

Basic Sentencing Rules with Potential Impact on Sentence Credit:

1. Court **can't** order sentence to be served consecutive to probation or jail time ordered as a condition of probation. *See State v. Maron*, 214 Wis. 2d 384, 395, 571 N.W.2d 454; Wis. Stat. § 973.15(2).
2. Court **can't** order sentence to be served consecutive to sentence that has not yet been imposed. Wis. Stat. § 973.15(2)(a).
3. Court **can** order sentence to be served consecutive to sentence previously imposed, even where supervision portion of that sentence has not yet been revoked. *See State v. Cole*, 2000 WI App 52, 233 Wis. 2d 577, ¶8, 608 N.W.2d 432; Wis. Stat. § 973.15(2)(a). If supervision subsequently *not* revoked, then the confinement portion of the sentence must commence at the time of sentencing, less sentence credit. *See* Wis. Stat. § 973.15(1); *but see Cole*, 233 Wis. 2d at 582, fn.2. (re contingency language, but confinement cannot run consecutive to supervision). *See* Wis. Stat. § 973.15(2m)(a)-(d).
4. Court **can't** order more than 12 months in jail as a condition probation, unless there is more than 1 “term of probation,” defined as probation related to convictions (not sentences) that occurred at the same time. *See State v. Johnson*, 2005 WI App 202, ¶20, 287 Wis. 2d 313, 704 N.W.2d 318; *see also* Wis. Stat. § 973.09(2)(a) and (b).
5. Court **may** permit a defendant to earn “good time,” under Wis. Stat. § 302.43, for time spent in jail as a condition of probation. *See Prue v. State*, 63 Wis. 2d 109, 114, 216 N.W.2d 43 (1974); *but see State ex rel. Baade v. Hayes*, 2015 WI App 71, ¶8, 365 Wis. 2d 174, 870 N.W.2d 478 (not entitled to good time on conditional jail term).
6. Likewise, court **may**, in effect, grant sentence credit against conditional jail term pursuant to its authority to impose or modify conditions of probation. *See* Wis. Stat. § 973.09(3)(a) and (4).
7. Sheriff **can't** deprive inmate serving jail sentence of more than 2 days of good time for any one offense without approval of the court. Otherwise, inmates serving

jail sentences earn good time at 25% of the jail term imposed/ordered. Wis. Stat. § 302.43.

8. **Jail sentences served in prison** = treated like old parole/indeterminate sentences: parole eligibility at 6 months, MR at 2/3 of sentence and the inmate does not earn “good time”. *See* Wis. Stat. §§ 973.03(2), 302.11(1), 302.113(1), 302.43; *see also State v. Harris*, 2011 WI App 130, 337 Wis. 2d 222, 805 N.W.2d 387.