child, or sexual assault by a school staff member or by a person who volunteers with children.

A Class I felony may not be expunged if either of the following apply:

- The person has a prior felony conviction.
- The current offense is defined as a violent offense, or a violation of concealing the death of a child.

There is one case in which the court **is required to** order that the record of a person's criminal conviction be expunged. If a person committed an invasion of privacy offense and is under the age of 18 when he or she committed the offense, then the court must order at the sentencing hearing that the person's record be expunged upon the person's successful completion of his or her sentence.<sup>16</sup>

## Corrections

### Correctional Facilities

In Wisconsin, DOC is responsible for the care and treatment of adult offenders placed under state supervision by the courts. As of June 25, 2010, DOC was responsible for 22,092 incarcerated adults. As of June 25, 2010, DOC was responsible for 68,054 adults in the community.

DOC operates 36 correctional facilities, including 20 adult prisons and 16 correctional centers.

### State Prisons and Correctional Centers

Persons sentenced to state prisons are received at the Dodge Correctional Institution Reception Center in Waupun. After an assessment and evaluation period of

four to six weeks, each inmate is classified according to the degree of security risk they present. If classified as maximum risk, adult male inmates are placed at Dodge, Waupun, Columbia, or Green Bay Correctional Institution. Male inmates classified as medium risk may be placed at Oshkosh, Kettle Moraine, Fox Lake, New Lisbon, Redgranite, Jackson, Prairie du Chien, Stanley, or Racine Correctional Institution. A medium risk inmate who is between the ages of 15 and 24 years may also be placed in the Racine Youthful Offender Correctional Facility. In addition, male inmates may be placed in the medium security Wisconsin Resource Center operated by the Department of Health Services (DHS). Male inmates who are classified as minimum risk are placed in the Fox Lake or Oakhill Correctional Institution, the Chippewa Valley Correctional Treatment Facility, the Sturtevant Transitional Facility, one of the 13 male minimum security correctional centers, or the Drug Abuse Correctional Center, which is located on the grounds of the Winnebago Mental Health Institute.

DOC also operates a super maximum prison, the Wisconsin Secure Program Facility, in Boscobel. Male inmates may be transferred there only after being placed in disciplinary segregation or as a consequence of a disciplinary action. The facility also houses general segregation inmates and inmates in the general population.

Adult female inmates classified as maximum or medium security risks are placed in the Taycheedah Correctional Institution. Female inmates who are classified as minimum-security risk may be placed at Taycheedah or the Milwaukee Women's Center, the Robert E. Ellsworth Correctional Center in Union Grove, the Saint Croix Center, or the John C. Burke Correctional Center in Waupun.

Male and female inmates who are preparing for release into the community may be placed in one of 16 minimum security facilities in the Wisconsin Correctional Center System.

**Milwaukee Secure Detention Facility.** The Milwaukee Secure Detention Facility is a holding facility for probation and parole violators and accepts offenders 24 hours per day, like a county jail, in addition to housing medium security inmates.

**County Facilities.** As of June 2010, DOC contracts with 20 Wisconsin counties to house 521 inmates. These counties are Bayfield, Columbia, Door, Douglas, Florence, Fond du Lac, Forest, Juneau, Langlade, Manitowoc, Milwaukee, Oneida, Outagamie, Ozaukee, Racine, Sauk, Sheboygan, Vilas, Washara, and Winnebago.

**Federal Prison.** DOC contracts with the federal government to house approximately 30 inmates in various federal prisons.

**Wisconsin Resource Center.** DOC contracts with DHS to house 349 inmates with mental health needs at the Wisconsin Resource Center in Winnebago as of June 25, 2010.

**Community Corrections**

The Division of Community Corrections in DOC provides community supervision for offenders on probation, parole, and ES. The division also oversees the minimum security correctional centers.

As of June 25, 2010, DOC was responsible for 48,270 probationers and 19,784 parolees and persons on ES. As of July 2010, there were 1,248.50 authorized full-time equivalent (FTE) agents for probation, parole, and ES supervising adults in the Division of Community Corrections.

