

**Olsen, Jefren**

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**From:** Brennan, Mike [mike.brennanQdoa.state.wi.us]  
**Sent:** Friday, November 06, 1998 4:40 PM  
**To:** 'aaron nathans -- capital times'; Korbitz, Adam; Statz, Andrew; 'bill clausius -- DOC public information director'; Grosshans, Bill; Archer, Cindy; 'david albino'; 'ed bloom -- wis. assoc. criminal defense lawyers'; 'george mitchell'; Olsen, Jefren; Bauer Jr., Jere; 'Jessica Weltman'; 'john cappelleri -- asst. legal counsel gov.'; Clark, Julie; Grapentine, Mark; 'marline pearson -- matc'; 'matt bromley -- state bar -- govt. relations'; Sullivan, Michael  
**Subject:** Criminal Penalties Study Committee-- Next Weeks Subcommittee Age ndas and 1 O-I 6-98 Minutes  
**Importance:** High

Below please find agendas and open meeting notices for two subcommittee meetings next week, as well as a copy of the minutes from the last whole committee meeting.

Please do not hesitate to contact me with any questions. Mike Brennan (414) 227-5102

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AGENDA AND NOTICE OF MEETING  
STATE OF WISCONSIN  
CRIMINAL PENALTIES STUDY COMMITTEE

Computer Modeling Subcommittee

Wednesday, November 11, 1998  
11:30 a.m.  
Rm. 5215  
University of Wisconsin Law School  
975 Bascom Mall  
Madison, Wisconsin 53706

1. Call to order - Subcommittee Chair Professor Walter Dickey
2. Report from staff counsel Michael Brennan on:
  - a. application for federal funding for technical assistance
  - b. discussion with IBM concerning cost of OLAP support
  - c. discussion with CCAP officials concerning nature and accessibility of database.
3. Discussion among subcommittee members concerning queries for first two "projects":
  - a. Determining who is in prison now, on what crimes, for how long, and for long they have been sentenced. Queries to be posed to DOC database.
  - b. Determining what past and current sentencing practices are, including how they relate to the criminal histories of the offender. Queries to be posed to the CCAP database.
4. Adjournment by approximately 1 :15 p.m.

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AGENDA AND NOTICE OF MEETING  
STATE OF WISCONSIN  
CRIMINAL PENALTIES STUDY COMMITTEE

Code Reclassification Subcommittee

Thursday, November 12, 1998

9:00 a.m.

Rm. 414

Milwaukee County Courthouse

901 N. 9th Street

Milwaukee, Wisconsin 53233

1. Call to order - Subcommittee Chair Professor Thomas Hammer
2. Review of Department of Corrections statistics as they concern the work of this subcommittee
3. Continued evaluation of classification of criminal code felonies currently classified in Classes B and BC
4. Set agenda and schedule for next subcommittee meeting
5. Adjournment

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Criminal Penalties Study Committee

October 18, 1998 Meeting Minutes  
Room 417N, State Capitol Building, Madison, Wisconsin

Chair Judge Thomas **Barland** called the meeting to order at 9:30 a.m. Present were: Judge Barland; Nicholas Chiarkas; Walter Dickey; Assistant Attorney General Matt Frank on behalf of Attorney General James Doyle; Greg Everts; Judge Patrick Fiedler; Brad Gehring; Thomas Hammer, the committee's reporter; Senator Joanne Huelsman; Steve **Hurley**; William Jenkins; Judge Elsa Lamelas; Judge Mike Malmstadt; Mike McCann; Barbara Powell; Judge Diane Sykes; and Judge Lee Wells. Linda Pugh, who was ill, was not present. The committee approved the minutes from the October 2, 1998 meeting.

First, the committee heard from an outside speaker, Judge Thomas Ross, a superior court judge from North Carolina, and chair of the North Carolina Sentencing Policy and Advisory Commission. He is the original chair of that commission, and a pioneer in the field of structured sentencing. He has received national recognition for his work. Judge Ross used a series of overhead transparencies during his presentation.

Judge Ross reviewed the history of North Carolina's commission, including the political and philosophical background of its members. He said there was not one right way to go about sentencing reform. He spoke about the history of North Carolina's criminal justice problems, including (1) insufficient prison building in the late 1970's and early 1980's, (2) no prison forecasting capability, and (3) the impact of crack cocaine on prison population. He gave sample calculations of the small amount of time offenders would serve under North Carolina's former indeterminate sentencing system: an average of 18% of the period of time to which the offender was sentenced. He mentioned how some offenders rejected probation to serve the short amounts of time offenders were serving in prison, because prison time was "easier" than being on probation, going to drug treatment, getting a job, and/or having to pay restitution.

Judge Ross spoke of North Carolina's goals in its transition from indeterminate to determinate sentencing: (1) certainty and consistency in sentencing, (2) balancing sentencing policies with procedures, (3) developing a correctional population simulation model, and (4) imprisoning violent and career offenders. When North Carolina began it had a federal court-ordered cap on the number of prisoners.

He said there were many ways to get to truth-in-sentencing. North Carolina wanted to use its resources wisely by setting priorities. By balancing sentencing policies with resources, truth-in-sentencing would result. To achieve this balance, a state can either change its sentencing policies in a way that fits its resources, or expand its resources to fit the policy. But one or the other must be done to tell the truth.

North Carolina's commission was charged with classifying sentences, recommending a new sentencing structure, and developing a correctional population simulation model, which Judge Ross emphasized was necessary to formulate and effectuate any rational sentencing policy. Only using such a model can you project what a change in the law is going to do to the corrections system, and adjust resources accordingly. Judge Ross said that as a policy is developed to fit within Wisconsin's new legislation, the simulation model will be invaluable, because it will indicate if a certain policy is adopted what resources will be required.

Judge Ross talked about the process North Carolina undertook to address its problems and meet its goals. It classifies felonies into 11 categories. By considering each crime, and ranking it, the violent crime went to the top of the list, and property crime was dropped down. North Carolina considered offenders' criminal history, as well as other aspects of an offender a judge might consider, such as substance-abuse history, employment history, etc. North Carolina developed a system to rank defendants based on seriousness of prior criminal history. It used that information to rank defendants, and came up with a grid, with seriousness of criminal offense increasing on the vertical axis, and seriousness of criminal history increasing on the horizontal axis. Judge Ross said that most judges initially disagreed with the grid system of sentencing as taking away their discretion. Defense lawyers disagreed as well as giving too much power to the prosecutors. He said that nobody in the criminal justice process likes change. The guidelines North Carolina promulgated are mandatory.

To fill in the grid, North Carolina developed 3 primary levels of disposition: active incarceration, community punishment, and intermediate sanctions. Because North Carolina could not send everybody to prison - it was too expensive to build new prisons and not cost-efficient - it invested in new, creative ways to deal with nonviolent criminals to ensure that prison space would be used for violent criminals. These included boot camps with comprehensive after-care programs, and residential facilities, some of which are privately funded. One program is for nonviolent women offenders with small children. Rather than put the mother in prison, place the child in foster care, pay for both, and, given that statistics demonstrate crime is generational, raise another criminal, they kept mother and child together, and paid only once for their care. That program won national awards. Also created were day reporting centers: places for an offender to check in for most of a day, receive drug, educational, and vocational training, perform community service. The state does not have to pay for the offender's bed at night. These day reporting centers have become recruitment areas for employers. Also created was intensive supervision: 2 probation officers for every 25 defendants; these officers make 6-7 visits per week, do curfew checks, and use electronic monitoring, sometimes with complete house arrest.

Judge Ross pointed out on North Carolina's grid that one-half of all the offenders commit low-level felonies and have little or no criminal history. He said these numbers drive the corrections system. Controlling those numbers, and the allocation of those offenders, will dictate the success or failure of any structured sentencing system. An example of this crime would be forgery, or possession of a small amount of drugs, Judge Ross said that what most people would consider nonviolent crime for people with no criminal history makes up a large percentage of prison offenders. He showed a graph in which incarceration rates, and time in prison, increased for violent crimes, but radically decreased for low-level felonies. He walked through a

couple of example crimes on the grid.

Judge Ross explained what the impact of the **new** structured system had been on North Carolina over the 4 years it has been in place. Rather than 18% of their sentence, offenders serve 100% of their sentence given by the judge. Violent career offenders serve longer prison terms. The key to North Carolina's success was using intermediate sanctions for the low-level nonviolent offenders, allowing it to double the time-served for violent career offenders. North Carolina now has a surplus of empty prison beds. Because North Carolina has "solved" its crime problem, the legislature for the last few sessions has focused on other topics, such as highway construction and education.

Judge Ross also showed statistics that jury trials had not increased, because defendants know exactly how much time they will serve. He asserted that notwithstanding mandatory guideline ranges for a crime given a defendant's criminal history, judges have more discretion than before because of the absence of parole, room within the guideline ranges, and the ability to stack consecutive sentences. He said that judges like the new system because the discretion is now on the front-end, rather than with the parole commission. Judge Ross said that involving people in the process was key to North Carolina's success. They had to reach out beyond the commission, especially to county governments, as whatever the state system does will impact them, especially county jails.

The committee took a break from 11:00 to 11:10 a.m. After that, Judge Ross commented about the political situation his commission faced concerning resources. He said they went to the legislature to ask for funds for intermediate sanctions. North Carolina also built a new prison, and made **significant** investments in community corrections programs, including probation and parole agents. Also, any new crime bills in North Carolina first must be presented to the commission for a fiscal impact study, which accompanies the bill before the legislature. This has cut down on criminal law legislation. He said this is not an easy undertaking, and requires courage to remove politics from the venture. He encouraged a bipartisan approach, since crime is such an easy issue to exploit.

Judge Ross answered questions from committee members. Judge Lamelas inquired how much attention North Carolina gave to noncompliance with intermediate sanctions programs. Judge Ross said a lot, by suspending prison sentences as a contingent liability should the offender not comply. Judge Ross emphasized that everyone in the criminal justice system had to look carefully at the continuum of sanctions to use the best resources in the best possible way. Judge Malmstadt inquired about penalty enhancers. Judge Ross said North Carolina removed them by factoring them into the mandatory guidelines. Judge Malmstadt also asked whether juvenile offenses counted as criminal history. Judge Ross said they are an aggravating factor, rather than **part** of the criminal history categories. Judge Malmstadt also asked about charge bargaining - prosecutors and defense attorneys negotiating what will be charged beforehand to affect the offender's potential penalties. Judge Ross said it occurred, but that prosecutors have always had a great amount of charging authority.

Steve Hurley asked whether the cost of corrections increased as a percentage of the state's budget. Judge Ross said it did. North Carolina's commission developed two plans it sent to the legislature: one had no impact on cost; the other had desirable punishments, but cost a great deal more. The legislature came out between the two. It made a decision as to what it could afford. Given the increase in maximum prison rates in 1997 Wisconsin Act 283, Judge Ross said a system like North Carolina's could be constructed underneath the maximums. How this committee categorizes defendants, and classifies crimes, will determine what resources are needed, and requested from the legislature. The advantage of a computer simulation model is you will know what those costs will be. Judge Ross pointed out that resources

often drive policy, and that legislators will want to know what any new system costs.

Matt Frank pointed out how data intensive most of this work is, and asked for suggestions on how to secure such data. Judge Ross said the state department of corrections was the place to start, and said that there was money available from the federal government to help secure data and a computer simulation model. Judge Ross offered North Carolina's computer simulation model for free.

Judge Fiedler asked who determined whether or not probation should be revoked and if so what sanction should be imposed. Judge Ross said North Carolina delegated that to certain community corrections officers, although there is a post-release supervision board, with an administrative officer, who supervises that decision. North Carolina's period of post-release supervision is relatively short.

Mike McCann asked how the sentencing guidelines ranges were arrived at, specifically, whether they were decided by small, experienced groups of people, as in Minnesota. Judge Ross responded that North Carolina built the system it liked, and estimated its cost. North Carolina arrived at its guideline ranges by a group of experienced individuals examining historical numbers for first-time offenders. Penalties increase geometrically as the offender's criminal history worsened. A computer projection was done based on the number of offenders, and ranges were debated based on a variety of factors, including cost. The ranges were provided to the legislature, which liked the punishment ranges, but did not like the costs, so asked for a guidelines system with similar ranges but at no additional cost. Judge Ross suggested that Wisconsin place the new maximum penalties at the right end of the horizontal axis, and progress **leftward** toward the first-time offender, determine the system's cost, and see if the legislature would buy it.

