

2001 DRAFTING REQUEST

Bill

Received: 01/07/2001

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 7-0370

By/Representing: Statz

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Alt. Drafters:

Subject: Criminal Law - sentencing

Extra Copies: rlr

Pre Topic:

DOA:.....Statz -

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 01/09/2001	12 Wlj 2/6	2/1	2/7			State
/1			DS marbykr 01/09/2001	Self	lrb_docadmin 01/10/2001		

FE Sent For:

<END>

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/?	mdsida 01/09/2001			_____			State
/1			martykr 01/09/2001	_____	lrb docadmin 01/10/2001		State
/2	nelsorp1 02/06/2001	wjackson 02/06/2001	pgreensl 02/07/2001	_____	gretskl 02/07/2001		

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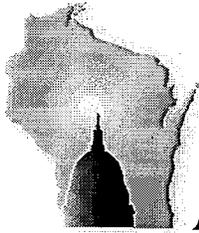
See Attached

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FE Sent For:

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**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

**TOMMY G. THOMPSON**  
GOVERNOR

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SECRETARY

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**Date:** January 7, 2001

**To:** Steve Miller, LRB

**From:** Andrew J. Statz, DOA 

**Subject:** Budget draft request relating to refinements and clarifications to  
Truth in Sentencing

I am requesting a specific draft be converted to a budget draft for inclusion with the 2001-03 biennial budget bill.

Unless subsequent changes have been made, the draft will incorporate the provisions outlined in LRB draft #0041/P4. The draft addresses the revocation of extended supervision, sentences for criminal attempts and certain misdemeanants, length of probation, and the length of confinement for persons found not guilty by reason of mental disease or mental defect, concurrent and consecutive sentences, and providing penalties.

If possible, please inform me if amendments are requested by the bill's original requestors, Judge Michael Brennan and Ladd Wiley of the Governor's Office.

Please contact me at 267-0370 or [andrew.statz@doa.state.wi.us](mailto:andrew.statz@doa.state.wi.us) if you have any questions. Thank you.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1855/?dn

MGD:.....

January 9, 2001

*Handwritten signature/initials*  
C.  
js

Andrew:

There is only one difference between this bill and LRB-0041/P4. This bill includes language in s. 971.17 (1) <sup>/</sup>(b) regarding penalty enhancement statutes that was inadvertently omitted in LRB-0041/P4.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

D - Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

BUDGET

Soon

DO NOT GEN

1 AN ACT to renumber and amend 302.11 (7) (a), 302.113 (9) (a), 302.114 (9) (a),  
2 971.17 (1), 973.01 (2) (b) 6, and 973.09 (2) (a) 2.; to consolidate, renumber  
3 and amend 973.09 (2) (intro.) and (a) 1.; to amend 301.035 (2), 301.035 (4),  
4 302.045 (3), 302.11 (1z), 302.11 (3), 302.11 (7) (b), 302.11 (7) (d), 302.113 (4),  
5 302.113 (9) (b), 302.113 (9) (c), 302.114 (4), 302.114 (9) (b), 302.114 (9) (bm),  
6 304.11 (3), 908.08 (1), 967.04 (9), 972.15 (2c), 973.01 (1), 973.01 (2) (intro.),  
7 973.01 (2) (a), 973.01 (2) (b) (intro.), 973.01 (2) (d), 973.01 (6), 973.09 (1) (a),  
8 973.09 (2) (b) 1., 973.09 (2) (b) 2. and 973.155 (1) (b); and to create 302.11 (7)  
9 (ag), 302.11 (7) (e), 302.113 (8m), 302.113 (9) (ag), 302.113 (9) (d), 302.113 (9) (e),  
10 302.113 (9) (f), 302.113 (9) (g), 302.114 (8m), 302.114 (9) (ag), 302.114 (9) (d),  
11 302.114 (9) (e), 302.114 (9) (f), 939.32 (1) (title), 939.32 (1m), 939.32 (2) (title),  
12 939.32 (3) (title), 971.17 (1) (b), 971.17 (1) (d), 973.01 (2) (b) 6. a. and b., 973.09  
13 (2) (ag), 973.09 (2) (am) (title), 973.09 (2) (b) (title) and 973.15 (2m) of the  
14 statutes; relating to: ~~revocation of extended supervision, sentences for~~  
15 ~~criminal attempts and certain misdemeanants, length of probation, the length~~

the budget

Head: Correctional system  
subhead: Adult correctional system

1 of confinement for persons found not guilty by reason of mental disease or  
2 mental defect, concurrent and consecutive sentences, and providing penalties.

**Analysis by the Legislative Reference Bureau**

**The structure of felony sentences under current law**

Current law sets maximum terms of imprisonment for all crimes. It also specifies how a term of imprisonment is structured. Under current law, if a person committing a felony before December 31, 1999, is sentenced to prison for a term of years, the person receives an indeterminate sentence, which typically consists of a term of confinement followed by parole. The person's term of confinement is not fixed when the sentence is imposed. He or she may be released on parole after serving as little as one-fourth of the sentence, as much as two-thirds of it (or more, if the crime for which the person was sentenced is classified as a serious felony), or some amount in between.

Current law provides a separate system for prison sentences for crimes committed on or after December 31, 1999. If a court chooses to sentence a felony offender to imprisonment in a state prison (other than through a life sentence) for a felony committed on or after December 31, 1999, the court must do so by imposing a bifurcated sentence. For the first part of the bifurcated sentence, the court sentences the person to a fixed term of confinement in prison. The minimum term of confinement is one year. The maximum term of confinement under a bifurcated sentence for felonies classified in the criminal code ranges from two to 40 years. If the person is being sentenced to prison for an unclassified felony, the term of confinement in prison portion of the sentence may not exceed 75% of the total length of the bifurcated sentence.

An offender is not eligible for parole under a bifurcated sentence. Instead, after serving the term of confinement portion of the bifurcated sentence, he or she serves a fixed term of ~~community-based~~ extended supervision as the second part of the bifurcated sentence.

**Revocation of extended supervision**

Under current law, if a person violates a requirement of parole or ~~ES~~, the department of corrections ~~DOC~~ may return the person to prison. Current law also permits DOC to take a person into custody if it alleges that the person has violated a condition or rule relating to parole. This bill specifies that DOC may also take a person under ~~ES~~ into custody if it alleges that the person has violated a condition or rule relating to ~~ES~~. In addition, the bill specifies how to calculate the amount of time remaining on a bifurcated sentence, for purposes of determining the maximum amount of time for which a person may be returned to prison after a violation of ~~ES~~ and the length of the term of ~~ES~~ that the person must serve thereafter.

extended supervision

**Concurrent and consecutive sentences**

Under current law, a court may order any sentence to be served concurrent with or consecutive to any other sentence imposed at the same time or previously. This

Head: Crimes  
subhead: Criminal sentences.

*extended  
supervision*

bill specifies how the person will serve the periods of confinement and the periods of ~~ES~~ and parole under the sentences as a result of the concurrent or consecutive nature of the sentences under the following circumstances: 1) when the court requires a sentence under which the person may be placed on ~~ES~~ (a "determinate sentence") to be served concurrent with or consecutive to another determinate sentence; 2) when the court requires a determinate sentence to be served concurrent with or consecutive to an indeterminate sentence; or 3) when the court requires an indeterminate sentence to be served concurrent with or consecutive to a determinate sentence. The bill also requires that a person sentenced to consecutive indeterminate and determinate sentences serve the term of ~~ES~~ under the determinate sentence before serving the period of parole under the indeterminate sentence, regardless of the order in which the crimes were committed or the sentences imposed.

### ***Penalties for criminal attempts***

Current law specifies that the maximum term of imprisonment for an attempt to commit a felony (other than certain felonies having separate penalties for attempts) is one-half of the maximum term of imprisonment for the completed crime. This bill specifies that the maximum term of confinement under a bifurcated sentence imposed for an attempt to commit a classified felony is one-half of the maximum term of confinement for the completed crime. The bill also specifies that the maximum term of confinement under a bifurcated sentence imposed for an attempt to commit an unclassified felony is 75% of the maximum term of imprisonment for the attempt.

### ***Other changes***

1. This bill specifies that, if a misdemeanor offender may be sentenced to prison because of the application of one or more sentence enhancers and the court decides to sentence the person to prison, the court must impose a bifurcated sentence. In sentencing a person to prison in such a case, the term of confinement in prison portion of the sentence may not constitute more than 75% of the bifurcated sentence.

2. Under current law, the maximum term of probation for a misdemeanor is two years, and the maximum term of probation for a felony is the maximum term of imprisonment for the crime or three years, whichever is greater. Under this bill, the maximum term of probation for a felony or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement in prison for the crime or three years, whichever is greater.

3. Under current law, if a person is found not guilty of a crime by reason of mental disease or mental defect and the crime is not punishable by life imprisonment, the maximum term for which the person may be committed to the department of health and family services is two-thirds of the maximum term of imprisonment for the crime. Under this bill, the maximum term of commitment for a felony other than one punishable by life imprisonment or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement that could be imposed on a person convicted of the crime.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 301.035 (2) of the statutes is amended to read:

2           301.035 (2) Assign hearing examiners from the division to preside over  
3 hearings under ss. 302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10 and 975.10  
4 (2) and ch. 304.

5           **SECTION 2.** 301.035 (4) of the statutes is amended to read:

6           301.035 (4) Supervise employes in the conduct of the activities of the division  
7 and be the administrative reviewing authority for decisions of the division under ss.  
8 302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10, 973.155 (2) and 975.10 (2) and  
9 ch. 304.

10          **SECTION 3.** 302.045 (3) of the statutes is amended to read:

11          302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department  
12 determines that an inmate serving a sentence other than one imposed under s.  
13 973.01 has successfully completed the challenge incarceration program, the parole  
14 commission shall parole the inmate for that sentence under s. 304.06, regardless of  
15 the time the inmate has served, ~~unless the person is serving a sentence imposed~~  
16 ~~under s. 973.01~~. When the parole commission grants parole under this subsection,  
17 it must require the parolee to participate in an intensive supervision program for  
18 drug abusers as a condition of parole.

19          **SECTION 4.** 302.11 (1z) of the statutes is amended to read:

20          302.11 (1z) An inmate who is sentenced to a term of confinement in prison  
21 under s. 973.01 for a felony that is committed on or after December 31, 1999, or a

1 misdemeanor committed on or after the effective date of this subsection .... [revisor  
2 inserts date], is not entitled under this section to mandatory release on parole under  
3 this section that sentence.

4 **SECTION 5.** 302.11 (3) of the statutes is amended to read:

5 302.11 (3) All consecutive sentences imposed for crimes committed before  
6 December 31, 1999, shall be computed as one continuous sentence.

7 **SECTION 6.** 302.11 (7) (a) of the statutes is renumbered 302.11 (7) (am) and  
8 amended to read:

9 302.11 (7) (am) ~~The division of hearings and appeals in the department of~~  
10 ~~administration, upon proper notice and hearing, or the department of corrections, if~~  
11 ~~the parolee waives a hearing, reviewing authority~~ may return a parolee released  
12 under sub. (1) or (1g) (b) or s. 304.02 or 304.06 (1) to prison for a period up to the  
13 remainder of the sentence for a violation of the conditions of parole. The remainder  
14 of the sentence is the entire sentence, less time served in custody prior to parole. The  
15 revocation order shall provide the parolee with credit in accordance with ss. 304.072  
16 and 973.155.

17 **SECTION 7.** 302.11 (7) (ag) of the statutes is created to read:

18 302.11 (7) (ag) In this subsection “reviewing authority” means the division of  
19 hearings and appeals in the department of administration, upon proper notice and  
20 hearing, or the department of corrections, if the parolee waives a hearing.

21 **SECTION 8.** 302.11 (7) (b) of the statutes is amended to read:

22 302.11 (7) (b) A parolee returned to prison for violation of the conditions of  
23 parole shall be incarcerated for the entire period of time determined by the  
24 ~~department of corrections in the case of a waiver or the division of hearings and~~  
25 ~~appeals in the department of administration in the case of a hearing under par. (a),~~

1 reviewing authority unless paroled earlier under par. (c). The parolee is not subject  
2 to mandatory release under sub. (1) or presumptive mandatory release under sub.  
3 (1g). The period of time determined under par. ~~(a)~~ (am) may be extended in  
4 accordance with subs. (1q) and (2).

5 **SECTION 9.** 302.11 (7) (d) of the statutes is amended to read:

6 302.11 (7) (d) A parolee who is subsequently released either after service of the  
7 period of time determined by the ~~department of corrections in the case of a waiver~~  
8 ~~or the division of hearings and appeals in the department of administration in the~~  
9 ~~case of a hearing under par. (a)~~ reviewing authority or by a grant of parole under par.  
10 (c) is subject to all conditions and rules of parole until expiration of sentence or  
11 discharge by the department.

12 **SECTION 10.** 302.11 (7) (e) of the statutes is created to read:

13 302.11 (7) (e) A reviewing authority may consolidate proceedings before it  
14 under par. (am) with other proceedings before that reviewing authority under par.  
15 (am) or s. 302.113 (9) (am) or 302.114 (9) (am) if all of the proceedings relate to the  
16 parole or extended supervision of the same person.

17 **SECTION 11.** 302.113 (4) of the statutes is amended to read:

18 302.113 (4) All consecutive sentences imposed for crimes committed on or after  
19 December 31, 1999, shall be computed as one continuous sentence. The person shall  
20 serve any term of extended supervision after serving all terms of confinement in  
21 prison.

22 **SECTION 12.** 302.113 (8m) of the statutes is created to read:

23 302.113 (8m) Every person released to extended supervision under this section  
24 remains in the legal custody of the department. If the department alleges that any  
25 condition or rule of extended supervision has been violated by the person, the

1 department may take physical custody of the person for the investigation of the  
2 alleged violation.

