

2001 DRAFTING REQUEST

Bill

Received: **12/31/2001**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-1353**

By/Representing: **Steinmetz**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sentencing**

Extra Copies: **rlr**

Submit via email: **NO**

Pre Topic:

DOA:.....Steinmetz -

Topic:

Truth in sentencing trailer

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 01/08/2002	jdyer 01/08/2002		_____			S&L
		jdyer 01/10/2002		_____			
/P1		gilfokm 01/14/2002	jfrantze 01/14/2002	_____	lrb_docadmin 01/14/2002		S&L
/1		jdyer 01/17/2002	haueca 01/15/2002	_____	lrb_docadmin 01/15/2002		S&L
/2		jdyer	haueca	_____	lrb_docadmin		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		01/29/2002	01/17/2002 _____		01/17/2002		
/3			jfrantze _____ 01/29/2002 _____		lrb_docadmin 01/29/2002		

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/2		13/29 jld	haugeca	_____	lrb_docadmin		
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1-17-02
pb/1-17-02

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Subject: Criminal Law - sentencing

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CH
1-15-02
CH
1-15-02
pb

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By/Representing: ~~Johnston~~ Steinmetz

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Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - sentencing

Extra Copies: rlr

Submit via email: NO

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DOA:.....~~Johnston~~ Steinmetz ← already fixed electronically?

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1/?	mdsida	1/11 10 jld	2/11 10-11	2/11 11/11			

FE Sent For:

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**Governor's Initiative
Department of Corrections
Budget Adjustment Bill
Statutory Language Request**

Topic: Sentence Modification

Current Language

Under current law, felonies created in the criminal code are put into one of 6 classes, with each class having a specific maximum term of imprisonment and a maximum fine. Except for Class A and Class B felonies, which are not punishable by a fine, each classified felony has a maximum fine of \$10,000.

Proposed Change

Amend current law to incorporate the provisions of 2001 Assembly Bill 3.

Effect of the Change

This change will expand the number of felony classes from six to nine and, except for Class A and Class B felonies, create new maximum terms of imprisonment and new maximum fines.

Desired Effective Date:	Upon passage of bill
Agency:	410 - Department of Corrections
Agency Contact:	Jana D. Steinmetz
Phone:	266-2213

01 Wis. Act 3, s. 1 - continued



(b) Except as provided in par. (c), any person who violates sub. (3) may be fined not more than \$10,000 or imprisoned for not more than 3 years and 6 months, or both, for each violation. Notwithstanding s. 101.02 (12), each act in violation of sub. (3) constitutes a separate offense.

01 Wis. Act 16, s. 1838gb - continued



(b) A person who is convicted of violating a rule promulgated by the department under par. (a) in connection with that person's furnishing of prescription drugs under this section may be fined not more than \$25,000, or imprisoned for not more than 7 years and 6 months, or both.

01 Wis. Act 16, s. 1838gb - continued



(c) A person other than a person specified in par. (b) who is convicted of violating a rule promulgated by the department under par. (a) may be fined not more than \$10,000, or imprisoned for not more than one year, or both.

01 Wis. Act 16, s. 3938up - continued



(b) Any person violating sub. (1) under all of the following circumstances is guilty of a Class E felony:

01 Wis. Act 16, s. 3949 - continued



943.70 (2) (b) 3g. A Class C felony if the offense results in damage valued at more than \$2,500.

01 Wis. Act 16, s. 3950 - continued



943.70 (2) (b) 3r. A Class C felony if the offense causes an interruption or impairment of governmental operations or public communication, of transportation, or of a supply of water, gas, or other public service.

01 Wis. Act 16, s. 3951 - continued



1. In the case of a misdemeanor, the maximum fine prescribed by law for the crime may be increased by not more than \$1,000 and the maximum term of imprisonment prescribed by law for the crime may be increased so that the revised maximum term of imprisonment is 12 months.

01 Wis. Act 16, s. 3951n - continued



(2) (a) Whoever intentionally introduces a contagious or infectious disease into livestock without the consent of the owner of the livestock is guilty of a Class C felony.

01 Wis. Act 16, s. 3951n - continued



(b) Whoever intentionally introduces a contagious or infectious disease into wild deer without the consent of the department of natural resources is guilty of a Class C felony.

01 Wis. Act 16, s. 3984 - continued



948.12 (2m) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply, is guilty of a Class E felony:

01 Wis. Act 16, s. 3987 - continued



1. Three grams or less, the person shall be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 7 years and 6 months.

01 Wis. Act 16, s. 3987 - continued



2. More than 3 grams but not more than 10 grams, the person shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

01 Wis. Act 16, s. 3987 - continued



3. More than 10 grams but not more than 50 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3987 - continued



4. More than 50 grams but not more than 200 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3987 - continued



5. More than 200 grams but not more than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3987 - continued



6. More than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

01 Wis. Act 16, s. 3989 - continued



961.41 (1) (im) 1. Three grams or less, the person shall be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 7 years and 6 months.