Tom Hammer asked for an example of the most serious kind of offense in which community punishment was used instead of prison. Judge Ross said that would be for a Class C crime such as assault with a deadly weapon inflicting serious injury, or second-degree kidnapping. He admitted that some of these were violent offenses. Tom Hammer observed that a good portion of defendants in North Carolina were sentenced to intermediate sanctions. He asked if a political consensus did not exist for that approach, what could Wisconsin do? Judge Ross responded that he did not know. It could turn on risk analysis: how likely is an individual to re-offend? He thought criminal history was a good indicator, and therefore North Carolina felt comfortable sentencing more first-time offenders to intermediate sanctions.

Judge Malmstadt asked whether "quality of life" crimes (such as less serious property, offenses) were factored into the sentencing guidelines grid. Judge Ross said they were. Judge Wells inquired how first- and second-time small amount drug dealers were handled in North Carolina. Judge Ross responded that these offenders drive the system. He suggested that the circumstances of these offenders be studied closely. Non-addicts can be placed on supervision, and addicts routed to treatment. Judge Ross emphasized offering these offenders life-skills training, such as how to get and hold a job. Judge Sykes asked how prior records are qualitatively and quantitatively analyzed under the guidelines. Judge Ross said that juvenile records do not count in criminal history, but the type of crime previously committed does, by assessing it different criminal history points. Arrests or contacts are not counted in criminal history. Prior bargains where counts are dismissed in exchange for a plea, and prior read-ins, also are not considered. Judge Sykes also asked about appellate review. Judge Ross said that if a sentence is within a presumptive range, the appeals court only reviews whether the judge sentenced the defendant to the correct grid cell. If a sentence is in the aggravating or mitigating range, findings are appealable, but only for abuse of discretion.

The committee broke for lunch from 12:25 to 12:55 p.m.

Judge **Barland** called the committee to order to update members on the meetings of the code reclassification and extended supervision revocation subcommittees. He also expressed concern over the magnitude of the task of developing a working, credible computer model. Judge **Barland** introduced Dr. Richard Kern, executive director of the Virginia Criminal Sentencing Commission. Dr. Kern has his Ph.D. in criminology. Judge **Barland** complimented Dr. Kern on the high quality of the Virginia commission's annual report. Although the overhead projector did not work for the first part of Dr. Kern's presentation, he did use overheads for the remainder.

Dr. Kern related that when Virginia started its transition to determinate sentencing, it had many of the same problems as North Carolina had, including severely overcrowded prisons and jails. The Virginia corrections department did have a working computer simulation model in use since 1984, but Virginia had underestimated its need for prison beds. Dr. Kern discussed Virginia's felony structure, and compared it to Wisconsin's. Virginia adopted an 85% truth-in-sentencing approach, in which a felon will serve a minimum of that period of their sentence in prison. In Virginia, juries render sentences after jury trials, and have done so since the time of Thomas Jefferson. This has made criminal jury trials rare, since sentences from juries are about 5 times longer than judge-fashioned sentences. Virginia has mandatory minimum sentences. None were repealed when parole was repealed and truth-in-sentencing was adopted.

Dr. Kern described Virginia's approach of reviewing various states systems, as well as the federal sentencing guidelines system, to arrive at a truth-in-sentencing guidelines system. He outlined Virginia's advanced data collection methods which track over 200 unique factors about the offender's background. Virginia standardized and automated a lot of detailed information about offenders. They added this to the department of corrections database.

Virginia abolished parole, and its extant good-conduct credit system, adopted the federal model of allowing 15% good time, targeted violent offenders for long prison sentences, and greatly expanded the alternatives to incarceration. Virginia used the information in its database to set sentences that were long for violent offenders. It adopted a voluntary guidelines system. The compliance rate ranges from 75 to 80%. Filling out the guidelines form is mandatory, but the decision as to the final sentence remains in the judge's discretion. The system used was modeled on historical sentences imposed. Knowing that, those sentences were greatly inflated to account for parole and good conduct credit, which could significantly shorten them. Virginia used its detailed database to look at actual sentences imposed, lopped off the extremes at the high and low end (the upper and lower 25th percentiles), and was left with a mid-range. That range is what the guidelines became. It provided to the judge what the middle range, for which judges were looking. Eventually, judges adopted the guidelines as correcting for sentence disparity. Virginia also saw sentencing guidelines as key to actively estimating future prison populations. Virginia has found that over the last 3 years, its estimates have been within 1% of the actual, final population. The key decision was made in Virginia to retain judicial discretion. Virginia rejected the North Carolina model of mandatory guidelines.

Virginia's sentencing commission was placed within the judicial branch. The guidelines system was written into the state statutes. Once parole and good-time were abolished, everyone understood that the current system could not be continued, because it would bankrupt the state. For example, 1 in every 3 prison admissions was for possession of cocaine with intent to distribute. Under its old system, a 5-year prison sentence for this crime became 10 months. Under the new system, the offender serves at least 85% of whatever period is meted out. The midpoint for that crime was determined to

be 1 year, with the expectation that the offender would serve 10 months. For violent offenders, midpoints for the crimes committed were multiplied anywhere from 100 to **500%**, depending upon the nature of the violent crime and the defendant's criminal history. In Virginia, once one is convicted of a violent crime, punishment for a future conviction is profoundly affected. A "crime decay" mechanism under which after 16 years at liberty crime-free, a defendant's record would be effectively expunged, was tried but discarded.

Dr. Kern exhibited a chart which showed that violent crime was largely committed by offenders aged 15 to 26, with the exception of sex offenders. Accordingly, Virginia sentenced criminals of that age with a prior violent crime to a longer sentence than older offenders committing the same crime. Also, it took into account juvenile records. Dr. Kern used the analogy of a professional athlete: It would be like giving a 40-year-old quarterback, who's won five Super Bowls, a lifetime contract, because he's done what he's done in the past. But his age is critical. Because of his age, he's not going to bring home any more Super Bowl rings. Mike McCann asked if Virginia abated the sentences of older offenders. Dr. Kern confirmed it did: a geriatric clause could kick in after age 65.

Each year Virginia's commission publishes an annual report which includes recommendations on revising the guidelines. Those recommendations go to the legislature, which has to move proactively to alter them. If they do not so move, the revisions take effect the following July 1 st. Although Virginia's guidelines are voluntary, they have mandatory features: in each case, the judge must review the presumptive guidelines, state for the record that he or she has considered them, and fill out the worksheets, which become part of the record. When the court departs from the guidelines, the judge must file a written explanation for that departure. The commission staff looks at the departure reviews to see if there are any patterns or trends which may be cause for the commission to consider revising the guidelines.

Virginia's system has not been in place as long as North Carolina's: since January 1, 1995. Judges have complied with the guidelines approximately 75% of the time. When they departed, it was evenly split: the aggravation rate was **13%**, and mitigation rate was 12%. When Virginia began, it took a random snapshot of the people in its prisons. Only 50% were considered violent, even under an expansive definition. They concluded many people were **occupying** expensive prison cells costing \$20,000 per year. So Virginia took those offenders, placed them in alternatives to prison, and began sentencing its violent and career offenders to longer periods in prison. Also, like North Carolina, Virginia requires that all criminal law legislation must have a commission prison-impact statement. Last year, over 100 bills increasing penalties were proposed at legislative sessions, but none of them even was discussed by the criminal justice committee due to the fiscal impact. Since 1995, "intermediate" punishments have been added to handle approximately 6,000 felons. That has freed up prison beds for violent offenders, which is determined by risk assessment. Last year, prison population decreased **2%**, 1 of only 2 states in the country in which that occurred.

Dr. Kern emphasized that educating people about the new truth-in-sentencing system was extremely important. Judges were now pronouncing sentences that could be perceived by the public as lenient, when in fact the offender would serve a longer period of time in prison: "You've got to do a good public-relations job educating your citizens on it." So Virginia drafted, printed, and distributed brochures. Dr. Kern distributed copies of them. (A copy of the brochure and the commission's annual report are contained in this committee's files, and a copy of the annual report was distributed to each committee member.) These brochures are distributed by prosecutors and victim-witness specialists, as well as probation offices. They explain the way the new system works. Virginia also educates its high-risk population by distributing cards to offenders as they are released, delineating, in a manner specific to that offender, what punishment the offender could receive

if the offender commits another crime and are convicted.

Virginia heavily researched offender risk assessment. It studied thousands of property and drug felons released from prison, and studied 200 factors relating to their criminal record, substance abuse, history, education, employment background, family background, etc. Recidivism was defined as a reconviction for a new felony within 3 years of release. The commission ranked the most important indicators of who would recidivate. Offender age was most important, prior record next, followed by prior juvenile incarceration, going all the way down to unemployment. Those factors are considered according to the offender's circumstances, and if they reach a certain level, incarceration is recommended, or if less than that level, an alternative to incarceration.

Dr. Kern answered the committee members' questions. In response to Steve Hurley's question, Dr. Kern confirmed that since implementation of the new system, corrections has increased as a percentage of Virginia's total budget. Dr. Kern also confirmed that Virginia's system postpones many true costs, because it incarcerates felons for such lengthy periods. Dr. Kern speculated that the state's geriatric clause could be revised to handle any crisis point years down the line. Judge Malmstadt confirmed with Dr. Kern that risk assessment is applied to nonviolent offenders. They discussed good predictors of future criminal activity, including age of first arrest. Virginia's guidelines knowingly turned the traditional model of sanctioning upside down by incarcerating young felons for longer periods, and the legislature approved those guidelines. Walter Dickey suggested that Virginia's system reflects political rather than substantive decisions as to who is a violent offender, assessment of risk in individual cases, etc.

On the issue of risk assessment, Dr. Kern said that in Virginia's elaborate database, a strong correlation was found between offenders who had a burglary of a dwelling in their background, and subsequent violent offenses, while there was no relationship with those who committed other types of burglaries. Walter Dickey and Dr. Kern discussed intuitive risk assessment for sentencing decisions, and Judge **Barland** pointed out that that is what judges do every day. On the risk assessment point, Dr. Kern indicated that that analysis is undertaken only for those offenders going to prison anyway; the decision is whether or not to remove an offender from the pool of prison-bound offenders. He also pointed out that over 50% of the people in the guidelines system are not recommended for prison.

Judge Sykes asked Dr. Kern for clarification on how the guideline ranges were arrived at. He confirmed that the commission looked at time actually served, and adjusted crime by crime by making policy determinations about whether they considered that to be a sufficient period of incarceration. It was not just the lowest common denominator, enshrining past decisions of the parole board. For example, much time was spent with the crime of possession of cocaine with intent to distribute, and many people thought that should be a violent crime, but ultimately, the decision was made that the state could not afford to do so. The issue of whether sentences of more than 1 count are consecutive or concurrent remains with the judge.

Walter Dickey asked whether, rather than grouping offenses as violent or nonviolent, each offense could be examined as to what punishment it deserves, and do a risk assessment as to that offender, use the punishment amount and quality as a baseline, and modify up or down from there, depending on the risk of the offense. Dr. Kern agreed that was a valid approach.

The floor was canvassed for public comments, but there was none. After Mike Brennan reviewed some housekeeping items, Judge **Barland** noted that the next meeting of the whole committee will be November 20, 1998 at 9:30 a.m. in Madison, Wisconsin, in Room 417N, the Grand Army of the Republic room, in the State Capitol Building. Judge **Barland** also discussed the work of the



Code Reclassification Subcommittee, which has reviewed Class A felonies and begun to review Class B felonies. The meeting was adjourned at **3:30** p.m.

## Olsen, Jefren

**From:** Brennan, Mike [mike.brennanQdoa.state.wi.us]  
**Sent:** Wednesday, November 18, 1998 11:31 AM  
**To:** 'aaron nathans -- capital times'; Korbitz, Adam; Statz, Andrew; 'bill Clausius -- DOC public information director'; Grosshans, Bill; Archer, Cindy; 'david albino'; 'ed bloom -- wis. assoc. criminal defense lawyers'; 'george mitchell'; Olsen, Jefren; Bauer Jr., Jere; 'Jessica Weltman'; Clark, Julie; Grapentine, Mark; 'marline pearson -- matc'; 'matt bromley -- state bar -- govt. relations'  
**cc:** 'prof. michael smith'

Below is a copy of the open meetings notice and agenda for next week's second sentencing guidelines subcommittee meeting.