## Prison Work and Study Assignments

### Prison Labor

For work assignments in a prison, other than for Badger State Industries or correctional farms, an inmate may earn \$0.12 to \$0.42 per hour. Inmates who have been assigned to a school, vocational training, or other programs are paid an hourly wage of \$0.15. Inmates who are unable to work may be paid an hourly wage of \$0.05.

## Badger State Industries and Correctional Farms

Badger State Industries operates at each of the maximum and medium security state prisons, except Dodge, and at the minimum-security Oakhill Correctional Institution and the Chippewa Valley Correctional Center. The industries engaged in include laundry, wood and metal furniture, upholstery, textiles, printing and graphics, data entry, silk-screening, metal stamping, and a distribution center. The farms operated by Badger State Correctional Farms are located at Oakhill, Waupun, Fox Lake, and Oneida. There are also computer, wheelchair, and sign blank recycling programs at Redgranite, New Lisbon, and Taycheedah, and at the Racine Youthful Offender Correctional Facility. The hourly wages for Badger State Industries in medium and maximum security institutions range from \$0.20 to \$1.00. In minimum security institutions, the range is \$0.50 to \$1.60. The hourly wages on the farms range from \$0.20 to \$1.60.

## Private Businesses Leasing Space in Prisons

Under current law, DOC is authorized to lease space within state prisons and juvenile correctional institutions to not more than six private businesses to employ prison inmates to manufacture products or components or to provide services for sale on the open market.<sup>17</sup> Currently, DOC does not lease space to any private businesses.

### Placement and Supervision of Sex Offenders

## Sex Offender Registry

### Who Must Register as a Sex Offender?

DOC is responsible for maintaining the sex offender registry.<sup>18</sup>

A person who is convicted of or adjudicated delinquent for a sex offense (defined by statute) must register as a sex offender. A court may also order persons who are convicted of certain offenses other than sex offenses to register as sex offenders if the court determines that the underlying conduct was sexually motivated (i.e., one of the purposes for the act was for the person's sexual arousal or gratification) and that requiring the person to register would be in the interest of public protection.

**Exemption.** A court may exempt a person who was under age 19 and not more than four years older than the victim at the time of the offense from sex offender registration requirements if the person was convicted or found to have committed sexual assault of a child and the violation did not involve force or violence with a victim under the age of 12 years. To grant an exemption, the court must find that it is not necessary, in the interest of public protection, to require the person to register as a sex offender.

### Registry Information

The sex offender registry must contain the following information for each person registered:

- The person's name and identifying factors including any aliases used by the person.
- Information sufficient to identify the person, including date of birth, gender, race, height, weight, and hair and eye color.
- The statute for the offense that subjects the person to registration; the date of conviction; and the county or, if the state is not Wisconsin, the state in which the person was convicted.
- The date the person was placed in the community or placed on probation, the date the person entered Wisconsin, or the date on which the person was required to register as a sex offender.
- The person's address.
- The name of the agency supervising the person, if applicable, and the office or unit and the telephone number of the office or unit that is responsible for the supervision of the person.
- The name or number of every electronic mail account the person creates or maintains, every Internet user name the person uses, and the name and Internet address of every public or private Internet profile the person creates, uses, or maintains.
- The name and address of the place at which the person is or will be employed.
- The name and location of any school in which the person is or will be enrolled.
- If the person is required to register because he or she is in institutional care or on conditional release from a sexually violent person commitment under ch. 980, a notation concerning the treatment that the person has received for his or her mental disorder.
- The most recent date on which the above information was updated.

## Duration of Registration Requirements

Generally, a person must comply with registration requirements for 15 years following release from supervision by the DOC or the DHS. A person who meets any one of the following conditions, however, is subject to lifetime registration requirements:

- Convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense, or for the solicitation, conspiracy, or attempt to commit a sex offense on two or more occasions.
- Convicted or found not guilty or not responsible by reason of mental disease or defect for a violation, or for the solicitation, conspiracy, or attempt to commit a violation of first- or second-degree sexual assault, first- or second-degree sexual assault of a child, or repeated sexual assault of a child.
- Found to be a sexually violent person under ch. 980, Stats., regardless of whether the person is discharged from the sexually violent person commitment.
- Ordered by a court to register as a sex offender and to comply with registration requirements during his or her lifetime.