3 **SECTION 13.** 302.113 (9) (a) of the statutes is renumbered 302.113 (9) (am) and  
4 amended to read:

5 302.113 (9) (am) If a person released to extended supervision under this section  
6 violates a condition of extended supervision, ~~the division of hearings and appeals in~~  
7 ~~the department of administration, upon proper notice and hearing, or the~~  
8 ~~department of corrections, if the person on extended supervision waives a hearing,~~  
9 reviewing authority may revoke the person's extended supervision of the person and  
10 return the person to prison. If, Upon revocation, the person is returned to prison,  
11 he or she shall be returned to prison for any specified period of time that does not  
12 exceed the time remaining on the bifurcated sentence. The time remaining on the  
13 bifurcated sentence is the total length of the bifurcated sentence, less time served by  
14 the person in custody confinement under the sentence before release to extended  
15 supervision under sub. (2) and less all time served in confinement for previous  
16 revocations of extended supervision under the sentence. The revocation order shall  
17 provide the person ~~on~~ whose extended supervision is revoked with credit in  
18 accordance with ss. 304.072 and 973.155.

19 **SECTION 14.** 302.113 (9) (ag) of the statutes is created to read:

20 302.113 (9) (ag) In this subsection "reviewing authority" means the division of  
21 hearings and appeals in the department of administration, upon proper notice and  
22 hearing, or the department of corrections, if the person on extended supervision  
23 waives a hearing.

24 **SECTION 15.** 302.113 (9) (b) of the statutes is amended to read:

1           302.113 (9) (b) A person who is returned to prison after revocation of extended  
2 supervision shall be incarcerated for the entire period of time specified by the  
3 ~~department of corrections in the case of a waiver or by the division of hearings and~~  
4 ~~appeals in the department of administration in the case of a hearing under par. (a)~~  
5 ~~reviewing authority.~~ The period of time specified under par. (a) (am) may be extended  
6 in accordance with sub. (3). If a person is returned to prison under par. (am) for a  
7 period of time that is less than the time remaining on the bifurcated sentence, the  
8 person shall be released to extended supervision after he or she has served the period  
9 of time specified under par. (am) and any extensions imposed under sub. (3).

10           **SECTION 16.** 302.113 (9) (c) of the statutes is amended to read:

11           302.113 (9) (c) A person who is subsequently released to extended supervision  
12 after service of the period of time specified by the ~~department of corrections in the~~  
13 ~~case of a waiver or by the division of hearings and appeals in the department of~~  
14 ~~administration in the case of a hearing under par. (a) reviewing authority~~ is subject  
15 to all conditions and rules under sub. (7) until the expiration of the ~~term of remaining~~  
16 extended supervision portion of the bifurcated sentence. The remaining extended  
17 supervision portion of the bifurcated sentence is the total length of the bifurcated  
18 sentence, less the time served by the person in confinement under the bifurcated  
19 sentence before release to extended supervision under sub. (2) and less all time  
20 served in confinement for any revocation of extended supervision under the  
21 bifurcated sentence.

22           **SECTION 17.** 302.113 (9) (d) of the statutes is created to read:

23           302.113 (9) (d) When determining under pars. (am) and (c) the amount of time  
24 a person has served in confinement before release to extended supervision or the  
25 amount of time a person has served in confinement for a revocation of extended

1 supervision, the reviewing authority shall include any extensions imposed under  
2 sub. (3).

3 **SECTION 18.** 302.113 (9) (e) of the statutes is created to read:

4 302.113 (9) (e) If a hearing is to be held under par. (am) before the division of  
5 hearings and appeals in the department of administration, the hearing examiner  
6 may order the taking and allow the use of a videotaped deposition under s. 967.04  
7 (7) to (10).

8 **SECTION 19.** 302.113 (9) (f) of the statutes is created to read:

9 302.113 (9) (f) A reviewing authority may consolidate proceedings before it  
10 under par. (am) with other proceedings before that reviewing authority under par.  
11 (am) or s. 302.11 (7) (am) or 302.114 (9) (am) if all of the proceedings relate to the  
12 parole or extended supervision of the same person.

13 **SECTION 20.** 302.113 (9) (g) of the statutes is created to read:

14 302.113 (9) (g) If there is a hearing under par. (am) before the division of  
15 hearings and appeals in the department of administration, the person on extended  
16 supervision may seek review of a decision to revoke extended supervision and the  
17 department of corrections may seek review of a decision to not revoke extended  
18 supervision. Review of a decision under this paragraph may be sought only by an  
19 action for certiorari.

20 **SECTION 21.** 302.114 (4) of the statutes is amended to read:

21 302.114 (4) All consecutive sentences imposed for crimes committed on or after  
22 December 31, 1999, shall be computed as one continuous sentence. An inmate  
23 subject to this section shall serve any term of extended supervision after serving all  
24 terms of confinement in prison.

25 **SECTION 22.** 302.114 (8m) of the statutes is created to read:

1           302.114 (8m) Every person released to extended supervision under this section  
2 remains in the legal custody of the department. If the department alleges that any  
3 condition or rule of extended supervision has been violated by the person, the  
4 department may take physical custody of the person for the investigation of the  
5 alleged violation.

6           **SECTION 23.** 302.114 (9) (a) of the statutes is renumbered 302.114 (9) (am) and  
7 is amended to read:

8           302.114 (9) (am) If a person released to extended supervision under this section  
9 violates a condition of extended supervision, ~~the division of hearings and appeals in~~  
10 ~~the department of administration, upon proper notice and hearing, or the~~  
11 ~~department of corrections, if the person on extended supervision waives a hearing,~~  
12 reviewing authority may revoke the person's extended supervision ~~of the person and~~  
13 ~~return the person to prison. If. Upon revocation,~~ the person is returned to prison,  
14 he or she shall be returned to prison for a specified period of time, as provided under  
15 par. (b).

16           **SECTION 24.** 302.114 (9) (ag) of the statutes is created to read:

17           302.114 (9) (ag) In this subsection "reviewing authority" has the meaning given  
18 in s. 302.113 (9) (ag).

19           **SECTION 25.** 302.114 (9) (b) of the statutes is amended to read:

20           302.114 (9) (b) If a person is returned to prison under par. (a) ~~(a)~~ (am) after  
21 revocation of extended supervision, ~~the department of corrections in the case of a~~  
22 ~~waiver or the division of hearings and appeals in the department of administration~~  
23 ~~in the case of a hearing under par. (a)~~ reviewing authority shall specify a period of  
24 time for which the person shall be incarcerated before being eligible for release to

1 extended supervision. The period of time specified under this paragraph may not be  
2 less than 5 years and may be extended in accordance with sub. (3).

3 **SECTION 26.** 302.114 (9) (bm) of the statutes is amended to read:

4 302.114 (9) (bm) A person who is returned to prison under par. (a) (am) after  
5 revocation of extended supervision may, upon petition to the sentencing court, be  
6 released to extended supervision after he or she has served the entire period of time  
7 specified in par. (b), including any periods of extension imposed under sub. (3). A  
8 person may not file a petition under this paragraph earlier than 90 days before the  
9 date on which he or she is eligible to be released to extended supervision. If a person  
10 files a petition for release to extended supervision under this paragraph at any time  
11 earlier than 90 days before the date on which he or she is eligible to be released to  
12 extended supervision, the court shall deny the petition without a hearing. The  
13 procedures specified in sub. (5) (am) to (f) apply to a petition filed under this  
14 paragraph.

15 **SECTION 27.** 302.114 (9) (d) of the statutes is created to read:

16 302.114 (9) (d) If a hearing is to be held under par. (am) before the division of  
17 hearings and appeals in the department of administration, the hearing examiner  
18 may order the taking and allow the use of a videotaped deposition under s. 967.04  
19 (7) to (10).

20 **SECTION 28.** 302.114 (9) (e) of the statutes is created to read:

21 302.114 (9) (e) A reviewing authority may consolidate proceedings before it  
22 under par. (am) with other proceedings before that reviewing authority under par.  
23 (am) or s. 302.11 (7) (am) or 302.113 (9) (am) if all of the proceedings relate to the  
24 parole or extended supervision of the same person.

25 **SECTION 29.** 302.114 (9) (f) of the statutes is created to read:

1           302.114 (9) (f) If there is a hearing under par. (am) before the division of  
2 hearings and appeals in the department of administration, the person on extended  
3 supervision may seek review of a decision to revoke extended supervision and the  
4 department of corrections may seek review of a decision to not revoke extended  
5 supervision. Review of a decision under this paragraph may be sought only by an  
6 action for certiorari.

7           **SECTION 30.** 304.11 (3) of the statutes is amended to read:

8           304.11 (3) If upon inquiry it further appears to the governor that the convicted  
9 person has violated or failed to comply with any of those conditions, the governor may  
10 issue his or her warrant remanding the person to the institution from which  
11 discharged, and the person shall be confined and treated as though no pardon had  
12 been granted, except that the person loses any applicable good time which he or she  
13 had earned. If the person is returned to prison, the person is subject to the same  
14 limitations as a revoked parolee under s. 302.11 (7). The department shall determine  
15 the period of incarceration under s. 302.11 (7) ~~(a)~~ (am). If the governor determines  
16 the person has not violated or failed to comply with the conditions, the person shall  
17 be discharged subject to the conditional pardon.

18           **SECTION 31.** 908.08 (1) of the statutes is amended to read:

19           908.08 (1) In any criminal trial or hearing, juvenile fact-finding hearing under  
20 s. 48.31 or 938.31 or revocation hearing under s. 302.113 (9) (am), 302.114 (9) (am),  
21 304.06 (3), or 973.10 (2), the court or hearing examiner may admit into evidence the  
22 videotaped oral statement of a child who is available to testify, as provided in this  
23 section.

24           **SECTION 32.** 939.32 (1) (title) of the statutes is created to read:

25           939.32 (1) (title) **GENERALLY.**

1           **SECTION 33.** 939.32 (1m) of the statutes is created to read:

2           **939.32 (1m) BIFURCATED SENTENCES.** (a) Subject to s. 973.01 (2) (d), if the court  
3 imposes a bifurcated sentence under s. 973.01 (1) for an attempt to commit a crime  
4 that is punishable under sub. (1) (intro.), the following requirements apply:

5           1. If the completed crime is a classified felony, the maximum term of  
6 confinement in prison is one-half of the maximum term of confinement in prison for  
7 the classified felony.

8           2. If the completed crime is not a classified felony, the maximum term of  
9 confinement is 75% of the maximum term of imprisonment under sub. (1) (intro.) for  
10 an attempt to commit the crime.

11           (b) Subject to s. 973.01 (2) (d), the maximum term of confinement in prison  
12 specified under par. (a) may be increased under s. 939.62 (1) or 961.48. If the  
13 maximum term of confinement in prison specified in par. (a) is increased under this  
14 paragraph, the maximum term of imprisonment under sub. (1) is increased by the  
15 same amount.

16           **SECTION 34.** 939.32 (2) (title) of the statutes is created to read:

17           **939.32 (2) (title) MISDEMEANOR COMPUTER CRIMES.**

18           **SECTION 35.** 939.32 (3) (title) of the statutes is created to read:

19           **939.32 (3) (title) REQUIREMENTS.**

20           **SECTION 36.** 967.04 (9) of the statutes is amended to read:

21           **967.04 (9)** In any criminal prosecution or juvenile fact-finding hearing under  
22 s. 48.31 or 938.31, the court may admit into evidence a videotaped deposition taken  
23 under subs. (7) and (8) without an additional hearing under s. 908.08. In any  
24 proceeding under s. 302.113 (9) (am), 302.114 (9) (am), 304.06 (3), or 973.10 (2), the  
25 hearing examiner may order and preside at the taking of a videotaped deposition

1 using the procedure provided in subs. (7) and (8) and may admit the videotaped  
2 deposition into evidence without an additional hearing under s. 908.08.

3 **SECTION 37.** 971.17 (1) of the statutes is renumbered 971.17 (1) (a) and  
4 amended to read:

5 971.17 (1) (a) Felonies committed before the effective date of this paragraph ....  
6 [revisor inserts date]. ~~When~~ Except as provided in par. (c), when a defendant is found  
7 not guilty by reason of mental disease or mental defect of a felony committed before  
8 the effective date of this paragraph .... [revisor inserts date], the court shall commit  
9 the person to the department of health and family services for a specified period not  
10 exceeding two-thirds of the maximum term of imprisonment that could be imposed  
11 ~~under s. 973.15 (2) (a) against an offender convicted of the same crime or crimes~~  
12 felony, including imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m),  
13 ~~939.62, 939.621, 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b)~~  
14 ~~and 961.48 and other~~ any applicable penalty enhancement statutes, as applicable,  
15 subject to the credit provisions of s. 973.155.

16 (c) Felonies punishable by life imprisonment. ~~If the maximum term of~~  
17 ~~imprisonment is~~ a defendant is found not guilty by reason of mental disease or  
18 mental defect of a felony that is punishable by life imprisonment, the commitment  
19 period specified by the court may be life, subject to termination under sub. (5).

20 **SECTION 38.** 971.17 (1) (b) of the statutes is created to read:

21 971.17 (1) (b) Crimes committed on or after the effective date of this paragraph  
22 .... [revisor inserts date] for which a bifurcated sentence may be imposed. When a  
23 defendant is found not guilty by reason of mental disease or mental defect of a crime  
24 committed on or after the effective date of this paragraph .... [revisor inserts date],  
25 and the crime is one for which a court may impose a bifurcated sentence under s.

*W. J. ...  
1/16/02*

1 973.01, the court shall commit the person to the department of health and family  
2 services for a specified period not exceeding the maximum term of confinement in  
3 prison that could be imposed on an offender convicted of the same crime, subject to  
4 the credit provisions of s. 973.155.

5 SECTION 39. 971.17 (1) (d) of the statutes is created to read:

*including ~~any~~  
imprisonment authorized  
by any applicable penalty  
enhancement statutes,*

6 971.17 (1) (d) *Misdemeanors for which a bifurcated sentence may not be*  
7 *imposed.* When a defendant is found not guilty by reason of mental disease or mental  
8 defect of one of the following misdemeanors, the court shall commit the person to the  
9 department of health and family services for a specified period not exceeding  
10 two-thirds of the maximum term of imprisonment that could be imposed against an  
11 offender convicted of the same misdemeanor, including imprisonment authorized by  
12 any applicable penalty enhancement statutes, subject to the credit provisions of s.  
13 973.155:

14 1. A misdemeanor committed before the effective date of this subdivision ....  
15 [revisor inserts date].

16 2. A misdemeanor committed on or after the effective date of this subdivision  
17 .... [revisor inserts date], for which a court may not impose a bifurcated sentence  
18 under s. 973.01.