Please note that it will take place via videoconference, our first attempt at utilizing this technology.

Please call me with any questions.

Mike Brennan  
(414) 227-5102

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AGENDA AND NOTICE OF MEETING  
STATE OF WISCONSIN  
CRIMINAL PENALTIES STUDY COMMIT-I-EE

Sentencing Guidelines Subcommittee

Wednesday, November 25, 1998  
9:00 a.m.  
Via Video Conference Network

Milwaukee - Rm. 542 -- State Office Building  
819 N. 6th Street, Milwaukee, Wisconsin 53203

Madison - Rm. 108 - Univ. of Wisconsin Systems  
780 Regent Street, Madison, Wisconsin 53706

Eau Claire - Rm. 139 - State Office Building  
718 Claremont Avenue, Eau Claire, Wisconsin 54702

1. Call to order - Subcommittee Chair Judge Elsa Lamelas
2. Presentation by Professors Walter Dickey and Michael Smith concerning:
  - a. Purposes of sentencing guidance
  - b. Nature of guidelines to effectuate these purposes
3. Discussion of presentation by subcommittee members
4. If time permits, discussion of 1997 Wis. Act. 283 sec. 454(1)(e)4. -- creation of a Wisconsin Criminal Sentencing Commission
5. Adjournment

## Olsen, Jefren

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**From:** Brennan, Mike [mike.brennan@doa.state.wi.us]  
**Sent:** Thursday, November 12, 1998 2:43 PM  
**To:** 'aaron nathans -- capital times'; Korbitz, Adam; Statz, Andrew; 'bill Clausius -- DOC public information director'; Grosshans, Bill; Archer, Cindy; 'david albino'; 'ed bloom -- wis. assoc. criminal defense lawyers'; 'george mitchell'; 'gwen mccutcheon -- premium business services'; Olsen, Jefren; Bauer Jr., Jere; 'Jessica Weltman'; Clark, Julie; Grapentine, Mark; 'mark loder -- DOC -- chief of BTM'; 'marline pearson -- matc'; 'matt bromley -- state bar -- govt. relations'; Sullivan, Michael  
**Subject:** Next CPSC Meeting and ESR Subcommittee Meeting

Below please find copies of the agenda and open meetings notice for the next committee as a whole meeting on 11/20, and a subcommittee meeting on 12/4.

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AGENDA AND NOTICE OF MEETING  
STATE OF WISCONSIN  
CRIMINAL PENALTIES STUDY COMMITTEE

Friday, November 20, 1998  
9:30 a.m.

Rm. 417N  
Grand Army of the Republic Room  
State Capitol Building  
Madison, Wisconsin

1. Call to order - Chair Judge Thomas Barland
2. Consideration of minutes of October 16, 1998 meeting
3. Presentation on Delaware's sentencing system -- Judge Richard G. Gebelein, chair of the Delaware Sentencing Commission
4. Committee members' questions and comments
5. Presentation on Ohio's truth-in-sentencing law and sentencing guidelines - Fritz Rauschenberg, research coordinator of the Ohio Criminal Sentencing Commission
6. Committee members' questions and comments
7. Discussion -- education of government officials and general public about our work
8. Public comments - limited to 15 minutes
9. Subcommittee reports and discussion: (1) criminal code reclassification, (2) sentencing guidelines, and (3) extended supervision revocation
10. Any housekeeping matters and adjournment

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AGENDA AND NOTICE OF MEETING  
STATE OF WISCONSIN  
CRIMINAL PENALTIES STUDY COMMITTEE

Extended Supervision Revocation Subcommittee

Friday, December 4, 1998  
9:00 a.m.  
Rm. 414  
Milwaukee County Courthouse  
901 N. 9th Street  
Milwaukee, Wisconsin 53233

1. Call to order - Subcommittee Chair Judge Pat Fiedler
2. Discussion of the current parole revocation process:
  - a. Presentation by David **Schwarz** and William Lundstrom of the Dept. of Administration Division of Hearings and Appeals
  - b. Presentation by William Grosshans and Robert Pultz of the Department of Corrections, including discussion of revocation matrix presentation by Iowa corrections officials on November 10, 1998
  - c. Presentation by John **Barian** and/or Jan Cummings of the Department of Corrections
3. Adjournment

## Olsen, Jefren

**From:** Brennan, Mike [mike.brennan@doj.state.wi.us]  
**Sent:** Friday, December 04, 1998 5:05 PM  
**To:** 'aaron nathans -- capital times'; Korbitz, Adam; Statz, Andrew; 'bill Clausius -- DOC public information director'; Grosshans, Bill; 'david albino'; 'ed bloom -- wis. assoc. criminal defense lawyers'; 'george mitchell'; Olsen, Jefren; Bauer Jr., Jere; 'Jessica Weltman'; Clark, Julie; Grapentine, Mark; 'marline pearson -- matc'; 'matt bromley -- state bar -- govt. relations'  
**Subject:** Criminal Penalties Study Committee -- 1 1/20/98 Minutes; 12/11/98 Agenda

Below please find the above-referenced documents:

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Criminal Penalties Study Committee

November 20, 1998 Meeting Minutes  
Room 417N, State Capitol Building, Madison, Wisconsin

Chair Judge Thomas Barland called the meeting to order at 9:30 a.m. Present were: Judge Barland; Nicholas Chiarkas; Walter Dickey; Assistant Attorney General Matt Frank on behalf of Attorney General James Doyle; Greg Everts; Judge Patrick Fiedler; Thomas Hammer, the committee's reporter; Senator Joanne Huelsman; Steve Hurley; William Jenkins; Judge Elsa Lamelas; Judge Mike Malmstadt; District Attorney Mike McCann; Barbara Powell; Linda Pugh; Judge Diane Sykes; and Judge Lee Wells. Brad Gehring, who was dealing with some Outagamie County budget issues, was not present. The committee approved unanimously the minutes from the October 16, 1998 meeting.

Judge Barland spoke about his testimony before the Assembly corrections committee chaired by Rep. Robert Goetsch. Judge Barland reported on this committee's work to the corrections committee. Also discussed was the short reporting deadline of April 30, 1999, as well as the possibility of extending the effective date of the new law, should this be necessary. Rep. Goetsch commented on the lack of success grid-guideline systems seemed to have had, and Judge Barland told him the committee was studying the question and considering a non-grid system. Rep. Goetsch also was interested in the reclassification of crimes and suggested that some felonies could be made misdemeanors: Judge Barland said he found the Assembly corrections committee open to what our committee is doing. Tom Hammer commented that Senator Gary George has been appointed to head the Senate judiciary committee.

The committee heard from an outside speaker, Judge Richard Gebelein of Delaware, who distributed handouts to the committee, copies of which are in the committee's files.

Delaware's structured sentencing system was created under a sentencing accountability mission, or SENTAC. Judge Gebelein noted that there are characteristics of a small state such as Delaware that make it different than most states. There are only 17 judges in the entire state, and it has a unified prison system: all state prisons, no county jails.

In the late 1970's, Delaware had a prison overcrowding problem. State officials examined the problem and determined their goal was rehabilitation. A commission was formed with a 90 day deadline to formulate suggestions. It took that commission 4 years to come up with just a consensus and philosophy as to how Delaware should solve this problem.

The commission recommended to the governor that sentencing guidelines be instituted, that there be a guideline commission, and that the sentencing philosophy be changed. Delaware created 5 levels of supervision: level 5

is prison, level 4 is work release, level 3 is intensive probation, level 2 is traditional probation, and level 1 is administrative probation. The commission then developed sentencing guidelines that suggested the use of different levels of supervision. A 1 year project to develop guidelines turned into 3 years. Delaware's sentencing commission staff examined other states' sentencing guidelines, and developed a Minnesota-type grid proposal, but the commission concluded that the proposal did not fit the commission's goals because: (1) it did not incapacitate violent people; (2) it did not emphasize alternative sanctions for offenders who do not need to be in jail; and (3) the judges on the commission did not like the rigid grid format.

So the commission decided to jettison the staff proposal, and instead determined that the guidelines should be voluntary and should modify sentencing, not codify what was already happening. The commission drafted and adopted guidelines. The Delaware Supreme Court adopted an administrative order for that state's courts to follow the guidelines, but in a voluntary manner. The enacted legislation said that failure to follow the guidelines was not grounds for appeal. But the supreme court required that a judge put on the record why he or she did not follow the guidelines, if that occurred.

Delaware carried out 6 months of education before the system was put in place, and after 18 months of actual operation, had about 85% compliance, defined as a sentence within the fairly broad ranges. Delaware had to create reporting centers and hire intensive probation officers in order to administer its middle level (levels 2 and 3) sanctions. Delaware was ahead of the curve in the U.S. in instituting alternative sanctions and emphasizing their use for property offenders. This resulted in the state's prison population's percentage growth slowing down from fastest in the country to below the national average. The total number of offenders in the system increased dramatically, but the alternatives to incarceration increased greatly, as did the number of probationers.

Delaware also found a significant discrepancy between prison admissions and who was actually in prison. This is because the system was designed to reward long-term prisoners by allowing them to earn good time. So the sentences imposed for violent offenders were being increased dramatically. But for each additional year tacked on, the offender was only serving about 10 days. This was because of the good-time system then in place. The commission realized that it had focused only on sentencing policy, not on any of the system's practical effects.

The solution arrived at for this problem was truth-in-sentencing. Delaware abolished parole, limited good time, and required the sentencing judge to state why he or she deviated from the guidelines. Delaware's law requires offenders to serve at least 75% of their sentence. Delaware recognized that if it maintained then-current sentencing practices, yet made people serve 75% or more of their sentences, its prisons would be overwhelmed. Therefore, the decision was made to put away violent offenders for longer periods, and to use alternatives to incarceration for other offenders. Delaware also reduced the length of maximum sentences recognized under the system, given that prisoners would be serving longer periods of time, and increased the number of felony classes to separate violent felonies away from nonviolent felonies, and thus lower the amount of time that nonviolent people would spend in prison.

Delaware also hosted focus groups around the state to test the public's support for the SENTAC philosophy. These groups demonstrated that people wanted to put violent criminals in prison, and desired predictable, fair sentences. People accepted intermediate sanctions as punishment for nonviolent offenders if supervision was strictly enforced and offenders were accountable. Sixty percent of the public supported spending tax dollars on halfway houses, reporting centers, or camps, and drug treatment, but only 25% wanted to spend the money on more prisons. Delaware also studied its

intermediate sanctions, and found that they were working: level 3 and 4 sanctions were significantly cheaper but as effective as prison at stemming recidivism.

The Delaware commission presented the legislature and the public with a public-relations campaign focused on the cost and the effectiveness of the proposed plan. For example, they showed graphically that to keep one offender in prison used the annual state taxes of 14.5 citizens, while intensive probation cost only the annual state taxes of 1.7 citizens. The commission also studied the effect of its recommendations. The number of nonviolent prisoners had shrunk to only 100, and the number of violent offenders had increased. Level 3 and 4 sanctions continued to grow, and were strictly enforced. Prison population is increasing, however. This is due to the admission of probation violators. Given the increased use of intermediate sanctions, offenders will violate, and for such sanctions to be effective, they must be enforced, which includes sending offenders to prison.

The chief danger in what Delaware did was tinkering by the legislature with what Judge Gebelein termed "crime of the week." By instituting mandatory minimum sentences for a spectacular crime, it resulted in population increases for certain crimes, which can skew the planned system. Delaware is currently experiencing this with drug crimes. Also, three-strikes laws and mandatory lifetime sentences must be factored into prison population estimates. This may be a result of federal grants, which can encourage such programs.