A person required to register as a sex offender based upon a finding of commission of a sex offense in another state must comply with Wisconsin registration requirements while a resident, a student, or employed or carrying on a vocation in Wisconsin or for 10 years from the date of release from supervision for the offense, whichever is less. A person meeting one of the criteria for lifetime registration must

comply with registration requirements while a resident, a student, employed, or carrying on a vocation in Wisconsin.

Provisions are contained in the laws for updating required registry information.

## Penalties

The sex offender registration law contains the following penalties:

- Intentionally failing to provide required information for the registry: a Class H felony (a fine of not more than \$10,000 or imprisonment for not more than six years, or both), unless the underlying offense requiring registry is a misdemeanor and it is the first offense of failure to provide information to the registry. In that case, the penalty is a fine of not more than \$10,000 or imprisonment for not more than nine months, or both.
- Intentionally establishing or changing residence unless certain conditions have been met: a Class H felony, unless the underlying offense is a misdemeanor and it is the first offense of this provision. In that case, the penalty is a fine of not more than \$10,000 or imprisonment for not more than nine months, or both.
- Failure to keep registry information confidential: a fine of not more than \$500 or imprisonment for not more than 30 days, or both.
- Changing name or identifying by a name other than one by which the offender is identified with DOC: a Class H felony, unless the underlying offense is a misdemeanor and it is the first offense of this provision. In that case, the penalty is a fine of not more than \$10,000 or imprisonment for not more than nine months, or both.<sup>19</sup>

## Disclosure of and Access to Registry Information

The DOC must generally keep the information in the sex offender registry confidential. Under specific circumstances, the DOC may disclose registry information.<sup>20</sup>

**Access for Law Enforcement Agencies.** When a person first registers as a sex offender, DOC must immediately make the registry information available to the police chief of any community and the sheriff of any county (“law enforcement agencies”) in which the person is residing, employed, or attending school. The DOC must also make updated information immediately available to law enforcement agencies. Law enforcement agencies may also request information concerning any person registered as a sex offender.

**Bulletins to Law Enforcement Agencies.** If a registered sex offender has been convicted or found not guilty or not responsible by reason of mental disease or defect for any sex offense, or for the solicitation, conspiracy, or attempt to commit such a violation **on one occasion only**, the DOC or DHS (for sexually violent person commitments) **may** notify law enforcement agencies of the area in which the person will be residing, employed, or attending school if the DOC or DHS determines that notification is necessary to protect the public.

If a registered sex offender has committed **two or more sex offenses**, the DOC or DHS **must** provide information to law enforcement agencies when the person is placed in a community. Notification must be in the form of a written bulletin that contains all of the following:

- The information to which law enforcement has access, as described above.

- Notice that information concerning registered sex offenders is available on a DOC Internet site.
- Any other information that the agency determines is necessary to assist law enforcement officers or to protect the public, including a photograph of the person, other identifying information, and a description of the person's patterns of violation.

**Notification of Victims.** When a person initially registers as a sex offender or when the person informs DOC of a change in registry information, DOC must make a reasonable attempt to notify the victim or a member of the victim's family (i.e., the victim's spouse, domestic partner, child, parent, sibling, or legal guardian) if the victim or family member has requested such notification. A victim receiving such notice may also request any of the information given to law enforcement agencies.

**Internet Access.** DOC also provides Internet access to limited information concerning persons registered as sex offenders. The information provided on the Internet site may be accessed by the general public by entering the name of a registrant or a zip code. DOC must keep this information secure against unauthorized alteration.

## Placement of Sex Offenders

Under current law, DOC must work to minimize, to the greatest extent possible, the residential population density of sex offenders who are on probation, parole, or ES or placed on supervised release as a sexually violent person under ch. 980, Stats.<sup>21</sup> In addition, a person who is paroled after serving a sentence for a sex offense may not be paroled to any county where there is a correctional institution that has a specialized sex offender treatment program, unless that county is also the person's county of residence.<sup>22</sup>

DOC must place each person who has been convicted of a sex offense in one of the following locations upon his or her release to parole or ES:

- The county in which the person resided on the date of the sex offense.
- The county in which the person was convicted of the sex offense.
- A sex offender treatment facility.