01 Wis. Act 16, s. 3989 - continued



2. More than 3 grams but not more than 10 grams, the person shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

01 Wis. Act 16, s. 3989 - continued



3. More than 10 grams but not more than 50 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3989 - continued



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01 Wis. Act 16, s. 3989 - continued



5. More than 200 grams but not more than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3989 - continued



6. More than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

01 Wis. Act 16, s. 3991 - continued



1. Three grams or less, the person shall be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 7 years and 6 months.

01 Wis. Act 16, s. 3991 - continued



2. More than 3 grams but not more than 10 grams, the person shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

01 Wis. Act 16, s. 3991 - continued



3. More than 10 grams but not more than 50 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3991 - continued



4. More than 50 grams but not more than 200 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3991 - continued



5. More than 200 grams but not more than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3991 - continued



6. More than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

01 Wis. Act 16, s. 3993 - continued



961.41 (1m) (im) 1. Three grams or less, the person shall be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 7 years and 6 months.

01 Wis. Act 16, s. 3993 - continued



2. More than 3 grams but not more than 10 grams, the person shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

01 Wis. Act 16, s. 3993 - continued



3. More than 10 grams but not more than 50 grams, the person shall be fined not less than \$1,000

nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3993 - continued



4. More than 50 grams but not more than 200 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3993 - continued



5. More than 200 grams but not more than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.

01 Wis. Act 16, s. 3993 - continued



6. More than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

Dsida, Michael

From: Steinmetz, Jana
Sent: Tuesday, January 08, 2002 8:23 AM
To: Dsida, Michael
Subject: RE: Miscellaneous TIS questions

In response to your questions,

1. Since AB3 proposed a 6-year commission, let's keep it at 6 years, so it would end in 2007.
2. I'm trying to determine what portion of a year and what positions, etc. the \$140,000 represents, but I haven't come across any fiscal estimates that have that information. Do you know when the commission was officially set to begin?
3. The obsolete references should be removed to keep the statutes cleaner.

Thanks,
Jana

-----Original Message-----

From: Dsida, Michael
Sent: Friday, January 04, 2002 2:12 PM
To: Steinmetz, Jana
Subject: Miscellaneous TIS questions

1. Do you want to keep the same sunset date for the sentencing commission (12/31/06)?
2. How do you want to handle the appropriation for the sentencing commission? (see section 13 of AB3)
3. Do you want to do anything with the obsolete references in s. 978.13 (1) (c) that remain in the bill? (There are similar obsolete references in s. 978.13 (1) (c), but that provision is not treated in AB3.)

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Truth-in-Sentencing Modification and 2001 Assembly Bill 3

66/9 - 2/

Assembly Amendment 2 to AB3:

Allows the sentencing judge to order an offender to participate in drug treatment during confinement or as a condition of extended supervision or probation and allows the judge to order DOC to pay for the treatment.

Recommendation: Do not incorporate this provision in the Budget Adjustment Bill.

Assembly Amendment 3 to AB3

Requires the Joint Review Committee established by the bill to submit a report to the legislature and to the governor containing recommendations regarding standards and procedures to be used by a court to modify a bifurcated sentence, including any proposed legislation necessary to implement the recommendations.

Recommendation: Incorporate this provision in the Budget Adjustment Bill, but note that offenders must serve 85% of the incarceration portion of the sentence before released in order to maintain eligibility for federal Truth-in-Sentencing funds.

Assembly Amendment 4 to AB3

Replaces the provision requiring one member appointed by the senate majority leader (or the minority leader if the majority leader and the Governor are of the same party) with a provision requiring one minority member from each house (so there will be one minority and majority member from each house on the Commission).

Recommendation: Incorporate this provision in the Budget Adjustment Bill.

Assembly Amendment 5 to AB3

Allows an inmate with a terminal condition serving a bifurcated sentence for a crime other than a Class B felony to seek sentence modification.

Recommendation: Incorporate this provision in the Budget Adjustment Bill.

Assembly Amendment 6 to AB3

Requires the court to state reasons for sentencing decisions in open court and on the record. If the court determines that it is not in the interest of the defendant for it to do so 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.

Recommendation: Incorporate this provision in the Budget Adjustment Bill.

Additional issues with incorporating AB3 into the Budget Adjustment Bill:

There are 34 provisions in Act 16 and one in Act 3 (storage and handling of anhydrous ammonia) related to new crimes. Most will be easy to reconcile, but the following are issues brought by LRB:

- Under s. 49.688(9)(b), a person convicted in connection with furnishing of prescription drugs may be fined not more than \$25,000, or imprisoned for not more than 7½ years, or both.

LRB: The fine corresponds to a Class G felony, but the maximum sentence is closer to Class H (6 years) than Class G (10 years). It makes sense to use the same variant of Class H in s. 49.49.

Recommendation: Class H.