Another problem was that the people of Delaware were accustomed to lengthy sentences. Under truth-in-sentencing, much shorter sentences were given. Judge Gebelein presided over one of the first rape cases under the new law. He wondered how the press would report it. The newspapers explained that while the sentence given was a lower number, the offender would actually spend more time in prison. So there was no adverse reaction. Further, prosecutors were willing to explain the new sentence structure to victims, which made a difference. Judge Gebelein stressed the continuing education component of truth-in-sentencing.

An observation about truth-in-sentencing systems is that there is a tendency to claim success during the first year when a system, as did Delaware's, washes out short-time people, and results in savings. This assumes, of course, shorter, but actually served, prison sentences, and diversion of former prison-bound offenders to intermediate sanctions. Judge Gebelein warned that after this initial drop, the numbers will catch up again by reason of longer actually-served sentences. Judge Gebelein then walked the committee through a sentencing example using Delaware's bench book.

Judge Gebelein stressed the importance of categorizing felonies into the proper classes. Under the original SENTAC philosophy, violent offenders would be imprisoned, and to the extent possible, nonviolent offenders would receive alternative sanctions. Thus, when categorizing felonies, they were careful to put virtually all nonviolent offenses in the lower-level felonies, and they were successful in doing that, except for drug offenses. The legislature simply disagreed with the commission as to drug offenses. It considered such offenders violent, and placed drug offenses into one of the violent-felony categories.

Judge Barland inquired whether Delaware distinguished between violent and nonviolent crimes by means other than the nature of the crime. Judge Gebelein said no. Tom Hammer asked whether there were any statutory aggravators other than those that relate to the offender's prior record. Judge Gebelein said there were, for example, betrayal of public trust, committing a crime while on supervision, or lack of remorse, as well as mitigating factors, such as victim involvement in crime, or that the crime was committed under duress or compulsion. Factors such as these would be

considered as reasons to deviate from a presumptive sentence. Many times it is not necessary to look at all of those factors because the judge has a fairly wide scope of discretion within the guideline.

Judge Sykes asked whether a juvenile record is considered in defining a first offender, and Judge Gebelein responded that it was not, based on the nature of Delaware's juvenile system. So, for example, although taking into account a juvenile record is not a valid aggravating factor for a sentence, the judge could do so, and not be reversed, because the guidelines are advisory.

Judge Lamelas inquired about violent and nonviolent felonies in the same classification. Judge Gebelein responded that those crimes were split apart and distributed across penalty ranges to preserve the system. Judge Gebelein discussed Operation Safe Streets, based on a Boston model of teaming up probation and police to check curfews and enforce the law against high-risk probationists. Judge Sykes then asked about the political will to put into place and make intermediate sanctions work. Judge Gebelein responded that being a small state helped, as well as that by properly funding and implementing an operation like Safe Streets, crime dropped.

Steve Hurley asked whether the crime rate in Delaware had declined. Judge Gebelein said it had declined this year, but went up last year. Since the implementation of the guidelines, the cost of corrections has increased as a percentage of the total state budget. Judge Gebelein attributed that to two things: (1) drug laws requiring the incarceration of a large number of people. In Delaware, that resulted in the need for 1 new prison. He said most of those people do not need to be there for 3 years, but could have been there for a short period of time, and released for treatment. (2) Following through with the commitment to punish people by incarcerating them for violating community supervision. Delaware has 5,000 prisoners and 21,000 offenders in community corrections; without a sanction of prison for violation of the latter, intermediate sanctions would not work.

Steve Hurley asked whether judges are given any information about the cost of sentencing alternatives. Judge Gebelein said they were aware of them through judicial education. He also said that the cost of prison per capita has dropped about \$3,000 per year since the implementation of truth-in-sentencing, as more people are now in prison, resulting in cost efficiencies. Steve Hurley asked about the cost of geriatric prisoners on life sentences. Judge Gebelein said nothing is really done to prepare for this eventuality.

Bill Jenkins commented that care for these older prisoners rests on the state and the federal government, for example, with Medicare. He asked Judge Gebelein whether there is a commensurate effort in Delaware to look at drug treatment along with truth-in-sentencing. Judge Gebelein said yes, that Delaware established an expensive substance-abuse treatment effort, inside and outside of prison, for offenders, as well as a statewide drug court. The latter diverted nearly 800 people outside the criminal justice system entirely, not even to level 1 probation.

Tom Hammer inquired how Delaware restructured its criminal code as to special-interest crimes. Delaware was lucky enough to have recently rewritten its criminal code 7 or 8 years before truth-in-sentencing, Judge Gebelein responded. Their commission currently has a committee looking at redefining everything in the criminal code again.

Judge Barland asked how Delaware factored race into its studies, and to what extent the prison population, as to race, deviated from the population of the state as a whole, as to race. Judge Gebelein said Delaware has a significantly higher percentage of minorities in prison than in the general population. Delaware considered that problem, and concluded it could not do anything to address it. "The guidelines are for everybody." The largest



disparity exists in the drug area, where virtually 90% of those imprisoned for drug trafficking are minorities.

Judge Sykes inquired whether there was a link between an increase in shootings in Wilmington and the fact that the new system placed more people in community supervision, intensive or otherwise. Judge Gebelein said that there was a drop in the number of shootings once Operation Safe Streets was implemented, monitoring the curfews of high-risk probationers. Judge Sykes asked whether therefore the probationers were the individuals doing the shooting. Judge Gebelein attributed the cause of the shootings to a change in Wilmington's policing policies.

Judge Sykes also asked about Delaware's non-grid system: was it a grid without a grid, because certain information was inputted and the guidelines spit out a presumptive range of sentence? Judge Gebelein said it was. It does not attribute points on a scale, but rather includes factors in a presentence report to see where the offender falls on the range.

Judge Fiedler asked who decides if a violator of mandatory post-release supervision returns to prison, and for how long. Judge Gebelein said Delaware had probation violation guidelines, and that the department of corrections makes the decision whether and how far the offender moves on the "level" scale, up to level 4, when if it is going to be incarceration or quasi-incarceration, the judge has to make the determination.

The committee took a break from 11:10 to 11:25, and then reconvened for a second report, this one from Fritz Rauschenberg, research coordinator of the Ohio Criminal Sentencing Commission.

Mr. Rauschenberg distributed handouts to the committee, copies of which are in the committee's files. He walked the committee through Ohio's felony sentencing quick reference guide, which has 10 sections encompassing hundreds of sections of Ohio's criminal code. Ohio concluded, as did Delaware, that the overriding purpose of criminal sentencing is to punish the offender and to protect the public from future crime. All sentences must comply with those purposes, should consider the needs for incapacitation, deterrence, rehabilitation, and restitution, should be commensurate with, and not demeaning to, the seriousness of the crime, and should be consistent with sentences for similar crimes committed by similar offenders.

The guide also references factors that indicate the severity of the crime: e.g., injury was exacerbated because of the physical or mental condition of the victim. These factors were placed in the sentencing calculus to replace the need for a special-interest crime, for example, crimes based upon age, race, or handicap. The guide also lists recidivism factors, such as if the crime was committed while on bail or awaiting sentencing under some sort of community sanction.

Ohio has five levels of penalties, although Ohio's life sentences for murder and the death penalty are not included in those, making their (in effect) 6 offense level system slightly different from Wisconsin's 5 offense level system. Ohio worked very hard to correctly classify its crimes, and move felonies outside the criminal code into it. Its guidelines system does not use a grid format.

When sentencing, the judge first looks at the in-or-out of prison decision. Among the first 2 offense levels, there is a presumption of prison. The judge is not required to impose prison, but is presumed to. If a judge believes prison is not appropriate, he or she examines a series of 8 detailed factors. If these dictate overriding a prison time, a judge can impose a community sanction. If a judge does so, the prosecutor can appeal. For the 3rd of the 5 offense levels, there is no guidance either way. The judge is supposed to balance those 8 factors and make the in-or-out of

prison decision. For the last 2 offense levels, there is a presumption of community sanctions, and the factors are considered. If any are satisfied, the crime is treated like a 3rd offense level crime, and the offender is imprisoned. If none are present, the offender is to be sentenced to community sanctions. If no factors are satisfied, and the judge sentenced the offender to prison, the case could be appealed.

Ohio's truth-in-sentencing minimized the number of crimes with mandatory minimums within this five offense level system. It eliminated good time, and went with a bad time system. Rather than three-strikes legislation, Ohio chose a repeat-violent-offender enhancement, in which for a second violent offense, the defendant's prison term would be doubled. Ohio also has statutes governing community sanctions. Recently, it has dramatically increased funding for the community sanctions available to judges as a sentencing option, as well as for residential treatment facilities. Ohio had a long history of shock probation: incarcerating the defendant for a short period right away, followed by a lengthy probationary period. It continued this practice under the new felony sentencing structure.

Mr. Rauschenberg then discussed Ohio's drug offense guide, which is in the form of a laminated card. This was the most difficult aspect of the implementation of truth-in-sentencing for Ohio to work out. It follows a set up similar to the rest of Ohio's sentencing guidelines system. It categorizes the crime based upon the offender's place in the offense continuum - possession, dealing, and manufacturing - and then within those categories, lists felony classifications, and therefore presumptive sentences, based upon the amount of controlled substances at issue. There is not a mandatory minimum sentence different from the range listed. After much soul searching, Ohio kept different scales for crack and powder cocaine. That has been challenged in federal court, and Ohio has won the first round.

Judge Wells inquired how Ohio handled possession of drugs with intent to deliver. Mr. Rauschenberg said that the crime had been eliminated, and possession and delivery have been made separate crimes. Mike McCann asked about how prison costs have been affected by the new system. Ohio's prison population is still in the initial dip Judge Gebelein mentioned when a state enacts truth-in-sentencing. The percentage of violent offenders incarcerated has increased dramatically. The expected time served of those individuals has increased. Steve Hurley inquired about geriatric prisoners. Ohio has avoided these because it has few prisoners sentenced to life. And life sentences still have parole releases. The cost of corrections has increased as a percentage of the state budget. The cost per day per prison bed decreased because of economies of scale.

Mike McCann inquired about shock probation, which Mr. Rauschenberg characterized as a type of release mechanism. Steve Hurley asked about concurrent versus consecutive sentences: is there anything in Ohio that requires a judge to determine related conduct in making this decision? Mr. Rauschenberg was not sure, but noted that a penalty enhancer, like the use of a gun, requires a consecutive sentence. Matt Frank asked whether Ohio reduced its statutory maximums when it implemented truth-in-sentencing. Mr. Rauschenberg confirmed that Ohio did: e.g., a first degree felony went from 25 years to 10 years. How did Ohio present that to the legislature? By specific examples, backed up by data.

Judge Malmstadt asked whether and how this legislation worked its way into the next election process for legislators and/or the governor. There was positive publicity for "offering a tough new truth-in-sentencing law," but no negative publicity for lowering statutory maximums. Senator Huelsman asked about the appeal process for sentences. Judges were concerned that there might be a large increase in appeals. The commission estimated there would be 1300 appeals of sentences. In fact, there have been only 70. Walter Dickey and Mr. Rauschenberg discussed Ohio's judicial release

mechanism, which allows a defendant to request modifications of the sentence over the life of the sentence. Mike McCann asked whether Ohio had victim's rights legislation, which it does.

Mr. Rauschenberg walked the committee through a sentencing example of the most serious felony. He discussed how recidivism and seriousness factors were weighed, and answered questions from Steve Hurley and Judge Sykes concerning how corrections costs were considered at sentencing. Mr. Rauschenberg mentioned that the Ohio commission worked very hard at rewriting the crimes of burglary and robbery to save a lot of wasted imprisonments. These crimes were weighted at the upper end and were stretched out through the range.

The committee broke for lunch at 12:40 p.m., and reconvened at 1:10 p.m.

Judge Barland mentioned that almost all committee members are now on electronic mail, and that that communication method now would be used more often. He also mentioned his concern about the absence of a safety valve for sentences of an offender outside the norm. He asked Judge Gebelein to discuss Delaware's safety valve, which is a provision that allowed the department of corrections on behalf of the individual inmate to petition for a modification of sentence for extraordinary reasons, such as medical conditions, or extraordinary rehabilitation. If the application has merit, it is presented to a sentencing judge, either the original or a successor, who holds a modification hearing. Delaware had seen 163 such applications in 5 years.