This provision does not preclude DOC from authorizing a person to reside in another location if DOC initially placed the person in one of the listed locations.

Some Wisconsin municipalities have also adopted ordinances restricting where a sex offender may reside within the municipality. As of August 2010, 110 municipalities had adopted such an ordinance.

## GPS Tracking of Child Sex Offenders

### Persons Required to be Tracked

Under current law, DOC must maintain lifetime global positioning system (GPS) tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone for all of the following:

- A person who is placed on probation or released to ES or parole for a **level 1 child sex offense** or who is released from prison upon completion of a sentence imposed for a **level 1 child sex offense**.
- A person who is convicted of a **level 2 child sex offense** on or after January 1, 2008, and is placed on probation, released to ES or parole, or released from prison upon completion of a sentence imposed for the sex offense.
- A person found not guilty of a **serious child sex offense** by reason of mental disease or defect and placed on conditional release or discharged from supervision.
- A person placed on lifetime supervision for committing a **serious child sex offense** who is released from prison.
- A person who has been found to be a sexually violent person under ch. 980, Stats., and is placed on supervised release or discharged from supervision.
- A person for whom a law enforcement agency receives a special bulletin notification under the sex offender registry statute.
- A person for whom DOC determines that GPS tracking is appropriate.

A “level 1 child sex offense” is defined as a violation of sexual assault of a child or repeated sexual assault of the same child in which any of the following occurs:

- The actor has sexual contact or sexual intercourse with an individual who is not a relative of the actor and who has not attained 13 years of age and causes great bodily harm to the individual.
- The actor has sexual intercourse with an individual who is not a relative of the actor and who has not attained 12 years of age.

A “level 2 child sex offense” is defined as a violation of sexual assault of a child or repeated sexual assault of the same child in which any of the following occurs:

- The actor has sexual intercourse, by use or threat of force or violence, with an individual who is not a relative of the actor and who has not attained 16 years of age.
- The actor has sexual contact, by use or threat of force or violence, with an individual who has not attained 16 years of age and who is not a relative of the actor, and the actor is at least 18 years of age when the sexual contact occurs.

A “serious child sex offense” is a level 1 or level 2 child sex offense.

## Supervision of Persons Subject to GPS Tracking

DOC is required to create individualized exclusion and inclusion zones for a person who is subject to GPS tracking, if necessary to protect public safety. “Exclusion zone” is defined as a zone in which a person who is GPS tracked is prohibited from entering except for purposes of traveling through to get to another destination. “Inclusion zone” is defined as a zone in which such a person is prohibited from leaving.

In creating exclusion zones, DOC must focus on areas where children congregate, with perimeters of 100 to 250 feet, and on areas where the person has been prohibited from going as a condition of probation, ES, parole, conditional release, or supervised release.

Current law requires DOC to ensure that the person's GPS tracking device, or any comparable technology used with respect to the person, immediately alerts DOC and the local law enforcement agency having jurisdiction over the exclusion or inclusion zone if: (a) the person stays in an exclusion zone that is created for him or her for any period longer than the time needed to travel through the zone to get to another destination; or (b) leaves any inclusion zone that is created for him or her.

DOC may use passive positioning tracking for a person who is subject to lifetime GPS tracking once the person completes his or her sentence, including any probation, parole, or ES. "Passive positioning system tracking" is defined as tracking using a system that monitors, identifies, and records a person's position.<sup>23</sup>

## Juvenile Justice

1995 Wisconsin Act 77 created the Juvenile Justice Code. [ch. 938, Stats.] This chapter governs delinquent juveniles and juveniles who are in need of protection or services. Prior to 1995, these juveniles were subject to the provisions of the Children's Code. [ch. 48, Stats.]