19 SECTION 40. 972.15 (2c) of the statutes is amended to read:

20 972.15 (2c) If the defendant is subject to being sentenced under s. 973.01 and  
21 he or she satisfies the criteria under s. 302.045 (2) (b) and (c), the person preparing  
22 the presentence investigation report shall include in the report a recommendation  
23 as to whether the defendant should be eligible for the challenge incarceration  
24 program under s. 302.045.

25 SECTION 41. 973.01 (1) of the statutes is amended to read:

1           973.01 (1) BIFURCATED SENTENCE REQUIRED. Except as provided in sub. (3),  
2 whenever a court sentences a person to imprisonment in the Wisconsin state prisons  
3 for a felony committed on or after December 31, 1999, or a misdemeanor committed  
4 on or after the effective date of this subsection .... [revisor inserts date], the court  
5 shall impose a bifurcated sentence that consists of a term of confinement in prison  
6 followed by a term of extended supervision under s. 302.113.

7           **SECTION 42.** 973.01 (2) (intro.) of the statutes is amended to read:

8           973.01 (2) STRUCTURE OF BIFURCATED SENTENCES. (intro.) ~~The court shall ensure~~  
9 ~~that~~ An order imposing a bifurcated sentence imposed under sub. (1) ~~complies shall~~  
10 comply with all of the following:

11           **SECTION 43.** 973.01 (2) (a) of the statutes is amended to read:

12           973.01 (2) (a) *Total length of bifurcated sentence.* Except as provided in par. (c),  
13 the total length of the bifurcated sentence may not exceed the maximum period of  
14 imprisonment for the felony crime.

15           **SECTION 44.** 973.01 (2) (b) (intro.) of the statutes is amended to read:

16           973.01 (2) (b) *Imprisonment Confinement portion of bifurcated sentence.*  
17 (intro.) The portion of the bifurcated sentence that imposes a term of confinement  
18 in prison may not be less than one year, subject to any minimum sentence prescribed  
19 for the felony crime, and, except as provided in par. (c), may not exceed is subject to  
20 whichever of the following limits is applicable:

21           **SECTION 45.** 973.01 (2) (b) 6. of the statutes is renumbered 973.01 (2) (b) 6.  
22 (intro.) and amended to read:

23           973.01 (2) (b) 6. (intro.) For any felony crime other than a ~~felony specified in~~  
24 ~~subds. 1. to 5.~~ one of the following, the term of confinement in prison may not exceed  
25 75% of the total length of the bifurcated sentence-:

1           **SECTION 46.** 973.01 (2) (b) 6. a. and b. of the statutes are created to read:

2           973.01 (2) (b) 6. a. A felony specified in subds. 1. to 5.

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

5           **SECTION 47.** 973.01 (2) (d) of the statutes is amended to read:

6           973.01 (2) (d) *Minimum term of extended supervision.* The term of extended  
7 supervision ~~that follows the term of confinement in prison~~ may not be less than 25%  
8 of the length of the term of confinement in prison imposed under par. (b).

9           **SECTION 48.** 973.01 (6) of the statutes is amended to read:

10          973.01 (6) NO PAROLE. A person serving a bifurcated sentence imposed under  
11 sub. (1) is not eligible for release on parole under that sentence.

12          **SECTION 49.** 973.09 (1) (a) of the statutes is amended to read:

13          973.09 (1) (a) Except as provided in par. (c) or if probation is prohibited for a  
14 particular offense by statute, if a person is convicted of a crime, the court, by order,  
15 may withhold sentence or impose sentence under s. 973.15 and stay its execution,  
16 and in either case place the person on probation to the department for a stated period,  
17 stating in the order the reasons therefor. The court may impose any conditions which  
18 appear to be reasonable and appropriate. The period of probation may be made  
19 consecutive to a sentence on a different charge, whether imposed at the same time  
20 or previously. If the court imposes an increased term of probation, as authorized  
21 under sub. (2) (a) (am) 2. or (b) 2., it shall place its reasons for doing so on the record.

22          **SECTION 50.** 973.09 (2) (intro.) and (a) 1. of the statutes are consolidated,  
23 renumbered 973.09 (2) (am) 1. and amended to read:

1           973.09 (2) (am) 1. The Subject to subd. 2., the original term of probation for a  
2 indeterminate sentence misdemeanor shall be: (a) 1. ~~Except as provided in subd. 2.,~~  
3 ~~for misdemeanors,~~ not less than 6 months nor more than 2 years.

4           **SECTION 51.** 973.09 (2) (a) 2. of the statutes is renumbered 973.09 (2) (am) 2.  
5 and amended to read:

6           973.09 (2) (am) 2. If the probationer is convicted of not less than 2 nor more than  
7 4 indeterminate sentence misdemeanors at the same time, the maximum original  
8 term of probation may be increased by one year. If the probationer is convicted of 5  
9 or more indeterminate sentence misdemeanors at the same time, the maximum  
10 original term of probation may be increased by 2 years.

11           **SECTION 52.** 973.09 (2) (ag) of the statutes is created to read:

12           973.09 (2) (ag) *Definitions.* In this subsection:

13           1. “Bifurcated sentence misdemeanor” means a misdemeanor committed on or  
14 after the effective date of this subdivision .... [revisor inserts date], for which a court  
15 may impose a bifurcated sentence under s. 973.01.

16           2. “Indeterminate sentence misdemeanor” means a misdemeanor other than  
17 a bifurcated sentence misdemeanor.

18           **SECTION 53.** 973.09 (2) (am) (title) of the statutes is created to read:

19           973.09 (2) (am) (title) *Misdemeanors for which a bifurcated sentence may not*  
20 *be imposed.*

21           **SECTION 54.** 973.09 (2) (b) (title) of the statutes is created to read:

22           973.09 (2) (b) (title) *Crimes for which a bifurcated sentence may be imposed.*

23           **SECTION 55.** 973.09 (2) (b) 1. of the statutes is amended to read:

24           973.09 (2) (b) 1. ~~Except as provided in~~ Subject to subd. 2., the original term of  
25 probation for felonies, and bifurcated sentence misdemeanors shall be not less than

1 one year nor more than either the statutory maximum term of imprisonment  
2 confinement in prison for the crime or 3 years, whichever is greater.

3 SECTION 56. 973.09 (2) (b) 2. of the statutes is amended to read:

4 973.09 (2) (b) 2. If the probationer is convicted of 2 or more crimes, including  
5 at least one felony or bifurcated sentence misdemeanor, at the same time, the  
6 maximum original term of probation may be increased by one year for each felony  
7 conviction for a felony or a bifurcated sentence misdemeanor.

8 SECTION 57. 973.15 (2m) of the statutes is created to read:

9 973.15 (2m) (a) *Definitions*. In this subsection:

10 1. “Determinate sentence” means a bifurcated sentence imposed under s.  
11 973.01 or a life sentence under which a person is eligible for release to extended  
12 supervision under s. 973.014 (1g) (a) 1. or 2.

13 2. “Indeterminate sentence” means a sentence to the Wisconsin state prisons  
14 other than one of the following:

15 a. A determinate sentence.

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

18 3. “Period of confinement in prison,” with respect to any sentence to the  
19 Wisconsin state prisons, means any time during which a person is incarcerated  
20 under that sentence, including any extensions imposed under s. 302.11 (3), 302.113  
21 (3), or 302.114 (3) and any period of confinement in prison required to be served under  
22 s. 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

23 (b) *Determinate sentences imposed to run concurrent with or consecutive to*  
24 *determinate sentences*. 1. If a court provides that a determinate sentence is to run  
25 concurrent with another determinate sentence, the person sentenced shall serve the

1 periods of confinement in prison under the sentences concurrently and the terms of  
2 extended supervision under the sentences concurrently.

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

8 (c) *Determinate sentences imposed to run concurrent with or consecutive to*  
9 *indeterminate sentences.* 1. If a court provides that a determinate sentence is to run  
10 concurrent with an indeterminate sentence, the person sentenced shall serve the  
11 period of confinement in prison under the determinate sentence concurrent with the  
12 period of confinement in prison under the indeterminate sentence and the term of  
13 extended supervision under the determinate sentence concurrent with the parole  
14 portion of the indeterminate sentence.

15 2. If a court provides that a determinate sentence is to run consecutive to an  
16 indeterminate sentence, the person sentenced shall serve the period of confinement  
17 in prison under the determinate sentence consecutive to the period of confinement  
18 in prison under the indeterminate sentence and the parole portion of the  
19 indeterminate sentence consecutive to the term of extended supervision under the  
20 determinate sentence.

21 (d) *Indeterminate sentences imposed to run concurrent with or consecutive to*  
22 *determinate sentences.* 1. If a court provides that an indeterminate sentence is to run  
23 concurrent with a determinate sentence, the person sentenced shall serve the period  
24 of confinement in prison under the indeterminate sentence concurrent with the  
25 period of confinement in prison under the determinate sentence and the parole

1 portion of the indeterminate sentence concurrent with the term of extended  
2 supervision required under the determinate sentence.

3 2. If a court provides that an indeterminate sentence is to run consecutive to  
4 a determinate sentence, the person sentenced shall serve the period of confinement  
5 in prison under the indeterminate sentence consecutive to the period of confinement  
6 in prison under the determinate sentence and the parole portion of the  
7 indeterminate sentence consecutive to the term of extended supervision under the  
8 determinate sentence.

9 (e) *Revocation in multiple sentence cases.* If a person is serving concurrent  
10 determinate sentences and extended supervision is revoked in each case, or if a  
11 person is serving a determinate sentence concurrent with an indeterminate sentence  
12 and both extended supervision and parole are revoked, the person shall concurrently  
13 serve any periods of confinement in prison required under those sentences under s.  
14 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

15 SECTION 58. 973.155 (1) (b) of the statutes is amended to read:

16 973.155 (1) (b) The categories in par. (a) include custody of the convicted  
17 offender which is in whole or in part the result of a probation, extended supervision  
18 or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10 (2) placed  
19 upon the person for the same course of conduct as that resulting in the new  
20 conviction. <sup>(3)</sup> <sup>(B)</sup> <sup>(3)</sup> 9159 <sup>(B)</sup> ; other

21 SECTION ~~58~~ <sup>59</sup>. Initial applicability,

22 (1) MISDEMEANORS FOR WHICH PRISON SENTENCES MAY BE IMPOSED; PENALTIES FOR  
23 ATTEMPTS. The treatment of sections 302.11 (1z), 939.32 (1m), 973.01 (1) and (2) (a)  
24 and (b) (intro.), and 973.09 (2) (a) 2., (ag), (am) (title), and (b) (title), 1., and 2. of the  
25 statutes, the renumbering and amendment of sections 971.17 (1) and 973.01 (2) (b)

1 6. of the statutes, the consolidation, renumbering and amendment of section 973.09  
 2 (2) (intro.) and (a) 1. of the statutes, and the creation of sections 971.17 (1) (b) and  
 3 (d) and 973.01 (2) (b) 6. a. and b. of the statutes first apply to crimes committed on  
 4 the effective date of this subsection.

5 (2) CONCURRENT AND CONSECUTIVE SENTENCES. The treatment of section 973.15  
 6 (2m) of the statutes first applies to persons sentenced for crimes committed on the  
 7 effective date of this subsection.

8 **SECTION 59. Effective dates.** This act takes effect on the day after publication,

9 ~~except as follows:~~

10 (1) MISDEMEANORS FOR WHICH PRISON SENTENCES MAY BE IMPOSED; PENALTIES FOR  
 11 ATTEMPTS. The treatment of sections 302.11 (1z), 939.32 (1m), 973.01 (1) and (2) (a)  
 12 and (b) (intro.), and 973.09 (2) (a) 2., (ag), (am) (title), and (b) (title), 1., and 2. of the  
 13 statutes, the renumbering and amendment of sections 971.17 (1) and 973.01 (2) (b)  
 14 6. of the statutes, the consolidation, renumbering and amendment of section 973.09  
 15 (2) (intro.) and (a) 1. of the statutes, the creation of sections 971.17 (1) (b) and (d) and  
 16 973.01 (2) (b) 6. a. and b. of the statutes, and SECTION 59 (1) and (2) of this act take  
 17 effect on the first day of the 7th month beginning after publication.

18 (END)

9459  
 other (B)

9359 9159

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1855/1dn  
MGD:cjs:km

January 9, 2001

Andrew:

There is only one difference between this bill and LRB-0041/P4. This bill includes language in s. 971.17 (1) (b) regarding penalty enhancement statutes that was inadvertently omitted in LRB-0041/P4.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1855/1

2

MGD:cjs:km

EWJ

D-Note

DOA:.....Statz - Truth in sentencing trailer

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

TODAY

DO NOT GEN

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**CORRECTIONAL SYSTEM**

**ADULT CORRECTIONAL SYSTEM**

***Revocation of extended supervision***

Under current law, if a person violates a requirement of parole or extended supervision, DOC may return the person to prison. Current law also permits DOC to take a person into custody if it alleges that the person has violated a condition or rule relating to parole. This bill specifies that DOC may also take a person under extended supervision into custody if it alleges that the person has violated a condition or rule relating to extended supervision. In addition, the bill specifies how to calculate the amount of time remaining on a bifurcated sentence, for purposes of determining the maximum amount of time for which a person may be returned to prison after a violation of extended supervision and the length of the term of extended supervision that the person must serve thereafter.

**CRIMES**

**CRIMINAL SENTENCES**

***The structure of felony sentences under current law***

Current law sets maximum terms of imprisonment for all crimes. It also specifies how a term of imprisonment is structured. Under current law, if a person

committing a felony before December 31, 1999, is sentenced to prison for a term of years, the person receives an indeterminate sentence, which typically consists of a term of confinement followed by parole. The person's term of confinement is not fixed when the sentence is imposed. He or she may be released on parole after serving as little as one-fourth of the sentence, as much as two-thirds of it (or more, if the crime for which the person was sentenced is classified as a serious felony), or some amount in between.

Current law provides a separate system for prison sentences for crimes committed on or after December 31, 1999. If a court chooses to sentence a felony offender to imprisonment in a state prison (other than through a life sentence) for a felony committed on or after December 31, 1999, the court must do so by imposing a bifurcated sentence. For the first part of the bifurcated sentence, the court sentences the person to a fixed term of confinement in prison. The minimum term of confinement is one year. The maximum term of confinement under a bifurcated sentence for felonies classified in the criminal code ranges from two to 40 years. If the person is being sentenced to prison for an unclassified felony, the term of confinement in prison portion of the sentence may not exceed 75% of the total length of the bifurcated sentence.