Mr. Rauschenberg then discussed particulars of Ohio's modifications to its truth-in-sentencing system, including modifications of post-release control. Walter Dickey inquired whether the two states specified conditions and durations for different types of crimes. Both states do. Judge Malmstadt asked whether judges overuse the number of choices for a defendant's post-release control. Judge Gebelein said sometimes.

Mr. Rauschenberg walked through another sentencing example under the Ohio system, this one a burglary case. He mentioned that a key to selling Ohio's law, given shortened maximums and the elimination of special interest crimes, was putting it into one large legislative package. There was no formal public relations campaign, but the commission did do seminars for the media, including for courthouse reporters. Delaware introduced its bill in the final month of the legislative cycle, let it lapse, then educated the public for 9 months, and received comments, and then reintroduced it. There was no fallout for legislators; nobody used the reduction of sentences as a campaign issue.

Upon questioning, Mr. Rauschenberg stated that Ohio's prison population was disproportionately African-American in contrast to the population as a whole. He attributed that to enforcement patterns, and the impact of the drug laws. A discussion was then had among various committee members and Mr. Rauschenberg concerning racial impact of the death penalty in Ohio, and upon prison population in general. Mike McCann asked that, if possible, the committee's projections include race, so as to be able to gauge the credibility of a justice system, should it become more racially disparate.

Judge Barland raised the item of education of government officials and the public about the committee's work. He mentioned that he would see that key members of the legislature receive committee minutes, and floated the idea of a subcommittee to plan a course of action. Judge Lamelas thought this was a great idea.

Walter Dickey gave a short report on the work of the computer modeling subcommittee. He related that the subcommittee has met several times and been examining various ways to proceed, including how to link necessary data, as well as a proposal by IBM for a computer model. Mike Brennan gave

a short report on the code reclassification subcommittee's three meetings, at which the class A and most of the class B felonies have been discussed. Judge Lamelas reported that the sentencing guidelines subcommittee has met once, had some basic discussions regarding how guidelines might look, and is scheduled to meet again next week. Judge Fielder said the extended supervision revocation subcommittee had met twice, and were scheduled to meet again on December 4th to hear from various corrections officials on how the current revocation process works.

Judge Barland also mentioned that he met with community corrections officials to discuss truth-in-sentencing. He has asked Bill Grosshans to prepare some recommendations on intermediate sanctions. He also asked committee members to think about a multi-day meeting sometime in January 1999. Judge Wells confirmed that that format was productive.

The floor was opened for public comments, but there were none.

At 2:30 p.m., the committee adjourned until its next meeting on December 11, 1998 at 9:30 a.m., in Room 417N of the State Capitol in Madison, Wisconsin.

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AGENDA AND NOTICE OF MEETING  
STATE OF WISCONSIN  
CRIMINAL PENALTIES STUDY COMMITTEE

Friday, December 11, 1998  
9:30 a.m.

Rm. 417N  
Grand Army of the Republic Room  
State Capitol Building  
Madison, Wisconsin

1. Call to order - Chair Judge Thomas Barland
2. Consideration of minutes of November 20, 1998 meeting
3. Presentation on near future of Wisconsin's corrections system, before impact of truth-in-sentencing -- Secretary of Corrections Michael Sullivan
4. Comments on the current state of the Wisconsin drug code:
  - a. Pat Kenney - Milwaukee County District Attorneys Office
  - b. Deb Smith - First Assistant State Public Defender
  - c. Committee discussion of these reports
5. Subcommittee reports, and discussion by the whole committee of those reports. Questions to consider in that discussion:
  - a. Which state systems, or aspects of certain state systems, did committee members like and dislike?
  - b. What type of guideline systems did members like and dislike?
  - c. Do committee members see a role for intermediate sanctions, and if so, what is it?
    - i. Criminal Code Reclassification - chair Thomas Hammer
    - ii. Sentencing Guidelines - Judge Barland

iii. Extended Supervision Revocation -  
chair Judge Pat Fiedler

iv. Computer Modeling - chair Walter Dickey

7. Public comments

a. Any housekeeping matters and adjournment

Olsen. Jefren

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**From:** Brennan, Mike [mike.brennanQdoa.state.wi.us]  
**Sent:** Thursday, December 10, 1998 8:29 AM  
**To:** 'aaron nathans -- capital times'; Korbitz, Adam; 'bill Clausius -- DOC public information director'; 'david albino'; 'ed bloom -- wis. assoc. criminal defense lawyers'; Sen.George; 'george mitchell'; Rep.Goetsch; Olsen, Jefren; Bauer Jr., Jere; 'Jessica Weltman'; 'john cappelleri -- asst. legal counsel gov.'; Clark, Julie; Grapentine, Mark; 'marline pearson -- matc'; 'matt bromley -- state bar -- govt. relations'; Sullivan, Michael; Simonson, Stewart; Rep.Sykora; Statz, Andrew; Poe, Alison  
**Subject:** FW: REPORT OF CODE RECLASSIFICATION SUBCOMMITTEE

Below an interim report to be presented at tomorrow's meeting.

> -----Original Message-----  
> From: Tom Hammer [SMTP:hammer@vmsb.csd.mu.edu]  
> Sent: Wednesday, December 09, 1998 4:12 PM  
> To: Brennan, Mike  
> Subject: REPORT OF CODE RECLASSIFICATION SUBCOMMITTEE  
>  
> CRIMINAL PENALTIES STUDY COMMITTEE  
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>  
> INTERIM REPORT OF THE CODE  
> RECLASSIFICATION SUBCOMMITTEE  
>  
> December 11, 1998  
>  
>  
> The Code Reclassification Committee has met several times to begin  
> the  
> process of analyzing the classification of crimes and making  
> recommendations regarding reclassification. To date it has discussed  
> all of the current Class A felonies and has just about concluded the  
> Class B felonies. There has not yet been formal consideration of  
> creating additional classes of felonies to supplement those presently in  
> existence, those this issue may arise when the subcommittee analyzes the  
> less serious Criminal Code felonies as well as the numerous felonies  
> codified elsewhere in the Wisconsin Statutes.  
>  
> Principles Guiding the Subcommittee's Work. Several factors have  
> influenced the subcommittee's discussions on crime classification,  
> though no definitive model has been agreed upon yet. Those factors  
> include the following:  
>  
> . The organizing principles underlying the first classification of  
> felonies in Wisconsin that took effect on June 1, 1978. The Legislative  
> Council Notes to the 1977 penalty classification bill (S.B. 14 (1977))  
> indicate that the crimes and forfeitures in the Criminal Code were  
> categorized according to the degree of actual or potential harm involved  
> in their commission: "Persons guilty of crimes resulting in death or  
> serious physical harm to others are subject to heavy punishments. Other  
> offenses involving less serious harm to persons have generally been  
> considered more serious than crimes against property alone. However,  
> given an equal degree of physical harm to persons, crimes involving  
> actual or potential harm to both persons and property are punished more  
> severely than offenses resulting in harm only to persons. Also, crimes  
> involving actual or potential harm to a number of people or to the  
> general public have been considered more serious than other offenses  
> with a similar degree of harm but more limited in scope or  
> application." See S.B. 14, at 4-5 (1977).

>

> . The felony offense classification criteria utilized in North Carolina.

>

> . Statistical information about the prosecution of crimes and the sentences imposed for them by Wisconsin courts. This includes data about the frequency of prosecution, range of sentences given, median sentence given, length of incarceration to first release, etc. Not all of this data is currently available to the subcommittee.

>

>

> . "Worst case" scenarios. Kay Knapp discussed this method of classifying offenses at an earlier meeting of the whole committee. She urged "worst case" analysis for setting maximum penalty ranges and "typical case" analysis for constructing sentencing guidelines. The subcommittee has utilized "worst case" analysis, though it recognizes that the term is capable of numerous meanings. Thus far it has been useful in assessing "protection of the public" issues arising out of the commission of the most serious kinds of felonies.

>

> . Practical political considerations. The subcommittee has been mindful of the fact that anything it recommends by way of reclassification of offenses must ultimately survive the scrutiny of the legislature.

>

> . Elimination of duplication/overlap in criminal statutes. The subcommittee is watching for situations where there is duplication/overlap in criminal statutes with the goal of eliminating it, unless there is a plausible need to maintain it.

>

>

> As it continues its work on Criminal Code crimes (or immediately thereafter), the subcommittee will need to confront three particularly challenging areas: penalty enhancers, controlled substance offenses, and motor vehicle offenses. Some preliminary reflections on these, which have emerged from subcommittee meetings, include the following:

>

> . Penalty enhancers. Thus far the subcommittee has identified three kinds of penalty enhancers:

>

> 1. Penalty enhancers codified as a group in Wis. Stat. ch. 939. These include, for example, the dangerous weapons enhancer, concealing identity enhancer, gang enhancer, etc.

>

> 2. Penalty enhancers built into various substantive crime statutes, for example, armed robbery within the robbery statute, armed burglary within the burglary statute, etc.

>

> 3. Penalty enhancers which surface as aggravated forms of "unenanced" crimes, for example, Battery to a Department of Commerce or Department of Workforce Development Employee is an aggravated form of the "unenanced" crime of battery.

>

> The subcommittee (and ultimately the whole committee) will have to grapple with the role of enhancers as the state moves to "truth in sentencing." Should they be maintained in their present form? Should they be eliminated from the substantive definitions of crime and reworked as aggravating factors to be considered by the court at the time of sentencing? If they are to become sentence aggravators, how will our guideline system take them into account? In any event the Code Reclassification Subcommittee will need to work closely with the Sentencing Guidelines Subcommittee on these issues.

>

> . Controlled Substances Offenses. At its meeting on December 11, 1998 the committee will be furnished with data demonstrating the significant effect drug offenses have on the Wisconsin prison population. Before

> the subcommittee tackles the classification of these offenses, it wanted  
> to have this data and well as the benefit of the expert presentations  
> and committee discussion that will occur on December 11.  
>  
> · Motor Vehicle Offenses. There are numerous unclassified felonies and  
> misdemeanors in the Motor Vehicle Code. Staff Counsel Michael Brennan  
> has prepared a comprehensive analysis of these for the subcommittee,  
> which it will consider after concluding its work on Criminal Code  
> offenses.  
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> Respectfully submitted,  
>  
>  
>  
> Thomas J. Hammer  
> Chair



**AGENDA AND NOTICE OF MEETING  
STATE OF WISCONSIN  
CRIMINAL PENALTIES STUDY COMMITTEE**

**Friday, January 8, 1999**

**9:30 a.m.**

**Rm. 417N**

**Grand Army of the Republic Room**

**State Capitol Building**

**Madison, Wisconsin**

- 
- 1. Call to order - Chair Judge Thomas Barland**
  - 2. Consideration of minutes of December 11, 1998 meeting**
  - 3. Presentation on Iowa placement and revocation matrix - Gary Hinzman, Director of the Iowa Sixth Judicial District (Cedar Rapids), Steve Street, probation/parole agent, and Shannon Ryan, software developer**
  - 4. Discussion of deadline extensions:  
    Committee's report: 4/30/99  
5: Effective date of truth-in-sentencing: 12/31/99**
  - 5. Public comments**
  - 6. Thank you to outgoing Secretary of Corrections Michael Sullivan; introduction of new Secretary of Corrections Jon Litscher**
  - 7. Any housekeeping matters and adjournment**
  - 8. Subcommittees meet:  
    Criminal code reclassification (Room 415NW)  
5: Sentencing guidelines, along with Computer Modeling (Room 417N - GAR)  
c. Extended supervision revocation (Room 424NE)**

## **Criminal Penalties Study Committee**

December 11, 1998 Meeting Minutes  
Room 417N, State Capitol Building, Madison, Wisconsin

Chair Judge Thomas Barland called the meeting to order at 9:30 a.m. Present were: Judge Barland; Nicholas Chiarkas; Assistant Attorney General Matt Frank on behalf of Attorney General James Doyle; Greg Everts; Judge Patrick Fiedler; Brad Gehring; Professor Thomas Hammer, the committee's reporter; Senator Joanne Huelsman; Steve Hurley; Judge Mike Malmstadt; District Attorney Mike McCann; Barbara Powell; Judge Diane Sykes; and Judge Lee Wells. Professor Walter Dickey arrived late due to academic obligations. Bill Jenkins arrived late after speaking to a group in Kohler, Wisconsin. Judge Elsa Lamelas was on vacation and therefore not present. Taking her place was Milwaukee County Circuit Judge Jeff Kremers. Linda Pugh was absent. The committee approved unanimously the minutes from the November 20, 1998 meeting.