### Delinquents

A delinquent juvenile is a juvenile who is 10 years of age or older and under 17 years of age and who has violated any state or federal criminal law.<sup>24</sup>

### Juveniles in Need of Protection or Services

A juvenile in need of protection or services is a juvenile who is uncontrollable, habitually truant from school, a school dropout, or a habitual runaway. In addition, a juvenile who is under 10 years of age who commits a delinquent act or a juvenile who is determined to be not responsible for a delinquent act by reason of mental disease or defect is a juvenile in need of protection or services.<sup>25</sup>

### Disposition

A juvenile who is adjudicated, or found to be, delinquent is subject to a variety of consequences.<sup>26</sup> These consequences are called dispositions under the Juvenile Justice Code. Dispositions for a juvenile who is found delinquent include the following:

- Placement in the Serious Juvenile Offender Program if the juvenile has been found to have committed a serious felony.
- Placement in a juvenile correctional facility if the juvenile is found to be delinquent for the commission of an act which, if committed by an adult, would be punishable by a sentence of six months or more and is found to be a danger to the public and in need of restrictive custodial treatment.
- Transfer of the juvenile's legal custody to a relative, a county department of health or social services, or a licensed child welfare agency.
- Payment of restitution or a forfeiture.
- Community service.
- Alcohol or drug treatment or education.
- Restriction on driving privileges.
- Victim-offender mediation.
- Special treatment or care, including medical, psychological or psychiatric treatment, or alcohol or other drug abuse treatment.

A juvenile who is found to be in need of protection or services may be subject to any of the dispositions available to the court for a juvenile who is found to be delinquent,

except payment of a forfeiture and placement in the Serious Juvenile Offender Program or in a secured facility.<sup>27</sup>

When a court orders a disposition for a juvenile who is found to be delinquent or in need of protection or services, the order is called a dispositional order. A dispositional order that continues placement of the juvenile in his or her home remains in effect for one year and may be extended up to an additional year. In general, an order placing a juvenile in a secured juvenile facility may apply for up to two years or until the juvenile's 18th birthday, whichever is earlier. For a juvenile who is placed in the Serious Juvenile Offender Program, however, the dispositional order remains in effect for five years, if the juvenile committed a Class B felony, or until the juvenile reaches 25 years of age, if the juvenile committed a Class A felony.<sup>28</sup>

### Expungement of Delinquency Adjudication Court Record

The juvenile court has discretion to order that a juvenile's delinquency adjudication record be expunged. When a juvenile who has been adjudicated delinquent turns 17 years of age, he or she may petition the juvenile court to expunge the court's record of the adjudication. The juvenile court **may** expunge the record if it determines all of the following:

- That the juvenile has satisfactorily complied with the conditions of his or her dispositional order.
- That the juvenile will benefit from having his or her record expunged.
- That society will not be harmed by the expungement.

### Adult Court Jurisdiction

There are cases when the juvenile court is required to order expungement of a juvenile's delinquency adjudication record. The juvenile court **is required to** order that the court's record of the juvenile's adjudication be expunged if the juvenile was adjudicated delinquent for committing an invasion of privacy offense, it was the juvenile's first delinquency adjudication, and the court determines that the juvenile has satisfactorily complied with the conditions of his or her dispositional order.<sup>29</sup>

A juvenile may be under the original jurisdiction of adult court<sup>30</sup> or may be waived by the juvenile court to adult court.<sup>31</sup> If the adult court has original jurisdiction over a juvenile, the juvenile's case **begins** in adult court.

## Original Jurisdiction

The adult court has original jurisdiction over the following juveniles:

- A juvenile who has been previously adjudicated delinquent and who is alleged to have committed battery or assault while placed in a secured correctional facility, a secure detention facility, or a secured child caring institution, or to have committed battery to a probation and parole agent or to an aftercare agent.
- A juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 10th birthday.
- A juvenile who is alleged to have committed a crime and has previously been convicted or has a case pending in adult court.

A juvenile over whom the adult court has original jurisdiction is generally subject to adult criminal procedures and the criminal penalties provided for the crime committed.

If certain conditions are met, a juvenile subject to adult court original jurisdiction may be “reverse waived” to the juvenile court.<sup>32</sup> The court may reverse waive the juvenile if he or she proves all of the following:

- That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
- That transferring jurisdiction to the juvenile court would not depreciate the serious nature of the offense.
- That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing a similar violation.