An offender is not eligible for parole under a bifurcated sentence. Instead, after serving the term of confinement portion of the bifurcated sentence, he or she serves a fixed term of extended supervision as the second part of the bifurcated sentence.

#### ***Concurrent and consecutive sentences***

Under current law, a court may order any sentence to be served concurrent with or consecutive to any other sentence imposed at the same time or previously. This bill specifies how the person will serve the periods of confinement and the periods of extended supervision and parole under the sentences as a result of the concurrent or consecutive nature of the sentences under the following circumstances: 1) when the court requires a sentence under which the person may be placed on extended supervision (a "determinate sentence") to be served concurrent with or consecutive to another determinate sentence; 2) when the court requires a determinate sentence to be served concurrent with or consecutive to an indeterminate sentence; or 3) when the court requires an indeterminate sentence to be served concurrent with or consecutive to a determinate sentence. The bill also requires that a person sentenced to consecutive indeterminate and determinate sentences serve the term of extended supervision under the determinate sentence before serving the period of parole under the indeterminate sentence, regardless of the order in which the crimes were committed or the sentences imposed.

#### ***Penalties for criminal attempts***

Current law specifies that the maximum term of imprisonment for an attempt to commit a felony (other than certain felonies having separate penalties for attempts) is one-half of the maximum term of imprisonment for the completed crime. This bill specifies that the maximum term of confinement under a bifurcated sentence imposed for an attempt to commit a classified felony is one-half of the maximum term of confinement for the completed crime. The bill also specifies that the maximum term of confinement under a bifurcated sentence imposed for an

attempt to commit an unclassified felony is 75% of the maximum term of imprisonment for the attempt.

***Other changes***

1. This bill specifies that, if a misdemeanor offender may be sentenced to prison because of the application of one or more sentence enhancers and the court decides to sentence the person to prison, the court must impose a bifurcated sentence. In sentencing a person to prison in such a case, the term of confinement in prison portion of the sentence may not constitute more than 75% of the bifurcated sentence.

2. Under current law, the maximum term of probation for a misdemeanor is two years, and the maximum term of probation for a felony is the maximum term of imprisonment for the crime or three years, whichever is greater. Under this bill, the maximum term of probation for a felony or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement in prison for the crime or three years, whichever is greater.

3. Under current law, if a person is found not guilty of a crime by reason of mental disease or mental defect and the crime is not punishable by life imprisonment, the maximum term for which the person may be committed to the department of health and family services is two-thirds of the maximum term of imprisonment for the crime. Under this bill, the maximum term of commitment for a felony other than one punishable by life imprisonment or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement that could be imposed on a person convicted of the crime.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 301.035 (2) of the statutes is amended to read:

2           301.035 (2) Assign hearing examiners from the division to preside over  
3           hearings under ss. 302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10 and 975.10  
4           (2) and ch. 304.

5           **SECTION 2.** 301.035 (4) of the statutes is amended to read:

6           301.035 (4) Supervise employes in the conduct of the activities of the division  
7           and be the administrative reviewing authority for decisions of the division under ss.  
8           302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10, 973.155 (2) and 975.10 (2) and  
9           ch. 304.

1           **SECTION 3.** 302.045 (3) of the statutes is amended to read:

2           302.045 (3) PAROLE ELICIBILITY. Except as provided in sub. (4), if the department  
3 determines that an inmate serving a sentence other than one imposed under s.  
4 973.01 has successfully completed the challenge incarceration program, the parole  
5 commission shall parole the inmate for that sentence under s. 304.06, regardless of  
6 the time the inmate has served, ~~unless the person is serving a sentence imposed~~  
7 ~~under s. 973.01.~~ When the parole commission grants parole under this subsection,  
8 it must require the parolee to participate in an intensive supervision program for  
9 drug abusers as a condition of parole.

10           **SECTION 4.** 302.11 (1z) of the statutes is amended to read:

11           302.11 (1z) An inmate who is sentenced to a term of confinement in prison  
12 under s. 973.01 for a felony that is committed on or after December 31, 1999, or a  
13 misdemeanor committed on or after the effective date of this subsection ... [revisor  
14 inserts date], is not entitled under this section to mandatory release on parole under  
15 ~~this section~~ that sentence.

16           **SECTION 5.** 302.11 (3) of the statutes is amended to read:

17           302.11 (3) All consecutive sentences imposed for crimes committed before  
18 December 31, 1999, shall be computed as one continuous sentence.

19           **SECTION 6.** 302.11 (7) (a) of the statutes is renumbered 302.11 (7) (am) and  
20 amended to read:

21           302.11 (7) (am) The ~~division of hearings and appeals in the department of~~  
22 ~~administration, upon proper notice and hearing, or the department of corrections, if~~  
23 ~~the parolee waives a hearing,~~ reviewing authority may return a parolee released  
24 under sub. (1) ~~or~~ <sup>1 or (2m)</sup> (1g) (b) ~~or~~ s. 304.02 or 304.06 (1) to prison for a period up to the  
25 remainder of the sentence for a violation of the conditions of parole. The remainder

1 of the sentence is the entire sentence, less time served in custody prior to parole. The  
2 revocation order shall provide the parolee with credit in accordance with ss. 304.072  
3 and 973.155.

4 **SECTION 7.** 302.11 (7) (ag) of the statutes is created to read:

5 302.11 (7) (ag) In this subsection "reviewing authority" means the division of  
6 hearings and appeals in the department of administration, upon proper notice and  
7 hearing, or the department of corrections, if the parolee waives a hearing.

8 **SECTION 8.** 302.11 (7) (b) of the statutes is amended to read:

9 302.11 (7) (b) A parolee returned to prison for violation of the conditions of  
10 parole shall be incarcerated for the entire period of time determined by the  
11 ~~department of corrections in the case of a waiver or the division of hearings and~~  
12 ~~appeals in the department of administration in the case of a hearing under par. (a),~~  
13 reviewing authority unless paroled earlier under par. (c). The parolee is not subject  
14 to mandatory release under sub. (1) or presumptive mandatory release under sub.  
15 (1g). The period of time determined under par. (a) ~~(a)~~ (am) may be extended in  
16 accordance with subs. (1q) and (2).

17 **SECTION 9.** 302.11 (7) (d) of the statutes is amended to read:

18 302.11 (7) (d) A parolee who is subsequently released either after service of the  
19 period of time determined by the ~~department of corrections in the case of a waiver~~  
20 ~~or the division of hearings and appeals in the department of administration in the~~  
21 ~~case of a hearing under par. (a)~~ reviewing authority or by a grant of parole under par.  
22 (c) is subject to all conditions and rules of parole until expiration of sentence or  
23 discharge by the department.

24 **SECTION 10.** 302.11 (7) (e) of the statutes is created to read:

1           302.11 (7) (e) A reviewing authority may consolidate proceedings before it  
2 under par. (am) with other proceedings before that reviewing authority under par.  
3 (am) or s. 302.113 (9) (am) or 302.114 (9) (am) if all of the proceedings relate to the  
4 parole or extended supervision of the same person.

5           **SECTION 11.** 302.113 (4) of the statutes is amended to read:

6           302.113 (4) All consecutive sentences imposed for crimes committed on or after  
7 December 31, 1999, shall be computed as one continuous sentence. The person shall  
8 serve any term of extended supervision after serving all terms of confinement in  
9 prison.

10          **SECTION 12.** 302.113 (8m) of the statutes is created to read:

11          302.113 (8m) Every person released to extended supervision under this section  
12 remains in the legal custody of the department. If the department alleges that any  
13 condition or rule of extended supervision has been violated by the person, the  
14 department may take physical custody of the person for the investigation of the  
15 alleged violation.

16          **SECTION 13.** 302.113 (9) (a) of the statutes is renumbered 302.113 (9) (am) and  
17 amended to read:

18          302.113 (9) (am) If a person released to extended supervision under this section  
19 violates a condition of extended supervision, ~~the division of hearings and appeals in~~  
20 ~~the department of administration, upon proper notice and hearing, or the~~  
21 ~~department of corrections, if the person on extended supervision waives a hearing,~~  
22 reviewing authority may revoke the person's extended supervision of the person and  
23 return the person to prison. If. Upon revocation, the person is returned to prison,  
24 ~~he or she shall be returned to prison for any specified period of time that does not~~  
25 exceed the time remaining on the bifurcated sentence. The time remaining on the

1 bifurcated sentence is the total length of the bifurcated sentence, less time served by  
2 the person in ~~eustody~~ confinement under the sentence before release to extended  
3 supervision under sub. (2) and less all time served in confinement for previous  
4 revocations of extended supervision under the sentence. The revocation order shall  
5 provide the person on whose extended supervision is revoked with credit in  
6 accordance with ss. 304.072 and 973.155.

7 **SECTION 14.** 302.113 (9) (ag) of the statutes is created to read:

8 302.113 (9) (ag) In this subsection “reviewing authority” means the division of  
9 hearings and appeals in the department of administration, upon proper notice and  
10 hearing, or the department of corrections, if the person on extended supervision  
11 waives a hearing.

12 **SECTION 15.** 302.113 (9) (b) of the statutes is amended to read:

13 302.113 (9) (b) A person who is returned to prison after revocation of extended  
14 supervision shall be incarcerated for the entire period of time specified by the  
15 ~~department of corrections in the case of a waiver or by the division of hearings and~~  
16 ~~appeals in the department of administration in the case of a hearing under par. (a)~~  
17 reviewing authority. The period of time specified under par. (a) (am) may be extended  
18 in accordance with sub. (3). If a person is returned to prison under par. (am) for a  
19 period of time that is less than the time remaining on the bifurcated sentence, the  
20 person shall be released to extended supervision after he or she has served the period  
21 of time specified under par. (am) and any extensions imposed under sub. (3).

22 **SECTION 16.** 302.113 (9) (c) of the statutes is amended to read:

23 302.113 (9) (c) A person who is subsequently released to extended supervision  
24 after service of the period of time specified by the ~~department of corrections in the~~  
25 ~~case of a waiver or by the division of hearings and appeals in the department of~~

1 ~~administration in the case of a hearing under par. (a) reviewing authority~~ is subject  
2 to all conditions and rules under sub. (7) until the expiration of the ~~term of~~ remaining  
3 extended supervision portion of the bifurcated sentence. The remaining extended  
4 supervision portion of the bifurcated sentence is the total length of the bifurcated  
5 sentence, less the time served by the person in confinement under the bifurcated  
6 sentence before release to extended supervision under sub. (2) and less all time  
7 served in confinement for any revocation of extended supervision under the  
8 bifurcated sentence.

9 **SECTION 17.** 302.113 (9) (d) of the statutes is created to read:

10 302.113 (9) (d) When determining under pars. (am) and (c) the amount of time  
11 a person has served in confinement before release to extended supervision or the  
12 amount of time a person has served in confinement for a revocation of extended  
13 supervision, the reviewing authority shall include any extensions imposed under  
14 sub. (3).

15 **SECTION 18.** 302.113 (9) (e) of the statutes is created to read:

16 302.113 (9) (e) If a hearing is to be held under par. (am) before the division of  
17 hearings and appeals in the department of administration, the hearing examiner  
18 may order the taking and allow the use of a videotaped deposition under s. 967.04  
19 (7) to (10).

20 **SECTION 19.** 302.113 (9) (f) of the statutes is created to read:

21 302.113 (9) (f) A reviewing authority may consolidate proceedings before it  
22 under par. (am) with other proceedings before that reviewing authority under par.  
23 (am) or s. 302.11 (7) (am) or 302.114 (9) (am) if all of the proceedings relate to the  
24 parole or extended supervision of the same person.

25 **SECTION 20.** 302.113 (9) (g) of the statutes is created to read:

1           302.113 (9) (g) If there is a hearing under par. (am) before the division of  
2 hearings and appeals in the department of administration, the person on extended  
3 supervision may seek review of a decision to revoke extended supervision and the  
4 department of corrections may seek review of a decision to not revoke extended  
5 supervision. Review of a decision under this paragraph may be sought only by an  
6 action for certiorari.

7           **SECTION 21.** 302.114 (4) of the statutes is amended to read:

8           302.114 (4) All consecutive sentences imposed for crimes committed on or after  
9 December 31, 1999, shall be computed as one continuous sentence. An inmate  
10 subject to this section shall serve any term of extended supervision after serving all  
11 terms of confinement in prison.

12           **SECTION 22.** 302.114 (8m) of the statutes is created to read:

13           302.114 (8m) Every person released to extended supervision under this section  
14 remains in the legal custody of the department. If the department alleges that any  
15 condition or rule of extended supervision has been violated by the person, the  
16 department may take physical custody of the person for the investigation of the  
17 alleged violation.

18           **SECTION 23.** 302.114 (9) (a) of the statutes is renumbered 302.114 (9) (am) and  
19 is amended to read:

20           302.114 (9) (am) If a person released to extended supervision under this section  
21 violates a condition of extended supervision, ~~the division of hearings and appeals in~~  
22 ~~the department of administration, upon proper notice and hearing, or the~~  
23 ~~department of corrections, if the person on extended supervision waives a hearing,~~  
24 reviewing authority may revoke the person's extended supervision of the person and  
25 return the person to prison. If. Upon revocation, the person is returned to prison,

1 he or she shall be returned to prison for a specified period of time, as provided under  
2 par. (b).

3 **SECTION 24.** 302.114 (9) (ag) of the statutes is created to read:

4 302.114 (9) (ag) In this subsection “reviewing authority” has the meaning given  
5 in s. 302.113 (9) (ag).

6 **SECTION 25.** 302.114 (9) (b) of the statutes is amended to read:

7 302.114 (9) (b) If a person is returned to prison under par. (a) (am) after  
8 revocation of extended supervision, the department of corrections in the case of a  
9 waiver or the division of hearings and appeals in the department of administration  
10 in the case of a hearing under par. (a) reviewing authority shall specify a period of  
11 time for which the person shall be incarcerated before being eligible for release to  
12 extended supervision. The period of time specified under this paragraph may not be  
13 less than 5 years and may be extended in accordance with sub. (3).