Judge Barland introduced the committee's new administrative assistant, Jennifer Dubberstein, and reported on the committee's attempts to hire a computer technical assistant. First on the meeting's agenda was a presentation by Secretary of Corrections Michael Sullivan, but he arrived later, so the agenda was altered to hear comments from two presenters on the current state of the Wisconsin drug code.

### **A. Presentation of Milwaukee County Assistant District Attorney Patrick Kenney on the Wisconsin Drug Code**

Milwaukee County Assistant District Attorney Patrick Kenney, in charge of that office's drug unit, spoke first. He distributed to the committee's members his office's drug policy, and some drug prosecution statistics from Milwaukee County. Copies of these documents are contained in the committee's files. Attorney Kenney addressed the objection to prison as the penalty for a relatively common type of drug case: that of a street trafficker, or drug house worker, who sells small amounts of drugs. He said this offender is often referred to as the "nonviolent small-time drug dealer."

Attorney Kenney said that to understand how such a trafficker works, one must understand how drug markets work. His office handles cases usually involving open-air street corner sales and drug houses. He described a quick street-corner drug sale from the trafficker to the user driving up in a car. He said that flagrant drug markets have standard marketplace characteristics, including demographic and product segmentation, brand loyalty, cartel pricing, aggressive salesmen, careful recruitment of productive employees, and clear hierarchies.

At the top of the hierarchy is the leader who has acquired sufficient capital and connections to locate a steady supply of drugs. The leader divides the larger quantities of drugs into smaller bundles, which themselves typically are made of plastic "gem" bags (small zip-lock bags which contain one dose of drugs). A bundle usually contains 10-20 gem packs. The leader drops off the bundles to assistants waiting at prearranged locations. The assistants are the "nonviolent small-time drug dealers" who routinely are arrested and prosecuted. The assistant's job is to run out to cars or to approach pedestrians, to sell the drugs, and to collect the cash. Although there are many variations on this particular scheme, the structure of nearly every drug-distribution system is

designed to protect those in the distribution chain from arrest, and if prosecuted, to minimize the resulting criminal charges.

Just as developers look for certain demographic characteristics before choosing a construction site, so retail drug dealers scout neighborhoods looking for certain characteristics before “setting up shop.” Attorney Kenney said that astounding amounts of money are made in the retail drug trade. An individual can turn \$400 worth of cocaine -- about seven grams, an amount that would barely fill a tablespoon-- into roughly \$900 worth of crack in about ten minutes, simply by using a little baking soda, water, and a microwave oven. At the conclusion of that process, the dealer divides that into about 90 ten-dollar vials of crack. Attorney Kenney thought it important to focus on crack because the successful crack-marketing practices have been expanded for use with other drugs, including marijuana and heroin.

Crack marketing and addiction mixed to create a very violent subculture in urban America. In addition, crack’s availability, effects on the consumer, and frequency of use cause tremendous problems for the individual and the neighborhood. Because crack is relatively inexpensive, dealers rely on volume to make a profit. The economics of crack make selling to strangers an absolute necessity. However, when dealers are not familiar with their customers, they greatly increase their exposure to robbery and violence. Obviously, unlike the convenience-store owner who can call the police when he is robbed, a crack dealer resorts to self-help and carries a gun. A pervasive sense of fear exists among buyers and sellers. Adolescents say they need a gun because of random and not so random violence generated by unstable street-drug markets. This has resulted in a rapid rise in gun ownership, gun use, and street violence.

During the 1990’s, homicide rates throughout the nation rose, and now have leveled off. The increase during the 1990’s primarily has been attributed to the use of drugs and drug trafficking, especially crack. Attorney Kenney quoted Attorney General Doyle, who stated that the increase in drug trafficking has resulted in younger murder victims, younger killers, as well as an increase in the proportion of murders committed with hand guns. General Doyle stated that the recent decline in murders was the result of a modest reduction in drug use and drug trafficking.

Attorney Kenney also spoke about the highly addictive nature of crack. Its low price makes it available to a much larger, younger, poorer, and more vulnerable population. He said crack houses in particular are law-enforcement nightmares because of the rapid escalation in muggings, prostitution, strong-arm robberies, burglaries, purse **snatchings**, and shootings that occur in their vicinity. As a result, the “nonviolent small-time drug trafficker” is the focal point for violence in the neighborhood in which he operates.

Studies in other jurisdictions show a strong correlation between drug abuse, specifically crack, and certain types of other criminal activity, especially robbery. In 1989, there were 2,640 crime-index offense reports for Milwaukee County. By 1991, that number had increased by 72% to 4,551. From 1988 to 1991, the homicide rate, which was about 80, doubled in three years to about 160. Additionally, a strong correlation has been found between drug-addicted women offenders and prostitution. Milwaukee has well over 95% of the state’s prostitution arrests. Attorney Kenney also discussed the consequences of the fact that an overwhelming majority of addicted women are also mothers. Although heroin and marijuana do not suffer from the same degree of violence associated with the drug abuser, they do suffer from the same degree of violence relative to rival street-drug traffickers and probably substance abusers.

Attorney Kenney discussed the costs of small amounts of different types of drugs. He often hears from people who argue it is inappropriate for an offender holding a relatively small amount of drugs to go to prison. But the primary reason for such dealers not possessing more product is worry about being robbed or shot by the highly addicted, anxious, paranoid, obsessed crack addict. While such robberies are not reflected in most crime statistics, it does play out in the number of calls to Milwaukee's Police Department day-in and day-out complaining of shootings. Attorney Kenney told of his experience not being able to discern the angle of shots fired for a shooting because each house on that block had bullet holes in it. For these reasons, it is his office's conclusion that the "nonviolent small-time drug dealer" **does not** exist.

The second argument used against incarceration of such a dealer is expense, and that the money could be better spent in other ways. His office rejects the approach that drug problems cannot be solved until poverty, illiteracy, and unemployment have been eliminated from the central city. Certainly, drug treatment, improving the schools, increasing funding for social services will reduce the drug problem in the long run. But in the short term, many urban neighborhoods are now under siege from drug activity. The people who live in those neighborhoods cannot and should not have to wait another generation for relief from crime. Incarceration of drug traffickers holds the greatest short-term promise of reducing crime, violence, and fear that the illegal drug trade creates. Attorney Kenney also mentioned some success stories where neighborhoods have seen a substantial reduction, not only in drug trafficking, but also in the crime associated with it.

Mr. McCann asked and Attorney Kenney confirmed that drive-by shootings and daytime street shootings did not take place in Milwaukee before the advent of crack, and that the number of drug-related homicides are underreported. Three years ago, in a 9 day period, his office had to dismiss 4 cases because each of the defendants were murdered.

Steve Hurley asked how long the policy about sending these dealers to prison has been in place, and Attorney Kenney responded 8 years. Steve Hurley asked whether drug trafficking had increased or decreased in that time. Attorney Kenney answered that for the first couple of years it increased, and since then has remained constant. Attorney Kenney did not know the cost of this policy on the state prison system. He said this was difficult to determine because the length of time an offender actually spends in prison has varied greatly. Steve Hurley asked whether it would be inappropriate for the committee to do such a cost-benefit analysis. Attorney Kenney questioned how such an analysis could be done on certain aspects of the drug problem. Steve Hurley concluded that if over 8 years, a certain amount of money has been spent, and all that has been done is replaced the individuals who deal drugs and corners on which it has occurred, the problem has not been solved.

Nick Chiarkas defined the drug problem in 2 ways: (1) the medical problem of 1 million Americans addicted to drugs, and (2) the political problem of the war on drugs. He suggested dealing with the 2 problems separately. He cited a Rand Institute study which said that treatment is 7 times less expensive and 11 times more effective than the war on drugs. He said that 2 years ago, it was estimated that organized crime and cartels made more profits from drugs sales than the profits of all of the Fortune 500 companies combined.

Mike McCann asked Attorney Kenney about suburban drug trafficking, and the disproportionate number of young black men in the courts and prisons for this crime. Attorney Kenney said that issue is of concern, as the community he prosecutes is also the community he serves. Although there may be more drug use among whites than blacks, he attributed the disparity in prosecution and incarceration to where the use and dealing took place: whites largely use a private marketplace, while blacks more often use a public marketplace. "Because these private transactions [involving whites] occur behind closed doors on private property, there's a high degree of impermeability to the dealer-customer relationship. As a consequence, police find it more difficult to make arrests." Also, arrests tend to be responsive to complaints of drug activity, and most of those come from the black community.

Attorney Kenney characterized the drug problem as a cancer, which by not increasing over the last 5-6 years, he found to be a victory. He cited a magazine study which said the only consistent variable that explains why crime is going up in certain areas and down in others was the percentage of arrestees testing positive for cocaine: e.g., where that number was decreasing, crime was decreasing. He discussed the Milwaukee County drug prosecution statistics he distributed, including: 1 out of every 8 prison Wisconsin state prison admissions over the last 8 years had been prosecuted in the Milwaukee County District Attorneys office drug unit; in 1994, 71% of drug-trafficking offenders were sentenced to prison, and 29% received probation, although most of those receiving probation also served jail time in the House of Corrections; crack dealers have gone from averaging 34 months time served in prison to almost 44 months; and a preliminary recidivist study done by Attorney Kenney's office showed an 8% rate.

Mr. McCann reiterated that the drug unit's policy does not reflect a desire to rush first offenders to prison. Rather, his office was shocked with the drug problem's effect on the community. He relayed the story of how 3 children were slain while sharing pizza with an individual later determined to be a drug dealer, and how members of the community approach him and ask why known drug dealers are not behind bars. Judge Malmstadt opined there has been a significant decrease in the age of victims of the crimes associated with drug dealing.

Then Judge Kremers spoke. For 3 of the last 4 years, he was presiding judge of the felony division of the Milwaukee County Circuit Court, and he presided over a great number of drug prosecutions over that period. Among the drug traffickers convicted before him, 93% went to prison. Judge Wells' figures were about the same. What became apparent to Judge Kremers was that small-time street level dealers placed on probation with time in the House of Corrections as a condition of that probation often would result in the offender spending more time than if the offender was sentenced to a prison term. He found this ridiculous, and factored this into the offender's sentence. He attributed longer sentences to that phenomenon. He did not dispute the ability to do a cost-benefit analysis on this problem. But he also thought that a method analysis should be done: if you take away drug dealers' sellers on the street - make it too expensive - that will have an impact. He opined that the drug problem would be far worse in Milwaukee without this policy of prison for street-level drug traffickers. He also referred to public opinion, which is that drug dealers should be in prison, not in the community. They also must be accurately called drug "dealers" - many disagree that they are, although they were trafficking. Judge Barland's experience was similar to Judge Kremers's, although at a lower volume.

Judge Malmstadt offered some comments he felt were from a point of view not yet expressed. Drug trafficking is not disorganized chaos; it is rational. Because of a number of

factors, he felt there is a push to use younger people, since they are less likely to be subject to this policy. He felt it important to start equalizing the amount of funds spent on prison and child welfare. He stated that money is taken from the latter for every new project that comes along, which results in children being hurt and killed.

Matt Frank asked Attorney Kenney if he had any thoughts on how the justice system can better manage the people who are leaving prison and going back into the community. Attorney Kenney responded that neighborhoods should be treated like victims, and that probation supervision must be toughened and made more productive. He also said that despite the bleak picture of life he painted in certain areas of the City of Milwaukee, things are better there than in other similarly situated cities. He said a couple of years ago, nearly 2,000 addicted women were arrested for prostitution and retail theft, and the children of these women are routinely seen in Children's Court. Attorney Kenney said that one of the problems judges have with a drug treatment court is that its graduated-sanctions approach might not work due to the sheer numbers of offenders in Milwaukee County. He said a problem with drug-treatment programs - even those court-ordered, which can be more successful - is that they have not proved effective in preventing recidivism. The research is tending to show that without sanctions such programs do not work, and such sanctions require resources. And in Milwaukee, thousands and thousands of such people would have to be admitted to such programs. Attorney Kenney referred to an encouraging study done in New York City which found the "big brother syndrome" - if people's relatives are "on the pipe," they see how miserable their life is, and do not want that for their lives. After Attorney Kenney's presentation, Judge Barland commented on how intense the problems are that the committee had been discussing, and the depth of emotion touched in the speakers.