### Waiver of Juveniles to Adult Court

A juvenile court may waive a juvenile to adult court under either of the following conditions:

- The juvenile is alleged to have committed any of the following offenses **on or after the juvenile’s 14th birthday**: felony murder; second-degree reckless homicide; first- or second-degree sexual assault; taking hostages; kidnapping; armed burglary; armed robbery; a drug manufacture or delivery violation; or a violation at the request of or for the benefit of a criminal gang that would constitute a felony under the Criminal Code or the Uniform Controlled Substances Act if committed by an adult.
- The juvenile is alleged to have violated any state criminal law on or after the juvenile’s 15th birthday.
- The court must base its decision whether or not to waive a juvenile to adult court on the following criteria:
  - The personality of the juvenile.
  - The prior record of the juvenile.
  - The type and seriousness of the offense.
  - The adequacy and suitability of facilities, services, and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system.
  - The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the adult court.

## Glossary of Terms and Abbreviations

**Crime** – An offense that is punishable by imprisonment, either in a county jail or a state prison.

**DOC** – Department of Corrections.

**Felony** – A criminal offense that is punishable by imprisonment of one year or longer.

**Juvenile** – For purposes of prosecution for criminal and civil offenses, a person who is younger than 17 years.

**Misdemeanor** – A criminal offense that is punishable by imprisonment of less than one year.

**Truth-in-Sentencing** – Sentencing requirements that apply to offenses committed on or after December 31, 1999, under which the court must impose a bifurcated sentence consisting of a specified period of confinement in prison followed by a specified period of ES.

### Funding

Counties are generally financially responsible for the costs of services under the Juvenile Justice Code. However, the state pays the costs for: juveniles who are placed in the Serious Juvenile Offender Program; juveniles who are under the

original jurisdiction of the adult court or who are waived into adult court and sentenced to prison, but placed in a juvenile correctional facility; and certain juveniles who were adjudicated delinquent for acts committed prior to July 1, 1996.

The Community Youth and Family Aids Program (Youth Aids) provides each county with an annual allocation of state and federal funds from which the county may pay for juvenile delinquency-related services, including out-of-home placements and community-based services for juveniles. Counties may supplement their expenditures on these services with funding from other sources, including community aids, other state aids to counties, county tax revenues, and grant moneys.

## Additional References

### Criminal Justice

- The Sex Offender Registry, which may be searched by name or zip code: <http://widocoffenders.org>.
- The state Department of Justice website contains information for victims of crime and information on crime prevention, background checks, and criminal investigations: <http://www.doj.state.wi.us>.
- The state Office of Justice Assistance website contains information on statewide strategies to address crime and crime statistics for the state: <http://oja.state.wi.us>.
- Information and application for seeking a pardon or executive clemency: [http://www.wi-doc.com/index\\_adult.htm](http://www.wi-doc.com/index_adult.htm).
- The Legislative Fiscal Bureau Informational Paper, *Felony Sentencing and Probation*, is available at: <http://www.legis.state.wi.us/lfb/Informationalpapers/info.html>.
- The final report of the Criminal Penalties Study Committee (August 31, 1999) which studied the implementation of truth-in-sentencing is available at: [http://www.doa.state.wi.us/docs\\_view2.asp?docid=42](http://www.doa.state.wi.us/docs_view2.asp?docid=42).
- The Legislative Audit Bureau report, *Allocation of District Attorney Positions* (Report 07-9), is available at: <http://www.legis.wisconsin.gov/lab/reports/07-9Full.pdf>.
- The Legislative Audit Bureau report, *Restorative Justice* (Report 04-6), is available at: <http://www.legis.wisconsin.gov/lab/reports/04-6Full.pdf>.

### Corrections

- The state DOC website is: <http://www.wi-doc.com>.
- The Legislative Fiscal Bureau Informational Paper, *Adult Corrections Program*, is available at: <http://www.legis.state.wi.us/lfb/Informationalpapers/info.html>.
- The Legislative Fiscal Bureau Paper, *2009 Act 28 Sentencing Modifications* (July 29, 2009).
- The Legislative Audit Bureau report, *Inmate Mental Health Care* (Report 09-4), is available at: <http://www.legis.wisconsin.gov/lab/reports/09-4Full.pdf>.

