



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 91

**Assembly Substitute
Amendment 1**

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2017 ASSEMBLY BILL 91

Under 2017 Assembly Bill 91 (the bill), if a defendant is convicted of a Class I felony¹, the court may refrain from designating the crime as a misdemeanor or a felony if the court determines that all of the following apply:

- The felony was not a violent crime.
- The felony did not involve a weapon.
- The defendant has not been previously convicted of a felony before the current conviction.
- The defendant has not been convicted of a crime that was a Class I felony designated by the court as a Class A misdemeanor.²
- The best interests of the community will be served and the public will not be harmed by this disposition.
- The sentence for a felony would be unduly harsh given the nature and the circumstances of the crime and the history and character of the defendant.

¹ The penalty for a Class I felony is a fine not to exceed \$10,000, imprisonment not to exceed three years and six months, or both. [s. 939.50 (3) (i), Stats.]

² The penalty for a Class A misdemeanor is a fine not to exceed \$10,000, imprisonment not to exceed nine months, or both. [s. 939.51 (3) (a), Stats.]

The court may order the crime designated as a Class I felony or a Class A misdemeanor when the defendant completes the sentence or period of probation. Until the court designates the crime, the defendant must be treated as if the conviction were a felony.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 (ASA 1) to the bill, clarifies that a court may enter the judgment of conviction as an undesignated felony if a defendant is convicted of a crime punishable as a Class I felony and the court determines that all of the following apply:

- The felony was not a violent crime.
- The felony did not involve a weapon.
- The defendant has not been previously convicted of a felony before the current conviction.
- The defendant has not previously had a judgment for an undesignated felony that was amended to a Class A misdemeanor.
- The best interests of the community will be served and the public will not be harmed by the disposition.
- The sentence for a felony would be unduly harsh given the nature and the circumstances of the crime and the history and character of the defendant.

ASA 1 also clarifies that if the court enters the judgment as an undesignated felony, the felony must be recorded as a “U felony” and the court must impose a sentence with the maximum penalties being the same as the maximum penalties for a Class I felony.

ASA 1 clarifies that a defendant who has been convicted of an undesignated felony, may file a petition with the court to amend the judgment of conviction to designate the “U felony” as a Class I felony or a Class A misdemeanor. Under ASA 1, the defendant may file the petition one year after the defendant completes the sentence, including any parole or extended supervision, or if placed on probation, one year after completing the period of probation.

Under ASA 1, after the defendant has filed a petition to amend the judgment of conviction to designate a “U felony” as a Class I felony or a Class A misdemeanor, the court must do either of the following:

- Without a hearing, amend the judgment to a Class I felony if any of the following occurred after the judgment of an undesignated felony was entered:
 - The defendant was convicted of a crime since the judgment of an undesignated felony was entered.
 - The defendant’s parole, extended supervision, or probation was revoked.

- Schedule a hearing to amend the judgment to a Class I felony or a Class A misdemeanor within 90 days of receiving the petition.

Lastly, ASA 1 clarifies that, until the court designates the “U felony” as a Class A misdemeanor, the defendant must be treated as if the conviction were for a felony. ASA 1 also clarifies that if the court schedules a hearing and amends the judgment of conviction to a Class A misdemeanor, then the defendant must be treated as if the original conviction was for a misdemeanor.

BILL HISTORY

ASA 1 was introduced on April 19, 2017, by Representative Sanfelippo. On April 20, 2017, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of ASA 1 by a vote of Ayes, 12; Noes, 0; and then voted to recommend the bill, as amended, by a vote of Ayes, 12; Noes, 0.

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