14 **SECTION 26.** 302.114 (9) (bm) of the statutes is amended to read:

15 302.114 (9) (bm) A person who is returned to prison under par. (a) (am) after  
16 revocation of extended supervision may, upon petition to the sentencing court, be  
17 released to extended supervision after he or she has served the entire period of time  
18 specified in par. (b), including any periods of extension imposed under sub. (3). A  
19 person may not file a petition under this paragraph earlier than 90 days before the  
20 date on which he or she is eligible to be released to extended supervision. If a person  
21 files a petition for release to extended supervision under this paragraph at any time  
22 earlier than 90 days before the date on which he or she is eligible to be released to  
23 extended supervision, the court shall deny the petition without a hearing. The  
24 procedures specified in sub. (5) (am) to (f) apply to a petition filed under this  
25 paragraph.

1           **SECTION 27.** 302.114 (9) (d) of the statutes is created to read:

2           302.114 (9) (d) If a hearing is to be held under par. (am) before the division of  
3 hearings and appeals in the department of administration, the hearing examiner  
4 may order the taking and allow the use of a videotaped deposition under s. 967.04  
5 (7) to (10).

6           **SECTION 28.** 302.114 (9) (e) of the statutes is created to read:

7           302.114 (9) (e) A reviewing authority may consolidate proceedings before it  
8 under par. (am) with other proceedings before that reviewing authority under par.  
9 (am) or s. 302.11 (7) (am) or 302.113 (9) (am) if all of the proceedings relate to the  
10 parole or extended supervision of the same person.

11           **SECTION 29.** 302.114 (9) (f) of the statutes is created to read:

12           302.114 (9) (f) If there is a hearing under par. (am) before the division of  
13 hearings and appeals in the department of administration, the person on extended  
14 supervision may seek review of a decision to revoke extended supervision and the  
15 department of corrections may seek review of a decision to not revoke extended  
16 supervision. Review of a decision under this paragraph may be sought only by an  
17 action for certiorari.

18           **SECTION 30.** 304.11 (3) of the statutes is amended to read:

19           304.11 (3) If upon inquiry it further appears to the governor that the convicted  
20 person has violated or failed to comply with any of those conditions, the governor may  
21 issue his or her warrant remanding the person to the institution from which  
22 discharged, and the person shall be confined and treated as though no pardon had  
23 been granted, except that the person loses any applicable good time which he or she  
24 had earned. If the person is returned to prison, the person is subject to the same  
25 limitations as a revoked parolee under s. 302.11 (7). The department shall determine

1 the period of incarceration under s. 302.11 (7) ~~(a)~~ (am). If the governor determines  
2 the person has not violated or failed to comply with the conditions, the person shall  
3 be discharged subject to the conditional pardon.

4 **SECTION 31.** 908.08 (1) of the statutes is amended to read:

5 908.08 (1) In any criminal trial or hearing, juvenile fact-finding hearing under  
6 s. 48.31 or 938.31 or revocation hearing under s. 302.113 (9) (am), 302.114 (9) (am),  
7 304.06 (3), or 973.10 (2), the court or hearing examiner may admit into evidence the  
8 videotaped oral statement of a child who is available to testify, as provided in this  
9 section.

10 **SECTION 32.** 939.32 (1) (title) of the statutes is created to read:

11 939.32 (1) (title) **GENERALLY.**

12 **SECTION 33.** 939.32 (1m) of the statutes is created to read:

13 939.32 (1m) **BIFURCATED SENTENCES.** (a) Subject to s. 973.01 (2) (d), if the court  
14 imposes a bifurcated sentence under s. 973.01 (1) for an attempt to commit a crime  
15 that is punishable under sub. (1) (intro.), the following requirements apply:

16 1. If the completed crime is a classified felony, the maximum term of  
17 confinement in prison is one-half of the maximum term of confinement in prison for  
18 the classified felony.

19 2. If the completed crime is not a classified felony, the maximum term of  
20 confinement is 75% of the maximum term of imprisonment under sub. (1) (intro.) for  
21 an attempt to commit the crime.

22 (b) Subject to s. 973.01 (2) (d), the maximum term of confinement in prison  
23 specified under par. (a) may be increased under s. 939.62 (1) or 961.48. If the  
24 maximum term of confinement in prison specified in par. (a) is increased under this

1 paragraph, the maximum term of imprisonment under sub. (1) is increased by the  
2 same amount.

3 **SECTION 34.** 939.32 (2) (title) of the statutes is created to read:

4 939.32 (2) (title) MISDEMEANOR COMPUTER CRIMES.

5 **SECTION 35.** 939.32 (3) (title) of the statutes is created to read:

6 939.32 (3) (title) REQUIREMENTS.

7 **SECTION 36.** 967.04 (9) of the statutes is amended to read:

8 967.04 (9) In any criminal prosecution or juvenile fact-finding hearing under  
9 s. 48.31 or 938.31, the court may admit into evidence a videotaped deposition taken  
10 under subs. (7) and (8) without an additional hearing under s. 908.08. In any  
11 proceeding under s. 302.113 (9) (am), 302.114 (9) (am), 304.06 (3), or 973.10 (2), the  
12 hearing examiner may order and preside at the taking of a videotaped deposition  
13 using the procedure provided in subs. (7) and (8) and may admit the videotaped  
14 deposition into evidence without an additional hearing under s. 908.08.

15 **SECTION 37.** 971.17 (1) of the statutes is renumbered 971.17 (1) (a) and  
16 amended to read:

17 971.17 (1) (a) Felonies committed before the effective date of this paragraph ....  
18 [revisor inserts date]. When Except as provided in par. (c), when a defendant is found  
19 not guilty by reason of mental disease or mental defect of a felony committed before  
20 the effective date of this paragraph ... [revisor inserts date], the court shall commit  
21 the person to the department of health and family services for a specified period not  
22 exceeding two-thirds of the maximum term of imprisonment that could be imposed  
23 under s. 973.15 (2) (a) against an offender convicted of the same crime or crimes  
24 felony, including imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m),  
25 939.62, 939.621, 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b)

1 ~~and 961.48 and other~~ any applicable penalty enhancement statutes, as applicable,  
2 subject to the credit provisions of s. 973.155.

3 (c) Felonies punishable by life imprisonment. ~~If the maximum term of~~  
4 ~~imprisonment is~~ a defendant is found not guilty by reason of mental disease or  
5 mental defect of a felony that is punishable by life imprisonment, the commitment  
6 period specified by the court may be life, subject to termination under sub. (5).

7 **SECTION 38.** 971.17 (1) (b) of the statutes is created to read:

8 971.17 (1) (b) *Crimes committed on or after the effective date of this paragraph*  
9 *.... [revisor inserts date] for which a bifurcated sentence may be imposed.* When a  
10 defendant is found not guilty by reason of mental disease or mental defect of a crime  
11 committed on or after the effective date of this paragraph .... [revisor inserts date],  
12 and the crime is one for which a court may impose a bifurcated sentence under s.  
13 973.01, the court shall commit the person to the department of health and family  
14 services for a specified period not exceeding the maximum term of confinement in  
15 prison that could be imposed on an offender convicted of the same crime, including  
16 imprisonment authorized by any applicable penalty enhancement statutes, subject  
17 to the credit provisions of s. 973.155.

18 **SECTION 39.** 971.17 (1) (d) of the statutes is created to read:

19 971.17 (1) (d) *Misdemeanors for which a bifurcated sentence may not be*  
20 *imposed.* When a defendant is found not guilty by reason of mental disease or mental  
21 defect of one of the following misdemeanors, the court shall commit the person to the  
22 department of health and family services for a specified period not exceeding  
23 two-thirds of the maximum term of imprisonment that could be imposed against an  
24 offender convicted of the same misdemeanor, including imprisonment authorized by

1 any applicable penalty enhancement statutes, subject to the credit provisions of s.  
2 973.155:

3 1. A misdemeanor committed before the effective date of this subdivision ....  
4 [revisor inserts date].

5 2. A misdemeanor committed on or after the effective date of this subdivision  
6 .... [revisor inserts date], for which a court may not impose a bifurcated sentence  
7 under s. 973.01.

8 **SECTION 40.** 972.15 (2c) of the statutes is amended to read:

9 972.15 (2c) If the defendant is subject to being sentenced under s. 973.01 and  
10 he or she satisfies the criteria under s. 302.045 (2) (b) and (c), the person preparing  
11 the presentence investigation report shall include in the report a recommendation  
12 as to whether the defendant should be eligible for the challenge incarceration  
13 program under s. 302.045.

14 **SECTION 41.** 973.01 (1) of the statutes is amended to read:

15 973.01 (1) BIFURCATED SENTENCE REQUIRED. Except as provided in sub. (3),  
16 whenever a court sentences a person to imprisonment in the Wisconsin state prisons  
17 for a felony committed on or after December 31, 1999, or a misdemeanor committed  
18 on or after the effective date of this subsection .... [revisor inserts date], the court  
19 shall impose a bifurcated sentence that consists of a term of confinement in prison  
20 followed by a term of extended supervision under s. 302.113.

21 **SECTION 42.** 973.01 (2) (intro.) of the statutes is amended to read:

22 973.01 (2) STRUCTURE OF BIFURCATED SENTENCES. (intro.) ~~The court shall ensure~~  
23 ~~that~~ An order imposing a bifurcated sentence imposed under sub. (1) complies shall  
24 comply with all of the following:

25 **SECTION 43.** 973.01 (2) (a) of the statutes is amended to read:

1           973.01 (2) (a) *Total length of bifurcated sentence.* Except as provided in par. (c),  
2 the total length of the bifurcated sentence may not exceed the maximum period of  
3 imprisonment for the felony crime.

4           **SECTION 44.** 973.01 (2) (b) (intro.) of the statutes is amended to read:

5           973.01 (2) (b) *Imprisonment Confinement portion of bifurcated sentence.*  
6 (intro.) The portion of the bifurcated sentence that imposes a term of confinement  
7 in prison may not be less than one year, subject to any minimum sentence prescribed  
8 for the felony crime, and, except as provided in par. (c), ~~may not exceed~~ is subject to  
9 whichever of the following limits is applicable:

10           **SECTION 45.** 973.01 (2) (b) 6. of the statutes is renumbered 973.01 (2) (b) 6.  
11 (intro.) and amended to read:

12           973.01 (2) (b) 6. (intro.) For any felony crime other than a ~~felony specified in~~  
13 ~~subds. 1. to 5.~~ one of the following, the term of confinement in prison may not exceed  
14 75% of the total length of the bifurcated sentence:

15           **SECTION 46.** 973.01 (2) (b) 6. a. and b. of the statutes are created to read:

16           973.01 (2) (b) 6. a. A felony specified in subds. 1. to 5.

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

19           **SECTION 47.** 973.01 (2) (d) of the statutes is amended to read:

20           973.01 (2) (d) *Minimum term of extended supervision.* The term of extended  
21 supervision ~~that follows the term of confinement in prison~~ may not be less than 25%  
22 of the length of the term of confinement in prison imposed under par. (b).

23           **SECTION 48.** 973.01 (6) of the statutes is amended to read:

24           973.01 (6) **NO PAROLE.** A person serving a bifurcated sentence imposed under  
25 sub. (1) is not eligible for release on parole under that sentence.

1           **SECTION 49.** 973.09 (1) (a) of the statutes is amended to read:

2           973.09 (1) (a) Except as provided in par. (c) or if probation is prohibited for a  
3 particular offense by statute, if a person is convicted of a crime, the court, by order,  
4 may withhold sentence or impose sentence under s. 973.15 and stay its execution,  
5 and in either case place the person on probation to the department for a stated period,  
6 stating in the order the reasons therefor. The court may impose any conditions which  
7 appear to be reasonable and appropriate. The period of probation may be made  
8 consecutive to a sentence on a different charge, whether imposed at the same time  
9 or previously. If the court imposes an increased term of probation, as authorized  
10 under sub. (2) (a) (am) 2. or (b) 2., it shall place its reasons for doing so on the record.

11           **SECTION 50.** 973.09 (2) (intro.) and (a) 1. of the statutes are consolidated,  
12 renumbered 973.09 (2) (am) 1. and amended to read:

13           973.09 (2) (am) 1. The Subject to subd. 2., the original term of probation for a  
14 indeterminate sentence misdemeanor shall be: ~~(a) 1. Except as provided in subd. 2.,~~  
15 ~~for misdemeanors,~~ not less than 6 months nor more than 2 years.

16           **SECTION 51.** 973.09 (2) (a) 2. of the statutes is renumbered 973.09 (2) (am) 2.  
17 and amended to read:

18           973.09 (2) (am) 2. If the probationer is convicted of not less than 2 nor more than  
19 4 indeterminate sentence misdemeanors at the same time, the maximum original  
20 term of probation may be increased by one year. If the probationer is convicted of 5  
21 or more indeterminate sentence misdemeanors at the same time, the maximum  
22 original term of probation may be increased by 2 years.

23           **SECTION 52.** 973.09 (2) (ag) of the statutes is created to read:

24           973.09 (2) (ag) *Definitions.* In this subsection:

1           1. “Bifurcated sentence misdemeanor” means a misdemeanor committed on or  
2 after the effective date of this subdivision .... [revisor inserts date], for which a court  
3 may impose a bifurcated sentence under s. 973.01.

4           2. “Indeterminate sentence misdemeanor” means a misdemeanor other than  
5 a bifurcated sentence misdemeanor.

6           **SECTION 53.** 973.09 (2) (am) (title) of the statutes is created to read:

7           973.09 (2) (am) (title) *Misdemeanors for which a bifurcated sentence may not*  
8 *be imposed.*

9           **SECTION 54.** 973.09 (2) (b) (title) of the statutes is created to read:

10          973.09 (2) (b) (title) *Crimes for which a bifurcated sentence may be imposed.*

11          **SECTION 55.** 973.09 (2) (b) 1. of the statutes is amended to read:

12          973.09 (2) (b) 1. Except as provided in Subd. 2., the original term of  
13 probation for felonies, and bifurcated sentence misdemeanors shall be not less than  
14 one year nor more than either the statutory maximum term of imprisonment  
15 confinement in prison for the crime or 3 years, whichever is greater.