## Juvenile Justice

- The Joint Legislative Council's Special Committee on High-Risk Juvenile Offenders is currently meeting to make recommendations relating to the Serious Juvenile Offender Program, waiver of juveniles to adult court, original adult court jurisdiction over juvenile offenders, and placement of juveniles in juvenile correctional institutions and adult prisons. Information about and documents from the Special Committee are available at:  
<http://www.legis.state.wi.us/lc/committees/study/2008/JUVE/index.htm>.
- The Legislative Fiscal Bureau Informational Paper, *Juvenile Justice and Youth Aids Program*, is available at:  
<http://www.legis.state.wi.us/lfb/Informationalpapers/info.html>.
- The Legislative Audit Bureau report, *17-Year Old Offenders in the Adult Criminal Justice System* (Report 08-3), is available at:  
<http://www.legis.wisconsin.gov/lab/reports/08-3Full.pdf>.

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<sup>1</sup> There are also misdemeanor offenses that are not in the Criminal Code, and are not classified, but that have a misdemeanor level penalty.

<sup>2</sup> s. 973.01, Stats.

<sup>3</sup> Current law also provides that an offender may be released by the Secretary of Corrections on a special action release, which is a program designed to relieve prison overcrowding. [s. 304.02, Stats.] No one has been paroled under this provision since 1991, however.

<sup>4</sup> s. 973.013, Stats.

<sup>5</sup> s. 304.06, Stats.

<sup>6</sup> s. 302.11, Stats.

<sup>7</sup> For this provision, "serious felony" is defined as certain drug offenses that are punishable by a maximum prison term of 30 years or more; first- or second-degree intentional homicide; first-degree reckless homicide; felony murder; homicide by intoxicated use of a vehicle; performing partial-birth abortion; substantial battery; substantial battery to an unborn child; mayhem; first- or second-degree sexual assault; taking hostages; kidnapping; causing death by tampering with a household product; arson; armed burglary; carjacking; armed robbery; assault by a prisoner; first- or second-degree sexual assault of a child; substantial physical abuse of a child; sexual exploitation of a child; incest; child enticement; soliciting a child for prostitution; child abduction; soliciting a child to commit a Class A or B felony; use of a child to commit a Class A felony; or solicitation, conspiracy, or attempt to commit a Class A felony.

<sup>8</sup> s. 973.0135, Stats.

<sup>9</sup> s. 302.11 (1g), Stats.

<sup>10</sup> s. 973.014 (1), Stats.

<sup>11</sup> ss. 302.113 (2) (b) and (bg) 2. and 304.06 (1) (bg) 1., Stats.

<sup>12</sup> s. 302.113 (9h), Stats.

<sup>13</sup> s. 302.1135, Stats.

<sup>14</sup> ss. 302.045 and 302.05, Stats.

<sup>15</sup> s. 973.031, Stats.

<sup>16</sup> s. 973.015, Stats.

<sup>17</sup> s. 303.01 (2) (em), Stats.

<sup>18</sup> s. 301.45, Stats.

<sup>19</sup> s. 301.47, Stats.

<sup>20</sup> s. 301.46, Stats.

<sup>21</sup> A sexually violent person commitment is a mental health commitment and such persons are supervised by DHS.

<sup>22</sup> s. 301.03 (19), Stats.

- <sup>23</sup> s. 301.48, Stats.
- <sup>24</sup> s. 938.12, Stats.
- <sup>25</sup> s. 938.13, Stats.
- <sup>26</sup> s. 938.34, Stats.
- <sup>27</sup> s. 938.345, Stats.
- <sup>28</sup> s. 938.355 (4), Stats.
- <sup>29</sup> s. 938.355 (4m), Stats.
- <sup>30</sup> s. 938.183, Stats.
- <sup>31</sup> s. 938.18, Stats.
- <sup>32</sup> s. 970.032 (2), Stats.

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