The committee took a break from 10:45 to 10:55 a.m.

**B. Presentation of First Assistant State Public Defender Deb Smith on the Wisconsin Drug Code**

First Assistant State Public Defender Deb Smith followed Attorney Kenney's presentation. She distributed materials for the committee's review, a copy of which is in the committee's files. She made 3 principal points.

The first is straightforward: if we continue to do what we are doing with regard to drug crimes, under Truth-In-Sentencing, we will continue to get what we are getting now, only multiplied. That includes expanding prison populations, and the budgets for that, which will be taken away from other services, as well as the appearance of racial injustice. Inmates serving time in prison on drug offenses is the fastest-growing segment of our prison population. And inmates serving time in prison contribute most to the disproportionate representation of minorities in the prison system. Attorney Smith said that prison is a high-ticket response to this problem. She added that prison does little or nothing to move these offenders from tax-consuming to tax-paying status. "The emphasis on incarceration means that despite a rapidly expanding budget for corrections, they can barely provide the secure bed space for inmates, and that draws resources away from other alternatives, including treatment." She did not want school children across the country to learn that Wisconsin's 3 principal exports are cheese, red sweatshirts, and prisoners. She asked that the committee examine the incarceration response versus treatment response, and how it is playing out right now with expanding corrections populations. The length of a prisoner's

sentence affects when he will be classified minimum security and can go into treatment. Judges and advocates consider this at the offender's sentencing.

Attorney Smith's second point was that our current drug code, its structure and its organizations, is a product of the "war on drugs." The strategies of the war are aggressive law enforcement, and prosecution and incarceration of drug offenders. The tactics include increasing mandatory minimum penalties, penalty enhancers, and financial rewards for adopting these strategies. Much money has become available for positions and equipment to fight the war, and grant accountability requires a body count. An example of how the drug code is modeled on the war on drugs effort is it being separated from the rest of the criminal code, with its own definitions and penalty structure. She told the story of a sad client of hers who had been arrested 5 times over a 3 month period for delivery of marijuana, each an eighth of an ounce, because law enforcement was training a new narcotics officer who needed an "easy target" on whom to practice. When she offered to plead her client to 2 of the 5 counts, she got the response that he must plead to 3 counts or go to trial. This strategy showed her that the war on drugs favor allowing a drug seller to remain on the street and to sell drugs so he can be charged with as many counts as possible. She asked us to keep in mind the purpose behind the drug code's current incarnation. Judges need more tools than a hammer; then every problem becomes a nail. The drug code, as currently written, is just a rack of hammers.

Attorney Smith's third point was that new tools need to be offered, besides prison, from the public health and restorative justice models. "This means that the criminal justice system must do something to deal with the drug-involved offender that addresses both the drug involvement and the offense." She admitted that the criminal justice system itself is not a treatment modality, but it can provide an opportunity for people to change. She offered 2 reasons why the farther an offender's case gets, the less likely it is that a person will accept needed treatment: (1) he system has an inertia toward imposing a penalty, and (2) human psychology is such that an offender is more likely to choose treatment if he or she is in a state of anxiety and disequilibrium.

Attorney Smith advocated the adoption of drug-treatment courts for Milwaukee. She has been involved in the original committee that set up Dane County's drug-treatment court. Clients are referred when their anxiety and disequilibrium are still high. They have access to treatment and other rehabilitative services right away. Program compliance is closely monitored and reported to the judge. And the judge rewards progress and provides sanctions for program violations on a one-to-one basis. She said that drug-treatment courts have been in operation for about ten years, and have shown effectiveness in participant retention, graduation rates, and lowered recidivism superior to other treatment programs. The restorative justice model, stressing accountability and responsibility, should also be considered. It focuses on crime as an offense against the community, and restoration of that sense of community. Attorney Smith said that an adaptive change is required. She said it is important that the committee's work product not simply be a more streamlined version of "business as usual."

Judge Barland observed that Attorney Smith's presentation focused on the individual as user, and Attorney Kenney's focused on the street-corner dealer, who is not necessarily a user. She responded yes, but she disagreed with Attorney Kenney that the street-corner dealer was not a user. Because so many criminals test positive for cocaine, she was skeptical these dealers were not also users. Judge Malmstadt said we should be careful about terms used, because users are not necessarily addicts. Judge Kremers asked whether drug-treatment courts are limited to offenders

who possess drugs, but without intent to deliver them. Attorney Smith said no, that varies per jurisdiction.

Judge Sykes thought that was an important distinction. Her impression was that a small percentage of street-level traffickers deal to support habits. Rather, they are often people without direction looking to make quick money. Steve Hurley said he thought the perception that young, black men deal drugs to make easy money is wrong. Many young men could turn to crime and do not. He said drug money was the only money those men could make. Mr. McCann disagreed with that statement. Judge Kremers said his experience differed from Steve Hurley's. Most offenders he sentenced are under 25 years of age, do not have a high school diploma, do not have a good job history, but have worked at a fast food chain or with a temporary help service. Asked why they were fired, they said they had too many absences, or showed up late, or left early. They have job opportunities, but did not take advantage of them. Steve Hurley said that part-time jobs cannot pay enough for rent, clothing, and transportation. Judge Kremers said drug dealing cannot either. The person making the money is the leader of the drug ring. The risk is being taken by the street-level traffickers. And they are the ones who will serve the prison sentence. They are being used. But street-level traffickers are not surviving on the money they are making.

Judge Sykes said the addicts are not trafficking to support their habit; they are committing collateral crimes. The homicides are being committed by the leaders who are protecting their territory. The burglaries, purse **snatchings**, robberies, forgeries, prostitution, and retail thefts are being perpetrated by the addicts. The street-level traffickers may be on marijuana, but usually they are not crack addicts who commit this collateral crime.

Judge Malmstadt said everyone of us as youths received a sense of hope. The young people who are being discussed have been stripped of a support system. At bottom, this is an economic issue. Without hope, many youths will go for the quick money. This committee will not solve this problem. He wrote out a question to think about: "if we can develop a non-prison response to drug offenses which minimizes the potential for long-term recidivism and maximizes the potential for long-term productive societal functioning, should that be pursued?" If the answer is yes, let's do it. If no, let's move on to what other crimes we should discuss. We may decide no, that drugs are too bad for society. Are the prosecutors correct to lock these people up? Yes, for lack of a better answer. The question for this group is whether there is a better answer. He did not know.

Attorney Smith said that we are better and more creative than to just say "it is too hard." She would be disappointed if we said that it is too hard. Mr. McCann said that that presumes drug-treatment courts work, and that the street-level dealers are addicted, which judges and some advocates say they are not. Attorney Smith responded that the model should be to integrate criminal justice and treatment systems. Judge Kremers said that both short- and long-term solutions must be sought. In the short-term, dealers must be incarcerated. If you do not, you will undermine the drug-treatment courts because those people are going to get drugs to continue their habits. He supports drug-treatment courts, and said Milwaukee County needs one. But that requires resources, and Milwaukee may require 10 times the resources Dane County does for such a solution to be viable.

Steve Hurley asked that the committee reexamine the short-term solution because now the system expends funds to a degree such that the long-term solution cannot be pursued. He said we



should look at the short-term solution and see if we are getting what we are paying for. Is there a more effective way to spend that money? Each speaker from another state has told us that once Truth-In-Sentencing is in place, corrections becomes an increasing percentage of the total state budget. He is also worried that Milwaukee sets the upper limit on penalties too high for the rest of the state. Attorney Kenney responded that while Milwaukee County may recommend prison for certain dealers while other prosecutors may not, that is not abusing the drug code, such as in the anecdote Attorney Smith told. Rarely do you see multiple counts of possession with intent to deliver in Milwaukee. Unless law enforcement is seeking a criminal higher on the ladder, he does not allow people to continue to sell drugs if enough evidence exists to arrest them.

Senator Huelsman said that she did not think this Committee would be able to solve all of the drug problems. Although a support structure is needed for youths, other community entities are working on that. She would be inclined to answer Mike Malmstadt's previous question "no." Even if we could accomplish his goal, she thought the legislature would look at the report and say, "that's not what we told you to do." She is concerned with the Committee going to far afield. She thought when we present our final report, we should delineate other areas to study. Steve Hurley did not disagree; he said we ought to consider the available resources, and then gauge what we can do to attack these problems. Attorney Smith asked that other solutions besides penalties be examined. Walter Dickey asked whether there has been variation in the price of drugs on the street. Attorney Kenney said "no," due to the proximity of Milwaukee to Chicago.

The committee broke for lunch from 12:30 p.m. to 1:00 p.m.

Nick Chiarkas wanted to confirm that the answer to Judge Malmstadt's question would be that our Committee would try. Judge Barland agreed it should be a question for us to keep in mind.

#### **C. Presentation by Secretary of Corrections Michael Sullivan on Drug Offenders in the Wisconsin Corrections System**

Secretary of Corrections Mike Sullivan distributed a packet, and used overheads which duplicated the packet, listing and graphically representing first-time admissions and releases for drug offenses in the state corrections system. A copy of the materials is in the committee's files. The materials broke down the drug offenders by areas of the state: Milwaukee, Racine and Kenosha, Dane and Rock, and Fox Valley. Twenty-three percent of all people on parole were on parole for drug offenses. Mr. McCann pointed out, and Bill Grosshans of the Department of Corrections confirmed, that a hefty percentage of probationers as a condition of probation are serving time in the House of Corrections. Mike Sullivan discussed the pilot programs in Racine and Dane Counties to transition prisoners back into the community. Nick Chiarkas mentioned a Reikers Island, New York study in which such a transitional program resulted in recidivism dropping from 86% to 16%. He will secure a copy of the study, as his brother runs the program.

#### **D. Subcommittee chairs report.**

Each of the subcommittee chairs gave a report of the work of his or her respective subcommittee. Tom Hammer distributed a copy of the interim report of the code reclassification subcommittee. That subcommittee has worked its way through the Class A felonies and now is almost finished with the Class B felonies. He outlined the various factors which have been

guiding the subcommittee's work, including statistical information, the "worst-case scenario," and eliminating duplication or overlap between crimes. Difficult remaining issues included penalty enhancers, how to classify drug crimes, and a possible recommendation that some sexual assault statutes be changed. Judge Wells mentioned that one other statute that should be looked at is what constitutes a lesser-included crime. Walter Dickey asked whether the subcommittee would take up the question of the interplay of mental state to harm. Tom Hammer thought we would when we got to battery. Walter Dickey suggested eliminating confusion by creating a punishment category for whatever the multiple groups you wanted to identify.

In Judge Lamelas's absence, Judge Barland gave a short synopsis of the work of the sentencing guidelines subcommittee. That subcommittee has debated grid vs. non-grid guidelines, as well as an analytical approach in which the judge answers a series of questions to help guide the judge to an ultimate sentence. Walter Dickey is sketching out some possible guidance systems for use by the subcommittee. Matt Frank advocated that the subcommittee consider a grid system. Matt also said that with the Committee's deadline fast approaching, he did not see how our job would be done without a workable computer model, which we do not have. Judge Barland said he was not sure whether we will ever have all the data we need at our fingertips to do the Committee's work during its lifetime. We have found that there is such a disparity of data in different parts of the governmental system that the process of pulling it all together in such a way that it is useful will take months. Judge Barland has gotten feedback that our Committee may have some elasticity in its deadline. But that requires us to go at a high rate of speed, and not let up. Unbeknownst to the Committee, Judge Barland has written Governor Thompson to let him know that for this Committee to properly complete its work, CCAP's budget should be augmented. At a recent legislative committee hearing, Representative Goetsch said that, if required, in January 1999, we should make request an extension of the Committee's reporting deadline and the effective date of Truth-In-Sentencing. Judge Barland did not know whether the legislature's opinion on that was unanimous, but Rep. Goetsch is an important chair. Steve Hurley said that without figures, it would be difficult for him to sign on to any recommendation. He began as anti-grid, but now as long as he knows the cost being considered in our recommendations, he did not care.