16          **SECTION 56.** 973.09 (2) (b) 2. of the statutes is amended to read:

17          973.09 (2) (b) 2. If the probationer is convicted of 2 or more crimes, including  
18 at least one felony or bifurcated sentence misdemeanor, at the same time, the  
19 maximum original term of probation may be increased by one year for each felony  
20 conviction for a felony or a bifurcated sentence misdemeanor.

21          **SECTION 57.** 973.15 (2m) of the statutes is created to read:

22          973.15 (2m) (a) *Definitions.* In this subsection:

23          1. “Determinate sentence” means a bifurcated sentence imposed under s.  
24 973.01 or a life sentence under which a person is eligible for release to extended  
25 supervision under s. 973.014 (1g) (a) 1. or 2.

1           2. “Indeterminate sentence” means a sentence to the Wisconsin state prisons  
2 other than one of the following:

3           a. A determinate sentence.

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

6           3. “Period of confinement in prison,” with respect to any sentence to the  
7 Wisconsin state prisons, means any time during which a person is incarcerated  
8 under that sentence, including any extensions imposed under s. 302.11 (3), 302.113  
9 (3), or 302.114 (3) and any period of confinement in prison required to be served under  
10 s. 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

11           (b) *Determinate sentences imposed to run concurrent with or consecutive to*  
12 *determinate sentences.* 1. If a court provides that a determinate sentence is to run  
13 concurrent with another determinate sentence, the person sentenced shall serve the  
14 periods of confinement in prison under the sentences concurrently and the terms of  
15 extended supervision under the sentences concurrently.

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

21           (c) *Determinate sentences imposed to run concurrent with or consecutive to*  
22 *indeterminate sentences.* 1. If a court provides that a determinate sentence is to run  
23 concurrent with an indeterminate sentence, the person sentenced shall serve the  
24 period of confinement in prison under the determinate sentence concurrent with the  
25 period of confinement in prison under the indeterminate sentence and the term of

1 extended supervision under the determinate sentence concurrent with the parole  
2 portion of the indeterminate sentence.

3 2. If a court provides that a determinate sentence is to run consecutive to an  
4 indeterminate sentence, the person sentenced shall serve the period of confinement  
5 in prison under the determinate sentence consecutive to the period of confinement  
6 in prison under the indeterminate sentence and the parole portion of the  
7 indeterminate sentence consecutive to the term of extended supervision under the  
8 determinate sentence.

9 (d) *Indeterminate sentences imposed to run concurrent with or consecutive to*  
10 *determinate sentences.* 1. If a court provides that an indeterminate sentence is to run  
11 concurrent with a determinate sentence, the person sentenced shall serve the period  
12 of confinement in prison under the indeterminate sentence concurrent with the  
13 period of confinement in prison under the determinate sentence and the parole  
14 portion of the indeterminate sentence concurrent with the term of extended  
15 supervision required under the determinate sentence.

16 2. If a court provides that an indeterminate sentence is to run consecutive to  
17 a determinate sentence, the person sentenced shall serve the period of confinement  
18 in prison under the indeterminate sentence consecutive to the period of confinement  
19 in prison under the determinate sentence and the parole portion of the  
20 indeterminate sentence consecutive to the term of extended supervision under the  
21 determinate sentence.

22 (e) *Revocation in multiple sentence cases.* If a person is serving concurrent  
23 determinate sentences and extended supervision is revoked in each case, or if a  
24 person is serving a determinate sentence concurrent with an indeterminate sentence  
25 and both extended supervision and parole are revoked, the person shall concurrently

1 serve any periods of confinement in prison required under those sentences under s.  
2 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

3 **SECTION 58.** 973.155 (1) (b) of the statutes is amended to read:

4 973.155 (1) (b) The categories in par. (a) include custody of the convicted  
5 offender which is in whole or in part the result of a probation, extended supervision  
6 or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10 (2) placed  
7 upon the person for the same course of conduct as that resulting in the new  
8 conviction.

9 **SECTION 9359. Initial applicability; other.**

10 (1) MISDEMEANORS FOR WHICH PRISON SENTENCES MAY BE IMPOSED; PENALTIES FOR  
11 ATTEMPTS. The treatment of sections 302.11 (1z), 939.32 (1m), 973.01 (1) and (2) (a)  
12 and (b) (intro.), and 973.09 (2) (a) 2., (ag), (am) (title), and (b) (title), 1., and 2. of the  
13 statutes, the renumbering and amendment of sections 971.17 (1) and 973.01 (2) (b)  
14 6. of the statutes, the consolidation, renumbering and amendment of section 973.09  
15 (2) (intro.) and (a) 1. of the statutes, and the creation of sections 971.17 (1) (b) and  
16 (d) and 973.01 (2) (b) 6. a. and b. of the statutes first apply to crimes committed on  
17 the effective date of this subsection.

18 (2) CONCURRENT AND CONSECUTIVE SENTENCES. The treatment of section 973.15  
19 (2m) of the statutes first applies to persons sentenced for crimes committed on the  
20 effective date of this subsection.

21 **SECTION 9459. Effective dates; other.**

22 (1) MISDEMEANORS FOR WHICH PRISON SENTENCES MAY BE IMPOSED; PENALTIES FOR  
23 ATTEMPTS. The treatment of sections 302.11 (1z), 939.32 (1m), 973.01 (1) and (2) (a)  
24 and (b) (intro.), and 973.09 (2) (a) 2., (ag), (am) (title), and (b) (title), 1., and 2. of the  
25 statutes, the renumbering and amendment of sections 971.17 (1) and 973.01 (2) (b)

**SECTION 9459**

1 6. of the statutes, the consolidation, renumbering and amendment of section 973.09  
2 (2) (intro.) and (a) 1. of the statutes, the creation of sections 971.17 (1) (b) and (d) and  
3 973.01 (2) (b) 6. a. and b. of the statutes, and SECTION 9359 (1) and (2) of this act take  
4 effect on the first day of the 7th month beginning after publication.

5

**(END)**

**2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1855/2ins  
MGD:cjs:km

*Insert 5-3*

\*\*\*\*NOTE: This is reconciled s. 302.11 (7) (am). This SECTION has been affected by drafts with the following LRB numbers: LRB-1855 and LRB-2142.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1855/2dn

MGD: ~~08/10/11~~

RMV E

WJ

This draft reconciles LRB-1855 and LRB-2142. All of these drafts should continue to appear in the compiled bill.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1855/2dn  
RPN&MCD:wlj:pg

February 7, 2001

This draft reconciles LRB-1855 and LRB-2142. All of these drafts should continue to appear in the compiled bill.

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1855/2  
MGD:cjs&wlj:pg

DOA:.....Statz - Truth in sentencing trailer

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**CORRECTIONAL SYSTEM**

**ADULT CORRECTIONAL SYSTEM**

***Revocation of extended supervision***

Under current law, if a person violates a requirement of parole or extended supervision, DOC may return the person to prison. Current law also permits DOC to take a person into custody if it alleges that the person has violated a condition or rule relating to parole. This bill specifies that DOC may also take a person under extended supervision into custody if it alleges that the person has violated a condition or rule relating to extended supervision. In addition, the bill specifies how to calculate the amount of time remaining on a bifurcated sentence, for purposes of determining the maximum amount of time for which a person may be returned to prison after a violation of extended supervision and the length of the term of extended supervision that the person must serve thereafter.

**CRIMES**

**CRIMINAL SENTENCES**

***The structure of felony sentences under current law***

Current law sets maximum terms of imprisonment for all crimes. It also specifies how a term of imprisonment is structured. Under current law, if a person

committing a felony before December 31, 1999, is sentenced to prison for a term of years, the person receives an indeterminate sentence, which typically consists of a term of confinement followed by parole. The person's term of confinement is not fixed when the sentence is imposed. He or she may be released on parole after serving as little as one-fourth of the sentence, as much as two-thirds of it (or more, if the crime for which the person was sentenced is classified as a serious felony), or some amount in between.

Current law provides a separate system for prison sentences for crimes committed on or after December 31, 1999. If a court chooses to sentence a felony offender to imprisonment in a state prison (other than through a life sentence) for a felony committed on or after December 31, 1999, the court must do so by imposing a bifurcated sentence. For the first part of the bifurcated sentence, the court sentences the person to a fixed term of confinement in prison. The minimum term of confinement is one year. The maximum term of confinement under a bifurcated sentence for felonies classified in the criminal code ranges from two to 40 years. If the person is being sentenced to prison for an unclassified felony, the term of confinement in prison portion of the sentence may not exceed 75% of the total length of the bifurcated sentence.

An offender is not eligible for parole under a bifurcated sentence. Instead, after serving the term of confinement portion of the bifurcated sentence, he or she serves a fixed term of extended supervision as the second part of the bifurcated sentence.

#### ***Concurrent and consecutive sentences***

Under current law, a court may order any sentence to be served concurrent with or consecutive to any other sentence imposed at the same time or previously. This bill specifies how the person will serve the periods of confinement and the periods of extended supervision and parole under the sentences as a result of the concurrent or consecutive nature of the sentences under the following circumstances: 1) when the court requires a sentence under which the person may be placed on extended supervision (a "determinate sentence") to be served concurrent with or consecutive to another determinate sentence; 2) when the court requires a determinate sentence to be served concurrent with or consecutive to an indeterminate sentence; or 3) when the court requires an indeterminate sentence to be served concurrent with or consecutive to a determinate sentence. The bill also requires that a person sentenced to consecutive indeterminate and determinate sentences serve the term of extended supervision under the determinate sentence before serving the period of parole under the indeterminate sentence, regardless of the order in which the crimes were committed or the sentences imposed.

#### ***Penalties for criminal attempts***

Current law specifies that the maximum term of imprisonment for an attempt to commit a felony (other than certain felonies having separate penalties for attempts) is one-half of the maximum term of imprisonment for the completed crime. This bill specifies that the maximum term of confinement under a bifurcated sentence imposed for an attempt to commit a classified felony is one-half of the maximum term of confinement for the completed crime. The bill also specifies that the maximum term of confinement under a bifurcated sentence imposed for an

attempt to commit an unclassified felony is 75% of the maximum term of imprisonment for the attempt.

***Other changes***

1. This bill specifies that, if a misdemeanor offender may be sentenced to prison because of the application of one or more sentence enhancers and the court decides to sentence the person to prison, the court must impose a bifurcated sentence. In sentencing a person to prison in such a case, the term of confinement in prison portion of the sentence may not constitute more than 75% of the bifurcated sentence.

2. Under current law, the maximum term of probation for a misdemeanor is two years, and the maximum term of probation for a felony is the maximum term of imprisonment for the crime or three years, whichever is greater. Under this bill, the maximum term of probation for a felony or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement in prison for the crime or three years, whichever is greater.

3. Under current law, if a person is found not guilty of a crime by reason of mental disease or mental defect and the crime is not punishable by life imprisonment, the maximum term for which the person may be committed to the department of health and family services is two-thirds of the maximum term of imprisonment for the crime. Under this bill, the maximum term of commitment for a felony other than one punishable by life imprisonment or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement that could be imposed on a person convicted of the crime.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 301.035 (2) of the statutes is amended to read:

2           301.035 (2) Assign hearing examiners from the division to preside over  
3 hearings under ss. 302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10 and 975.10  
4 (2) and ch. 304.

5           **SECTION 2.** 301.035 (4) of the statutes is amended to read:

6           301.035 (4) Supervise employes in the conduct of the activities of the division  
7 and be the administrative reviewing authority for decisions of the division under ss.  
8 302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10, 973.155 (2) and 975.10 (2) and  
9 ch. 304.

1           **SECTION 3.** 302.045 (3) of the statutes is amended to read:

2           302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department  
3 determines that an inmate serving a sentence other than one imposed under s.  
4 973.01 has successfully completed the challenge incarceration program, the parole  
5 commission shall parole the inmate for that sentence under s. 304.06, regardless of  
6 the time the inmate has served, ~~unless the person is serving a sentence imposed~~  
7 ~~under s. 973.01.~~ When the parole commission grants parole under this subsection,  
8 it must require the parolee to participate in an intensive supervision program for  
9 drug abusers as a condition of parole.

10           **SECTION 4.** 302.11 (1z) of the statutes is amended to read:

11           302.11 (1z) An inmate who is sentenced to a term of confinement in prison  
12 under s. 973.01 for a felony that is committed on or after December 31, 1999, or a  
13 misdemeanor committed on or after the effective date of this subsection .... [revisor  
14 inserts date], is not entitled under this section to mandatory release on parole under  
15 ~~this section that sentence.~~

16           **SECTION 5.** 302.11 (3) of the statutes is amended to read:

17           302.11 (3) All consecutive sentences imposed for crimes committed before  
18 December 31, 1999, shall be computed as one continuous sentence.

19           **SECTION 6.** 302.11 (7) (a) of the statutes is renumbered 302.11 (7) (am) and  
20 amended to read:

21           302.11 (7) (am) ~~The division of hearings and appeals in the department of~~  
22 ~~administration, upon proper notice and hearing, or the department of corrections, if~~  
23 ~~the parolee waives a hearing,~~ reviewing authority may return a parolee released  
24 under sub. (1) ~~or~~, (1g) (b), or (2m) or s. 304.02 or 304.06 (1) to prison for a period up  
25 to the remainder of the sentence for a violation of the conditions of parole. The

1 remainder of the sentence is the entire sentence, less time served in custody prior to  
2 parole. The revocation order shall provide the parolee with credit in accordance with  
3 ss. 304.072 and 973.155.

\*\*\*\*NOTE: This is reconciled s. 302.11 (7) (am). This SECTION has been affected by  
drafts with the following LRB numbers: LRB-1855 and LRB-2142.

4 **SECTION 7.** 302.11 (7) (ag) of the statutes is created to read:

5 302.11 (7) (ag) In this subsection "reviewing authority" means the division of  
6 hearings and appeals in the department of administration, upon proper notice and  
7 hearing, or the department of corrections, if the parolee waives a hearing.

8 **SECTION 8.** 302.11 (7) (b) of the statutes is amended to read:

9 302.11 (7) (b) A parolee returned to prison for violation of the conditions of  
10 parole shall be incarcerated for the entire period of time determined by the  
11 ~~department of corrections in the case of a waiver or the division of hearings and~~  
12 ~~appeals in the department of administration in the case of a hearing under par. (a),~~  
13 reviewing authority unless paroled earlier under par. (c). The parolee is not subject  
14 to mandatory release under sub. (1) or presumptive mandatory release under sub.  
15 (1g). The period of time determined under par. (a) ~~(a)~~ (am) may be extended in  
16 accordance with subs. (1q) and (2).

