

1       **AN ACT** *to amend* 973.09 (1) (d) and (4) (a); and *to create* 973.09 (4g) of the statutes;  
2       **relating to:** judicial authority to order home detention as a condition of probation.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was prepared for the Joint Legislative Council’s Study Committee on Problem–Solving Courts, Alternatives, and Diversions.

**Background**

Current law provides that if a person is convicted of an offense, for which there is a mandatory or presumptive minimum period of one year or less of imprisonment, a court may place the person on probation if the court requires, that the person be confined for at least that mandatory or presumptive minimum period as a condition of the probation. The person is eligible to earn good time credit calculated regarding the period of confinement. In *State v. Eastman*, 220 Wis. 2d 330, 339, (Ct. App. 1998), the Court of Appeals clarified that a court’s authority did not include the ability to order home detention as a condition of probation if a person is convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment.

Current law also authorizes a county sheriff, or a house of correction superintendent, to place any person confined in jail who has been arrested for, charged with, convicted of, or sentenced for a crime in the home detention program.

**Bill Draft**

The draft provides express authority for a court to order that a probationer, including a probationer who is convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment, be confined in jail, placed in detention at the probationer’s place of residence or other place designated by the court, or both, as a condition of probation during such period of the term of probation as the court prescribes, but not to exceed one year. The detention must be monitored by the use of an electronic device worn continuously on the probationer’s person and be capable of providing positive identification of the wearer at the detention location at any time. A probationer in detention is eligible for good time credit.

Under the draft, the condition of detention 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 condition of probation of home detention, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms of the condition of home detention may include a requirement that the defendant pay a daily fee to cover the costs associated with the monitoring. In that case, the terms must specify to whom the payments are made.

If the probationer fails to comply with the terms of the condition of detention, the draft authorizes the court to order that the probationer be brought before the court and to order that the remainder of the period of detention be served in the county jail.

1           **SECTION 1.** 973.09 (1) (d) and (4) (a) of the statutes are amended to read:

2           973.09 (1) (d) If a person is convicted of an offense that provides a mandatory or  
3 presumptive minimum period of one year or less of imprisonment, a court may place the  
4 person on probation under par. (a) if the court requires, as a condition of probation, that the  
5 person be confined under sub. (4) or be placed in detention under sub. (4g), or both, for at least  
6 that mandatory or presumptive minimum period. The person is eligible to earn good time  
7 credit calculated under s. 302.43 regarding the period of confinement or detention.

**NOTE:** SECTION 1 provides express statutory authority for a court to decide to confine or place a person in detention at the person's place of residence or other place designated by the court, or both, as a condition of probation in cases where the person is convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment. This SECTION also allows a person placed in detention to be eligible to earn good time credit.

8           **(4) (a)** The court may also require as a condition of probation that the probationer be  
9 confined under this subsection or under sub. (4g), or both, during such period of the term of  
10 probation as the court prescribes, but not to exceed one year. The court may grant the privilege  
11 of leaving the county jail, Huber facility, work camp, or tribal jail during the hours or periods  
12 of employment or other activity under s. 303.08 (1) while confined under this subsection. The

1 court may specify the necessary and reasonable hours or periods during which the probationer  
2 may leave the jail, Huber facility, work camp, or tribal jail or the court may delegate that  
3 authority to the sheriff. In those counties without a Huber facility under s. 303.09, a work camp  
4 under s. 303.10, or an agreement under s. 302.445, the probationer shall be confined in the  
5 county jail. In those counties with a Huber facility under s. 303.09, the sheriff shall determine  
6 whether confinement under this subsection is to be in that facility or in the county jail. In those  
7 counties with a work camp under s. 303.10, the sheriff shall determine whether confinement  
8 is to be in the work camp or the county jail. The sheriff may transfer persons confined under  
9 this subsection between a Huber facility or a work camp and the county jail. In those counties  
10 with an agreement under s. 302.445, the sheriff shall determine whether a person who is  
11 confined under this subsection but who is not subject to an order under par. (b) is to be confined  
12 in the tribal jail or the county jail, unless otherwise provided under the agreement. In those  
13 counties, the sheriff may transfer persons confined under this subsection between a tribal jail  
14 and a county jail, unless otherwise provided under the agreement.

15 **SECTION 2.** 973.09 (4g) of the statutes is created to read:

16 973.09 (4g) A court may also require, as a condition of probation, that the probationer  
17 be placed in detention at the defendant's place of residence or other place designated by the  
18 court as a condition of probation during such period of the term of probation as the court  
19 prescribes, but not to exceed one year. Detention under this subsection may be imposed only  
20 if agreed to by the defendant. Detention under this subsection shall be monitored by the use  
21 of an electronic device worn continuously on the probationer's person and capable of  
22 providing positive identification of the wearer at the detention location at any time. The court  
23 shall ensure that the defendant is provided a written statement of the terms of the condition  
24 detention under this subsection, including a description of the detention monitoring

1 procedures and requirements and of any applicable liability issues. The terms of the condition  
2 of probation of home detention may include a requirement that the defendant pay a daily fee  
3 to cover the costs associated with monitoring him or her. In that case, the terms must specify  
4 to whom the payments are made.

5 (b) If the probationer fails to comply with the terms of the condition of detention under  
6 par. (a), the court may order the probationer brought before the court and the court may order  
7 that the remainder of the detention, or portion thereof, be served in confinement under par. (a).

**NOTE:** This SECTION provides express statutory authority for a court to require that the probationer be placed in detention at the defendant's place of residence or other place designated by the court as a condition of probation during such period of the term of probation as the court prescribes, but not to exceed one year. The detention must be monitored by the use of an electronic device worn continuously on the probationer's person and capable of providing positive identification of the wearer at the detention location at any time.

This SECTION also provides that the court must ensure that the defendant is provided with a written statement of the terms of the condition of detention, including a description of the detention monitoring procedures and requirements, and of any applicable liability issues. The terms may include a requirement that the defendant pay a daily fee to cover the costs associated with monitoring the probationer, and if so, the terms must specify to whom the payments are made.

Lastly, if the probationer fails to comply with the terms of the condition of detention, the court may order that the probationer be brought before the court. The court may also order that the remainder of the detention, or portion thereof, be served in confinement in the county jail.