- Under s. 943.01(2d)(b), a person who intentionally causes damage to another's property without the person's consent is guilty of a Class E felony under the following circumstances:
 1. The property is a plant, material taken, extracted, or harvested from a plant, or a seed or other plant material that is being used or that will be used to grow or develop a plant.
 2. The plant was being grown as feed for animals being used for commercial purposes, for other commercial purposes, or in conjunction with plant research and development.

LRB: Could be classified as Class H because it is similar to s. 943.75(2m), but the other felonies in the first subsection of ch. 943, other than those relating to arson and firebombs, are Class I.

Recommendation: Class I.

- Under s. 943.70(2)(am), whoever intentionally causes an interruption in service by submitting a message, or multiple messages, to a computer, computer program, computer system, or computer network that exceeds the processing capacity of the computer, computer program, computer system, or computer network may be penalized in various ways including:
 - A Class C felony if damage valued at more than \$2,500.
 - A Class C felony if interruption or impairment of governmental operations or public communication, transportation, or supply of water, gas, or other public service.

LRB: The first, or both, could be given a lower level penalty, given that the CPSC classified offenses creating a substantial and unreasonable risk of death or great bodily harm as a Class F felony. The CPSC classified these as Class H when they were combined in s. 943.70(2)(b)3.

Recommendation: Class F.

- Under s. 943.76(2)(a), whoever intentionally introduces a contagious or infectious disease into livestock without the consent of the owner is guilty of a Class C felony.
Under s. 943.76(2)(b), whoever intentionally introduces a contagious or infectious disease into wild deer without the consent of the DNR is guilty of a Class C felony.

LRB: These make sense, but not sure what the CPSC would have done.

Recommendation: Class F.

FELONY CLASSIFICATION CHANGES

Classification	1997 Act 283 (TIS)	Proposed Changes for Maximum Sentences and Penalties	
	Maximum Sentence	Maximum Confinement	Maximum Supervision
Class A	Life		
Class B	60 years	40 years	20 years
Class BC	30 years		
Class C	15 years	25 years	15 years
Class D	10 years	15 years	10 years
Class E	5 years	10 years	5 years
Class F		7½ years	5 years
Class G		5 years	5 years
Class H		3 years	3 years
Class I		1½ years	2 years

Sentencing Commission

AB3 created an appropriation under s. 20.505 (4) (dr) for the Sentencing Commission and provided \$140,000 GPR to fund director and deputy director positions.

AB 465 also created an appropriation under s. 20.505 (4) (dr) for the Sentencing Commission and provided 6.0 FTE GPR and \$415,000 GPR in the first year, \$380,000 GPR in the second year and projected annual costs of \$400,000 GPR for each of the remaining four years of the commission.

Recommendation: AB3.

Medical and Elderly Parole

AB3 created a procedure that would allow sentence modification in the following situations:

- Inmates 65 or older who have served at least 5 years of confinement under a bifurcated sentence
- Inmates 60 or older who have served at least 10 years of confinement under a bifurcated sentence
- Inmates who have a terminal condition and are expected to live no more than 6 months

The inmate would file a petition with the prison's program review committee, which may then refer the petition to the sentencing court if it finds that the public interest would be served by modification. If the court decides that the public interest would be served by such a modification, the court must modify the sentence by reducing the term of confinement and increasing the term of extended supervision so that the total length of the bifurcated sentence does not change.

The Governor's budget bill allowed the secretary of the Department of Corrections to release an inmate, other than one sentenced to life imprisonment, if the inmate is seriously or terminally ill. Release could be granted so long as the secretary determined that the release would not pose a risk of harm to any person, and the inmate's health care costs would likely be paid by a state or federal medical program or by the inmate. The bill also required the Department of Corrections to promulgate rules regarding eligibility for this conditional medical parole or extended supervision program regarding criteria for revoking the parole of extended supervision.

Recommendation: AB3.

Bifurcated misdemeanors

A bifurcated sentence misdemeanor is one for which, as a result of the application of penalty enhancers, a person may be sentenced to prison, as opposed to jail.

AB3 treats bifurcated sentence misdemeanors like other misdemeanors for determining the maximum term for commitment to DHFS if found not guilty by reason of mental disease or defect and the maximum period of probation. The Governor's budget bill treated them more like felonies in those contexts, which lengthened the maximum commitment and probation periods.

AB3 does not specify that a person sentenced to prison for a bifurcated sentence misdemeanor is not eligible for parole. The Governor's budget bill did.

Recommendation: AB3.

Property Crimes

Proposed by CPSC		Proposed by AB3		Budget as passed and signed	
Under \$2,000	Class A misdemeanor	Under \$1,000	Class A misdemeanor	Under \$2,500	Class A misdemeanor
\$2,000 - \$5,000	Class I felony	\$1,000 - \$5,000	Class I felony	Over \$2,500	Class C (Class G under proposed classification expansion)
\$5,000 - \$10,000	Class H felony	\$5,000 - \$10,000	Class H felony		
Over \$10,000	Class G felony	Over \$10,000	Class G felony		

Recommendation: AB3.