17 **SECTION 9.** 302.11 (7) (d) of the statutes is amended to read:

18 302.11 (7) (d) A parolee who is subsequently released either after service of the  
19 period of time determined by the ~~department of corrections in the case of a waiver~~  
20 ~~or the division of hearings and appeals in the department of administration in the~~  
21 ~~case of a hearing under par. (a)~~ reviewing authority or by a grant of parole under par.  
22 (c) is subject to all conditions and rules of parole until expiration of sentence or  
23 discharge by the department.

1           **SECTION 10.** 302.11 (7) (e) of the statutes is created to read:

2           302.11 (7) (e) A reviewing authority may consolidate proceedings before it  
3 under par. (am) with other proceedings before that reviewing authority under par.  
4 (am) or s. 302.113 (9) (am) or 302.114 (9) (am) if all of the proceedings relate to the  
5 parole or extended supervision of the same person.

6           **SECTION 11.** 302.113 (4) of the statutes is amended to read:

7           302.113 (4) All consecutive sentences imposed for crimes committed on or after  
8 December 31, 1999, shall be computed as one continuous sentence. The person shall  
9 serve any term of extended supervision after serving all terms of confinement in  
10 prison.

11           **SECTION 12.** 302.113 (8m) of the statutes is created to read:

12           302.113 (8m) Every person released to extended supervision under this section  
13 remains in the legal custody of the department. If the department alleges that any  
14 condition or rule of extended supervision has been violated by the person, the  
15 department may take physical custody of the person for the investigation of the  
16 alleged violation.

17           **SECTION 13.** 302.113 (9) (a) of the statutes is renumbered 302.113 (9) (am) and  
18 amended to read:

19           302.113 (9) (am) If a person released to extended supervision under this section  
20 violates a condition of extended supervision, ~~the division of hearings and appeals in~~  
21 ~~the department of administration, upon proper notice and hearing, or the~~  
22 ~~department of corrections, if the person on extended supervision waives a hearing,~~  
23 reviewing authority may revoke the person's extended supervision of the person and  
24 return the person to prison. If, Upon revocation, the person is returned to prison,  
25 ~~he or she shall be returned to prison for any specified period of time that does not~~

1 exceed the time remaining on the bifurcated sentence. The time remaining on the  
2 bifurcated sentence is the total length of the bifurcated sentence, less time served by  
3 the person in custody confinement under the sentence before release to extended  
4 supervision under sub. (2) and less all time served in confinement for previous  
5 revocations of extended supervision under the sentence. The revocation order shall  
6 provide the person ~~on~~ whose extended supervision is revoked with credit in  
7 accordance with ss. 304.072 and 973.155.

8 **SECTION 14.** 302.113 (9) (ag) of the statutes is created to read:

9 302.113 (9) (ag) In this subsection “reviewing authority” means the division of  
10 hearings and appeals in the department of administration, upon proper notice and  
11 hearing, or the department of corrections, if the person on extended supervision  
12 waives a hearing.

13 **SECTION 15.** 302.113 (9) (b) of the statutes is amended to read:

14 302.113 (9) (b) A person who is returned to prison after revocation of extended  
15 supervision shall be incarcerated for the entire period of time specified by the  
16 ~~department of corrections in the case of a waiver or by the division of hearings and~~  
17 ~~appeals in the department of administration in the case of a hearing under par. (a)~~  
18 reviewing authority. The period of time specified under par. ~~(a)~~ (am) may be extended  
19 in accordance with sub. (3). If a person is returned to prison under par. (am) for a  
20 period of time that is less than the time remaining on the bifurcated sentence, the  
21 person shall be released to extended supervision after he or she has served the period  
22 of time specified under par. (am) and any extensions imposed under sub. (3).

23 **SECTION 16.** 302.113 (9) (c) of the statutes is amended to read:

24 302.113 (9) (c) A person who is subsequently released to extended supervision  
25 after service of the period of time specified by the ~~department of corrections in the~~

1 ~~case of a waiver or by the division of hearings and appeals in the department of~~  
2 ~~administration in the case of a hearing under par. (a) reviewing authority is subject~~  
3 ~~to all conditions and rules under sub. (7) until the expiration of the term of remaining~~  
4 ~~extended supervision portion of the bifurcated sentence. The remaining extended~~  
5 ~~supervision portion of the bifurcated sentence is the total length of the bifurcated~~  
6 ~~sentence, less the time served by the person in confinement under the bifurcated~~  
7 ~~sentence before release to extended supervision under sub. (2) and less all time~~  
8 ~~served in confinement for any revocation of extended supervision under the~~  
9 ~~bifurcated sentence.~~

10 **SECTION 17.** 302.113 (9) (d) of the statutes is created to read:

11 302.113 (9) (d) When determining under pars. (am) and (c) the amount of time  
12 a person has served in confinement before release to extended supervision or the  
13 amount of time a person has served in confinement for a revocation of extended  
14 supervision, the reviewing authority shall include any extensions imposed under  
15 sub. (3).

16 **SECTION 18.** 302.113 (9) (e) of the statutes is created to read:

17 302.113 (9) (e) If a hearing is to be held under par. (am) before the division of  
18 hearings and appeals in the department of administration, the hearing examiner  
19 may order the taking and allow the use of a videotaped deposition under s. 967.04  
20 (7) to (10).

21 **SECTION 19.** 302.113 (9) (f) of the statutes is created to read:

22 302.113 (9) (f) A reviewing authority may consolidate proceedings before it  
23 under par. (am) with other proceedings before that reviewing authority under par.  
24 (am) or s. 302.11 (7) (am) or 302.114 (9) (am) if all of the proceedings relate to the  
25 parole or extended supervision of the same person.

1           **SECTION 20.** 302.113 (9) (g) of the statutes is created to read:

2           302.113 (9) (g) If there is a hearing under par. (am) before the division of  
3           hearings and appeals in the department of administration, the person on extended  
4           supervision may seek review of a decision to revoke extended supervision and the  
5           department of corrections may seek review of a decision to not revoke extended  
6           supervision. Review of a decision under this paragraph may be sought only by an  
7           action for certiorari.

8           **SECTION 21.** 302.114 (4) of the statutes is amended to read:

9           302.114 (4) All consecutive sentences imposed for crimes committed on or after  
10          December 31, 1999, shall be computed as one continuous sentence. An inmate  
11          subject to this section shall serve any term of extended supervision after serving all  
12          terms of confinement in prison.

13          **SECTION 22.** 302.114 (8m) of the statutes is created to read:

14          302.114 (8m) Every person released to extended supervision under this section  
15          remains in the legal custody of the department. If the department alleges that any  
16          condition or rule of extended supervision has been violated by the person, the  
17          department may take physical custody of the person for the investigation of the  
18          alleged violation.

19          **SECTION 23.** 302.114 (9) (a) of the statutes is renumbered 302.114 (9) (am) and  
20          amended to read:

21          302.114 (9) (am) If a person released to extended supervision under this section  
22          violates a condition of extended supervision, ~~the division of hearings and appeals in~~  
23          ~~the department of administration, upon proper notice and hearing, or the~~  
24          ~~department of corrections, if the person on extended supervision waives a hearing,~~  
25          reviewing authority may revoke the person's extended supervision ~~of the person and~~

1 ~~return the person to prison. If, Upon revocation, the person is returned to prison,~~  
2 ~~he or she~~ shall be returned to prison for a specified period of time, as provided under  
3 par. (b).

4 **SECTION 24.** 302.114 (9) (ag) of the statutes is created to read:

5 302.114 (9) (ag) In this subsection "reviewing authority" has the meaning given  
6 in s. 302.113 (9) (ag).

7 **SECTION 25.** 302.114 (9) (b) of the statutes is amended to read:

8 302.114 (9) (b) If a person is returned to prison under par. ~~(a)~~ (am) after  
9 revocation of extended supervision, ~~the department of corrections in the case of a~~  
10 ~~waiver or the division of hearings and appeals in the department of administration~~  
11 ~~in the case of a hearing under par. (a)~~ reviewing authority shall specify a period of  
12 time for which the person shall be incarcerated before being eligible for release to  
13 extended supervision. The period of time specified under this paragraph may not be  
14 less than 5 years and may be extended in accordance with sub. (3).

15 **SECTION 26.** 302.114 (9) (bm) of the statutes is amended to read:

16 302.114 (9) (bm) A person who is returned to prison under par. ~~(a)~~ (am) after  
17 revocation of extended supervision may, upon petition to the sentencing court, be  
18 released to extended supervision after he or she has served the entire period of time  
19 specified in par. (b), including any periods of extension imposed under sub. (3). A  
20 person may not file a petition under this paragraph earlier than 90 days before the  
21 date on which he or she is eligible to be released to extended supervision. If a person  
22 files a petition for release to extended supervision under this paragraph at any time  
23 earlier than 90 days before the date on which he or she is eligible to be released to  
24 extended supervision, the court shall deny the petition without a hearing. The

1 procedures specified in sub. (5) (am) to (f) apply to a petition filed under this  
2 paragraph.

3 **SECTION 27.** 302.114 (9) (d) of the statutes is created to read:

4 302.114 (9) (d) If a hearing is to be held under par. (am) before the division of  
5 hearings and appeals in the department of administration, the hearing examiner  
6 may order the taking and allow the use of a videotaped deposition under s. 967.04  
7 (7) to (10).

8 **SECTION 28.** 302.114 (9) (e) of the statutes is created to read:

9 302.114 (9) (e) A reviewing authority may consolidate proceedings before it  
10 under par. (am) with other proceedings before that reviewing authority under par.  
11 (am) or s. 302.11 (7) (am) or 302.113 (9) (am) if all of the proceedings relate to the  
12 parole or extended supervision of the same person.

13 **SECTION 29.** 302.114 (9) (f) of the statutes is created to read:

14 302.114 (9) (f) If there is a hearing under par. (am) before the division of  
15 hearings and appeals in the department of administration, the person on extended  
16 supervision may seek review of a decision to revoke extended supervision and the  
17 department of corrections may seek review of a decision to not revoke extended  
18 supervision. Review of a decision under this paragraph may be sought only by an  
19 action for certiorari.

20 **SECTION 30.** 304.11 (3) of the statutes is amended to read:

21 304.11 (3) If upon inquiry it further appears to the governor that the convicted  
22 person has violated or failed to comply with any of those conditions, the governor may  
23 issue his or her warrant remanding the person to the institution from which  
24 discharged, and the person shall be confined and treated as though no pardon had  
25 been granted, except that the person loses any applicable good time which he or she

1 had earned. If the person is returned to prison, the person is subject to the same  
2 limitations as a revoked parolee under s. 302.11 (7). The department shall determine  
3 the period of incarceration under s. 302.11 (7) ~~(a)~~ (am). If the governor determines  
4 the person has not violated or failed to comply with the conditions, the person shall  
5 be discharged subject to the conditional pardon.

6 **SECTION 31.** 908.08 (1) of the statutes is amended to read:

7 908.08 (1) In any criminal trial or hearing, juvenile fact-finding hearing under  
8 s. 48.31 or 938.31 or revocation hearing under s. 302.113 (9) (am), 302.114 (9) (am),  
9 304.06 (3), or 973.10 (2), the court or hearing examiner may admit into evidence the  
10 videotaped oral statement of a child who is available to testify, as provided in this  
11 section.

12 **SECTION 32.** 939.32 (1) (title) of the statutes is created to read:

13 939.32 (1) (title) **GENERALLY.**

14 **SECTION 33.** 939.32 (1m) of the statutes is created to read:

15 939.32 (1m) **BIFURCATED SENTENCES.** (a) Subject to s. 973.01 (2) (d), if the court  
16 imposes a bifurcated sentence under s. 973.01 (1) for an attempt to commit a crime  
17 that is punishable under sub. (1) (intro.), the following requirements apply:

18 1. If the completed crime is a classified felony, the maximum term of  
19 confinement in prison is one-half of the maximum term of confinement in prison for  
20 the classified felony.

21 2. If the completed crime is not a classified felony, the maximum term of  
22 confinement is 75% of the maximum term of imprisonment under sub. (1) (intro.) for  
23 an attempt to commit the crime.

24 (b) Subject to s. 973.01 (2) (d), the maximum term of confinement in prison  
25 specified under par. (a) may be increased under s. 939.62 (1) or 961.48. If the

1 maximum term of confinement in prison specified in par. (a) is increased under this  
2 paragraph, the maximum term of imprisonment under sub. (1) is increased by the  
3 same amount.

4 **SECTION 34.** 939.32 (2) (title) of the statutes is created to read:

5 939.32 (2) (title) MISDEMEANOR COMPUTER CRIMES.

6 **SECTION 35.** 939.32 (3) (title) of the statutes is created to read:

7 939.32 (3) (title) REQUIREMENTS.

8 **SECTION 36.** 967.04 (9) of the statutes is amended to read:

9 967.04 (9) In any criminal prosecution or juvenile fact-finding hearing under  
10 s. 48.31 or 938.31, the court may admit into evidence a videotaped deposition taken  
11 under subs. (7) and (8) without an additional hearing under s. 908.08. In any  
12 proceeding under s. 302.113 (9) (am), 302.114 (9) (am), 304.06 (3), or 973.10 (2), the  
13 hearing examiner may order and preside at the taking of a videotaped deposition  
14 using the procedure provided in subs. (7) and (8) and may admit the videotaped  
15 deposition into evidence without an additional hearing under s. 908.08.

16 **SECTION 37.** 971.17 (1) of the statutes is renumbered 971.17 (1) (a) and  
17 amended to read:

18 971.17 (1) (a) *Felonies committed before the effective date of this paragraph ....*  
19 *[revisor inserts date].* ~~When~~ Except as provided in par. (c), when a defendant is found  
20 not guilty by reason of mental disease or mental defect of a felony committed before  
21 the effective date of this paragraph .... [revisor inserts date], the court shall commit  
22 the person to the department of health and family services for a specified period not  
23 exceeding two-thirds of the maximum term of imprisonment that could be imposed  
24 under s. ~~973.15 (2) (a)~~ against an offender convicted of the same ~~crime or crimes~~  
25 felony, including imprisonment authorized by ~~ss. 346.65 (2) (f), (2j) (d) or (3m),~~

1 ~~939.62, 939.621, 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b)~~  
2 ~~and 961.48 and other~~ any applicable penalty enhancement statutes, as applicable,  
3 subject to the credit provisions of s. 973.155.

4 (c) Felonies punishable by life imprisonment. If the ~~maximum term of~~  
5 ~~imprisonment is~~ a defendant is found not guilty by reason of mental disease or  
6 mental defect of a felony that is punishable by life imprisonment, the commitment  
7 period specified by the court may be life, subject to termination under sub. (5).

8 **SECTION 38.** 971.17 (1) (b) of the statutes is created to read:

9 971.17 (1) (b) *Crimes committed on or after the effective date of this paragraph*  
10 *.... [revisor inserts date] for which a bifurcated sentence may be imposed.* When a  
11 defendant is found not guilty by reason of mental disease or mental defect of a crime  
12 committed on or after the effective date of this paragraph .... [revisor inserts date],  
13 and the crime is one for which a court may impose a bifurcated sentence under s.  
14 973.01, the court shall commit the person to the department of health and family  
15 services for a specified period not exceeding the maximum term of confinement in  
16 prison that could be imposed on an offender convicted of the same crime, including  
17 imprisonment authorized by any applicable penalty enhancement statutes, subject  
18 to the credit provisions of s. 973.155.

19 **SECTION 39.** 971.17 (1) (d) of the statutes is created to read:

20 971.17 (1) (d) *Misdemeanors for which a bifurcated sentence may not be*  
21 *imposed.* When a defendant is found not guilty by reason of mental disease or mental  
22 defect of one of the following misdemeanors, the court shall commit the person to the  
23 department of health and family services for a specified period not exceeding  
24 two-thirds of the maximum term of imprisonment that could be imposed against an  
25 offender convicted of the same misdemeanor, including imprisonment authorized by

1 any applicable penalty enhancement statutes, subject to the credit provisions of s.  
2 973.155:

3 1. A misdemeanor committed before the effective date of this subdivision ...  
4 [revisor inserts date].

5 2. A misdemeanor committed on or after the effective date of this subdivision  
6 .... [revisor inserts date], for which a court may not impose a bifurcated sentence  
7 under s. 973.01.

8 **SECTION 40.** 972.15 (2c) of the statutes is amended to read:

9 972.15 (2c) If the defendant is subject to being sentenced under s. 973.01 and  
10 he or she satisfies the criteria under s. 302.045 (2) (b) and (c), the person preparing  
11 the presentence investigation report shall include in the report a recommendation  
12 as to whether the defendant should be eligible for the challenge incarceration  
13 program under s. 302.045.

14 **SECTION 41.** 973.01 (1) of the statutes is amended to read:

15 973.01 (1) BIFURCATED SENTENCE REQUIRED. Except as provided in sub. (3),  
16 whenever a court sentences a person to imprisonment in the Wisconsin state prisons  
17 for a felony committed on or after December 31, 1999, or a misdemeanor committed  
18 on or after the effective date of this subsection ... [revisor inserts date], the court  
19 shall impose a bifurcated sentence that consists of a term of confinement in prison  
20 followed by a term of extended supervision under s. 302.113.

21 **SECTION 42.** 973.01 (2) (intro.) of the statutes is amended to read:

22 973.01 (2) STRUCTURE OF BIFURCATED SENTENCES. (intro.) ~~The court shall ensure~~  
23 ~~that~~ An order imposing a bifurcated sentence imposed under sub. (1) ~~complies~~ shall  
24 comply with all of the following:

25 **SECTION 43.** 973.01 (2) (a) of the statutes is amended to read:

1           973.01 (2) (a) *Total length of bifurcated sentence.* Except as provided in par. (c),  
2 the total length of the bifurcated sentence may not exceed the maximum period of  
3 imprisonment for the felony crime.

4           **SECTION 44.** 973.01 (2) (b) (intro.) of the statutes is amended to read:

5           973.01 (2) (b) *Imprisonment Confinement portion of bifurcated sentence.*  
6 (intro.) The portion of the bifurcated sentence that imposes a term of confinement  
7 in prison may not be less than one year, subject to any minimum sentence prescribed  
8 for the felony crime, and, except as provided in par. (c), ~~may not exceed~~ is subject to  
9 whichever of the following limits is applicable:

10           **SECTION 45.** 973.01 (2) (b) 6. of the statutes is renumbered 973.01 (2) (b) 6.  
11 (intro.) and amended to read:

12           973.01 (2) (b) 6. (intro.) For any felony crime other than a felony specified in  
13 ~~subds. 1. to 5.~~ one of the following, the term of confinement in prison may not exceed  
14 75% of the total length of the bifurcated sentence.:

15           **SECTION 46.** 973.01 (2) (b) 6. a. and b. of the statutes are created to read:

16           973.01 (2) (b) 6. a. A felony specified in subds. 1. to 5.

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

19           **SECTION 47.** 973.01 (2) (d) of the statutes is amended to read:

20           973.01 (2) (d) *Minimum term of extended supervision.* The term of extended  
21 supervision ~~that follows the term of confinement in prison~~ may not be less than 25%  
22 of the length of the term of confinement in prison imposed under par. (b).

23           **SECTION 48.** 973.01 (6) of the statutes is amended to read:

24           973.01 (6) NO PAROLE. A person serving a bifurcated sentence imposed under  
25 sub. (1) is not eligible for release on parole under that sentence.

1           **SECTION 49.** 973.09 (1) (a) of the statutes is amended to read:

2           973.09 (1) (a) Except as provided in par. (c) or if probation is prohibited for a  
3 particular offense by statute, if a person is convicted of a crime, the court, by order,  
4 may withhold sentence or impose sentence under s. 973.15 and stay its execution,  
5 and in either case place the person on probation to the department for a stated period,  
6 stating in the order the reasons therefor. The court may impose any conditions which  
7 appear to be reasonable and appropriate. The period of probation may be made  
8 consecutive to a sentence on a different charge, whether imposed at the same time  
9 or previously. If the court imposes an increased term of probation, as authorized  
10 under sub. (2) (a) ~~(am)~~ 2. or (b) 2., it shall place its reasons for doing so on the record.

11           **SECTION 50.** 973.09 (2) (intro.) and (a) 1. of the statutes are consolidated,  
12 renumbered 973.09 (2) (am) 1. and amended to read:

13           973.09 (2) (am) 1. The Subject to subd. 2., the original term of probation for an  
14 indeterminate sentence misdemeanor shall be: ~~(a) 1. Except as provided in subd. 2.,~~  
15 ~~for misdemeanors,~~ not less than 6 months nor more than 2 years.

16           **SECTION 51.** 973.09 (2) (a) 2. of the statutes is renumbered 973.09 (2) (am) 2.  
17 and amended to read:

18           973.09 (2) (am) 2. If the probationer is convicted of not less than 2 nor more than  
19 4 indeterminate sentence misdemeanors at the same time, the maximum original  
20 term of probation may be increased by one year. If the probationer is convicted of 5  
21 or more indeterminate sentence misdemeanors at the same time, the maximum  
22 original term of probation may be increased by 2 years.

23           **SECTION 52.** 973.09 (2) (ag) of the statutes is created to read:

24           973.09 (2) (ag) *Definitions.* In this subsection:

1           1. “Bifurcated sentence misdemeanor” means a misdemeanor committed on or  
2 after the effective date of this subdivision .... [revisor inserts date], for which a court  
3 may impose a bifurcated sentence under s. 973.01.

4           2. “Indeterminate sentence misdemeanor” means a misdemeanor other than  
5 a bifurcated sentence misdemeanor.

6           **SECTION 53.** 973.09 (2) (am) (title) of the statutes is created to read:

7           973.09 (2) (am) (title) *Misdemeanors for which a bifurcated sentence may not*  
8 *be imposed.*

9           **SECTION 54.** 973.09 (2) (b) (title) of the statutes is created to read:

10          973.09 (2) (b) (title) *Crimes for which a bifurcated sentence may be imposed.*

11          **SECTION 55.** 973.09 (2) (b) 1. of the statutes is amended to read:

12          973.09 (2) (b) 1. Except as provided in Subject to subd. 2., the original term of  
13 probation for felonies, and bifurcated sentence misdemeanors shall be not less than  
14 one year nor more than either the statutory maximum term of imprisonment  
15 confinement in prison for the crime or 3 years, whichever is greater.

16          **SECTION 56.** 973.09 (2) (b) 2. of the statutes is amended to read:

17          973.09 (2) (b) 2. If the probationer is convicted of 2 or more crimes, including  
18 at least one felony or bifurcated sentence misdemeanor, at the same time, the  
19 maximum original term of probation may be increased by one year for each felony  
20 conviction for a felony or a bifurcated sentence misdemeanor.

21          **SECTION 57.** 973.15 (2m) of the statutes is created to read:

22          973.15 (2m) (a) *Definitions.* In this subsection:

23          1. “Determinate sentence” means a bifurcated sentence imposed under s.  
24 973.01 or a life sentence under which a person is eligible for release to extended  
25 supervision under s. 973.014 (1g) (a) 1. or 2.

1           2. “Indeterminate sentence” means a sentence to the Wisconsin state prisons  
2 other than one of the following:

3           a. A determinate sentence.

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

6           3. “Period of confinement in prison,” with respect to any sentence to the  
7 Wisconsin state prisons, means any time during which a person is incarcerated  
8 under that sentence, including any extensions imposed under s. 302.11 (3), 302.113  
9 (3), or 302.114 (3) and any period of confinement in prison required to be served under  
10 s. 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

11           (b) *Determinate sentences imposed to run concurrent with or consecutive to*  
12 *determinate sentences.* 1. If a court provides that a determinate sentence is to run  
13 concurrent with another determinate sentence, the person sentenced shall serve the  
14 periods of confinement in prison under the sentences concurrently and the terms of  
15 extended supervision under the sentences concurrently.

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

21           (c) *Determinate sentences imposed to run concurrent with or consecutive to*  
22 *indeterminate sentences.* 1. If a court provides that a determinate sentence is to run  
23 concurrent with an indeterminate sentence, the person sentenced shall serve the  
24 period of confinement in prison under the determinate sentence concurrent with the  
25 period of confinement in prison under the indeterminate sentence and the term of

1 extended supervision under the determinate sentence concurrent with the parole  
2 portion of the indeterminate sentence.

3 2. If a court provides that a determinate sentence is to run consecutive to an  
4 indeterminate sentence, the person sentenced shall serve the period of confinement  
5 in prison under the determinate sentence consecutive to the period of confinement  
6 in prison under the indeterminate sentence and the parole portion of the  
7 indeterminate sentence consecutive to the term of extended supervision under the  
8 determinate sentence.

9 (d) *Indeterminate sentences imposed to run concurrent with or consecutive to*  
10 *determinate sentences.* 1. If a court provides that an indeterminate sentence is to run  
11 concurrent with a determinate sentence, the person sentenced shall serve the period  
12 of confinement in prison under the indeterminate sentence concurrent with the  
13 period of confinement in prison under the determinate sentence and the parole  
14 portion of the indeterminate sentence concurrent with the term of extended  
15 supervision required under the determinate sentence.

16 2. If a court provides that an indeterminate sentence is to run consecutive to  
17 a determinate sentence, the person sentenced shall serve the period of confinement  
18 in prison under the indeterminate sentence consecutive to the period of confinement  
19 in prison under the determinate sentence and the parole portion of the  
20 indeterminate sentence consecutive to the term of extended supervision under the  
21 determinate sentence.

22 (e) *Revocation in multiple sentence cases.* If a person is serving concurrent  
23 determinate sentences and extended supervision is revoked in each case, or if a  
24 person is serving a determinate sentence concurrent with an indeterminate sentence  
25 and both extended supervision and parole are revoked, the person shall concurrently

1 serve any periods of confinement in prison required under those sentences under s.  
2 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

3 **SECTION 58.** 973.155 (1) (b) of the statutes is amended to read:

4 973.155 (1) (b) The categories in par. (a) include custody of the convicted  
5 offender which is in whole or in part the result of a probation, extended supervision  
6 or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10 (2) placed  
7 upon the person for the same course of conduct as that resulting in the new  
8 conviction.

9 **SECTION 9359. Initial applicability; other.**

10 (1) MISDEMEANORS FOR WHICH PRISON SENTENCES MAY BE IMPOSED; PENALTIES FOR  
11 ATTEMPTS. The treatment of sections 302.11 (1z), 939.32 (1m), 973.01 (1) and (2) (a)  
12 and (b) (intro.), and 973.09 (2) (a) 2., (ag), (am) (title), and (b) (title), 1., and 2. of the  
13 statutes, the renumbering and amendment of sections 971.17 (1) and 973.01 (2) (b)  
14 6. of the statutes, the consolidation, renumbering and amendment of section 973.09  
15 (2) (intro.) and (a) 1. of the statutes, and the creation of sections 971.17 (1) (b) and  
16 (d) and 973.01 (2) (b) 6. a. and b. of the statutes first apply to crimes committed on  
17 the effective date of this subsection.

18 (2) CONCURRENT AND CONSECUTIVE SENTENCES. The treatment of section 973.15  
19 (2m) of the statutes first applies to persons sentenced for crimes committed on the  
20 effective date of this subsection.

21 **SECTION 9459. Effective dates; other.**

22 (1) MISDEMEANORS FOR WHICH PRISON SENTENCES MAY BE IMPOSED; PENALTIES FOR  
23 ATTEMPTS. The treatment of sections 302.11 (1z), 939.32 (1m), 973.01 (1) and (2) (a)  
24 and (b) (intro.), and 973.09 (2) (a) 2., (ag), (am) (title), and (b) (title), 1., and 2. of the  
25 statutes, the renumbering and amendment of sections 971.17 (1) and 973.01 (2) (b)

1 6. of the statutes, the consolidation, renumbering and amendment of section 973.09  
2 (2) (intro.) and (a) 1. of the statutes, the creation of sections 971.17 (1) (b) and (d) and  
3 973.01 (2) (b) 6. a. and b. of the statutes, and SECTION 9359 (1) and (2) of this act take  
4 effect on the first day of the 7th month beginning after publication.

5 (END)