Walter Dickey gave a report on the work of the computer modeling subcommittee. It has met with IBM to try to create a model that would divide the problem into 2 parts: (1) the question of guidance for judges at sentencing, numerical or not, and (2) prediction of the need and use of correctional resources in the future. He believes those questions should be considered separately, because resources for the future, at least in the near term, are going to be dominated by "old world" sentences, which will dictate the use of correctional resources well into the next decade. So although you can merge the parts, the 2<sup>nd</sup> part involves much prediction, and sometimes guesswork. Steve Hurley, Matt Frank, and Walter Dickey discussed the impact of "old world" sentences on the existence of the parole commission. Judge Barland pointed out that 1997 Wis. Act 283 says that the guidelines shall be advisory. If it is a far-out sentence, he said our Committee should recommend to the legislature some vehicle to account for and correct that. Judge Malmstadt commented that Wisconsin formerly had a grid guidelines system, and that system did not inform the judges of total cost. Walter Dickey pointed out that in the presentations of each of our outside speakers, each state had an initial dip in the number of prisoners, but that had to be attributed to meeting or exceeding projections by using old world sentences. The Committee declined a suggestion to take a non-binding straw vote on recommending a grid vs. a non-grid guidelines system.

Judge Barland described his securing information from CCAP that over the first 6 months of 1998, Milwaukee County judges sentenced first-time felons to probation 52% of the time, while judges in the rest of the state did so 72% of the time. Judge Sykes thought that was partly a reflection of more violent crime in Milwaukee, and Mr. McCann added that part of it was a lack of confidence in probation among Milwaukee County judges. Judge Sykes said it also could be a result of more Milwaukee County felons with juvenile records.

Judge Sykes reiterated that judges will need a formula to convert indeterminate sentences into truthful sentences. She anticipates that this will be the most important piece of information judges will want and need. She asked that whatever form of guideline system we come up with include a translation grid or translation table to show what the median sentence and time served was for a crime. Otherwise, this project could run into trouble with the public and victims' groups. Judge Sykes also mentioned a fundamental decision the Committee must **make**: is it our mission to reclassify all felonies downward to mirror current sentencing practices or current time-served practices? Or is it our mission to come up with a guideline sentence that results in truthful sentences that mirror current sentencing realities or current time-served realities?

Judge Fiedler gave a report on the extended supervision revocation subcommittee's work. He distributed to the Committee a copy of the minutes of the subcommittee's third meeting, attended by 6 people knowledgeable about the current corrections system. Judge Fiedler discussed the statistics the DOC and DOA division of hearings and appeals presenters reported. He also reported that Iowa's software revocation matrix would be presented in January 1999 to the Committee as a whole. Mr. McCann asked whether the ESR subcommittee would recommend a new range of residential-type facilities, or respond to this question based on what existing resources are. Judge Fiedler's individual recommendation would be the former.

The floor was opened for public comments, but there were none.

The Committee discussed whether it should meet for a two-day meeting outside of Madison, but there was not support for holding a meeting at a convention site outside of Madison. It was agreed that the January 22, 1999 meeting would begin January 21, 1999, and continue until noon on the 22<sup>nd</sup>, and would take place in Madison, although at a hotel.

At 3:00 p.m., the committee adjourned until its next meeting on January 8, 1999, at 9:30 a.m., in Room 417N of the State Capitol in Madison, Wisconsin.

## Olsen, Jefren

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**From:** Dubberstein, Jennifer [Jennifer.Dubberstein@doa.state.wi.us]  
**Sent:** Tuesday, January 19, 1999 12:38 PM  
**To:** aaron nathans -- capital times; Korbitz, Adam; alison poe -- bjis of doa; andrew statz -- state budget office; bill Clausius -- DOC public information director; Bill Grosshans; cindy archer -- state budget office; david albino; dick jones; ed bloom -- wis. assoc. criminal defense lawyers; Eberle, Ed; Sen.George; george mitchell; Rep.Goetsch; Olsen, Jefren; jennifer dubberstein; Bauer Jr., Jere; jessica o'donnell; Jessica Weltman; Julie Clark; julie schultz -- sec'y to Jim Doyle; mark grapentine -- scott walkers counsel; marline pearson -- matc; matt bromley -- state bar -- govt. relations; Michael Sullivan; Mike Flaherty; prof. michael smith; sandra shane-dubow; sharon schmeling; Rep.Sykora  
**Subject:** Criminal Penalties Study Committee

Below please find the agenda for our 2 day meeting this week as well as the minutes from our last meeting, 1/8/99.

Jennifer Dubberstein  
(414) 2275103

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### AGENDA AND NOTICE OF MEETING STATE OF WISCONSIN CRIMINAL PENALTIES STUDY COMMITTEE

Thursday, January 21, 1999  
9:30 a.m.  
Friday, January 22, 1999  
8:00 a.m.

Senate Room  
The Madison Concourse Hotel  
1 West Dayton Street  
Madison, Wisconsin 53703

1. Call to order - Chair Judge Thomas Barland
2. Consideration of minutes of January 8, 1999 meeting
3. Break out into subcommittees:
  - a. Sentencing Guidelines and Computer Modeling: remain in Senate room
  - b. Code Reclassification: conference room III (2nd floor)
  - c. Extended Supervision Revocation: conference room IV (2nd floor)  
[Committee members are invited to join in the discussion of other subcommittees if their subcommittee's session finishes early.]
4. Committee reforms to consider and discuss relevant statistics
5. Committee discussion on, and possible decision of, various issues:
  - a. Extended Supervision Revocation
    1. Proposed revision of administrative regulation DOC 331.03
    2. Proposed revision of administrative regulation HA 2.05(7)
    3. Extended Supervision procedure:
      - a. Strict supervision model with less restrictive stages added to it
      - b. For offenders of certain classes of

crimes, presumption of strict supervision during initial period of extended supervision

- c. Cost of strict supervision model
  - 4. DOA Division of Hearings and

Appeals, or DOC if offender waives hearing, to make revocation decision, or judge to do so in certain cases

- b. Code Reclassification
  - 1. New felony class structure
  - 2. Mandatory release period, or first release eligibility, as conversion mechanism for unclassified felonies
  - 3. Placement of ch. 961, Stats., Uniform Controlled Substance Act
  - 4. Placement of vehicle-related felonies in criminal code, or maintain in traffic code

- c. Sentencing Guidelines
  - 1. Nature of sentence guidance
  - 2. Nature of sentencing commission

- d. Computer Modeling
  - 1. Discuss and define parameters of task computer technician is undertaking

- 6. Public comments
- 7. Discussion and choice of requested deadline extension
- 8. Discussion and choice of future meeting dates
- 9. Adjournment on Friday, January 22, 1999

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Criminal Penalties Study Committee

January 8, 1999 Meeting Minutes  
Room 417N, State Capitol Building, Madison, Wisconsin

Chair Judge Thomas Barland called the meeting to order shortly after 9:30 a.m. Present were: Judge Barland; Nicholas Chiarkas; Professor Walter Dickey; Assistant Attorney General Matt Frank on behalf of Attorney General James Doyle; Greg Everts; Judge Patrick Fiedler; Professor Thomas Hammer, the committee's reporter; Senator Joanne Huelsman; Steve Hurley; Bill Jenkins; Judge Elsa Lamelas; District Attorney Mike McCann; Barbara Powell; and Judge Diane Sykes. Judge Mike Malmstadt was represented by Milwaukee County Circuit Judge Jeff Kremers. Brad Gehring and Linda Pugh were absent. Judge Wells attempted to attend the meeting, but was unable to due to illness.

The committee approved unanimously the minutes from the December 11, 1998 meeting. Judge Barland recognized Bill Grosshans, director of the division of community corrections, to introduce individuals from Iowa's sixth judicial district.

Presentation of officers from the Iowa's sixth judicial district on its probation and parole placement matrix

The committee heard a presentation from Steve Konarske, residential supervisor of Iowa's sixth judicial district, Steve Street, a probation supervisor of that district, and Shannon Ryan, a technical consultant. The district of these officials includes 4 rural counties and 2 urban counties,

including Cedar Rapids and Iowa City. There are 12 judges for these 6 counties. Corrections officials from this judicial district have developed a pilot software program to aid probation and parole officers in placement and revocation. The program is in its infancy; Iowa has not adopted it statewide, but the state is considering doing so.

Steve Street gave an overview of the probation and parole matrix, and Shannon Ryan demonstrated the software in a powerpoint presentation. One purpose of the matrix is for all interested parties to speak in the same terms with the same set of facts. It is an automated computer program with the goal to make research-based, consistent decisions regarding clients. By entering specific data about a client, including demographics, assessment results, criminal history, and supervision status, the matrix guides the probation/parole officer through a decisionmaking process regarding supervision level, treatment interventions, and sanctions.

The matrix is used by supervising officers as clients enter the officers' caseloads. Its goal is to synthesize assessment scores and criminal and treatment history quickly such that a larger placement and revocation picture develops from the details. They term it a "relational tool." This program combines information learned from various risk and need assessments (many of which are currently used in Wisconsin). As for risk, decisions are made on the level of control, supervision, and sanctions. For need, decisions are made on treatment, assessment, and responses to violating behavior.

Risk is gauged low, moderate, elevated, and high, along the horizontal axis. Need for treatment is gauged low, moderate, elevated, and high, along the vertical axis. This forms a 16 cell grid (4 x 4). Clients are initially placed into the appropriate cell. The cell offers suggestions to the supervising officer regarding assessment, control, treatment, and responses. If the client violates supervision condition(s), the matrix guides the supervising officer through sanctions and revocation decisions. Each grid cell provides information concerning: (1) sanctions available, (2) a profile of an offender in this cell (to check accuracy of input), (3) threshold tolerance level of the community to an offender with these characteristics, (4) level of supervision suggested, (5) programs available for this type of client, (6) prerequisites for those programs, (7) responses to such a client, and (8) examples of how this type of offender has been handled in the past. Included in each grid cell is a bibliography of corrections research the supervising officer may consult in his dealings with this type of offender.

Goals underlying the development of the matrix include: (1) not to push low-risk offenders further into the criminal justice system by revoking them and placing them in expensive prison beds, (2) to help best join each client with the proper program, and at the least cost, and (3) not to inundate low-risk offenders with services which are unnecessary, thereby saving these services for high risk clients.

Any tool such as this is only as useful as the information which is entered into it. Two key assessments must be done: (1) the LSI, or level of service inventory, which measures risk and need, and (2) the CMC, or case management classification system, which assists adult probation and parole officers to effectively and efficiently manage caseloads under supervision. Besides these two assessments, 3 other assessments may be done for risk, and 6 other assessments (including attention deficit disorder, drug and alcohol abuse, etc.) may be done for need. The more accurate and detailed information that goes into the program, the more accurately the client can be placed into 1 of the 16 boxes. Note that the recommendations of each cell do not change based upon the client; rather, the information entered into it attempts to best place the client into a cell.

The sixth judicial district has now begun to move its assessments

and matrix use to the “front end” of the system - at the time of sentencing. The Iowa officials say that judges and prosecutors have found it helpful in assessing the risk an offender will recidivate as well as determine that offender’s treatment needs. These assessments are done as part of the presentence investigation report.

Steve Konarske distributed copies of two case studies, and described how the two cases would be handled using the probation and parole placement matrix. In the first, a 22 year old female on probation for possession of a controlled substance with intent to deliver, was granted a deferred judgment, and placed on two years probation. After she went through the assessments, the matrix placed her in a low-risk, low-need grid cell. The Iowa classification system, a risk assessment adopted originally from Wisconsin, acts as a prescreen. If an individual rises to a certain level in that system, specialized assessments are done. In the second case, a 35 year old white male was given a 2 year suspended sentence for assault causing bodily injury, domestic abuse penalty enhanced. He had violated his probation for consuming alcohol, public intoxication, and committing a new offense, assault while displaying a dangerous weapon. He has a lengthy criminal history. The matrix placed him in a high-risk, high-need grid cell, and the range of outcome possibilities included revocation.

Judge Barland asked how long these officials have been working on the matrix. Steve Street responded 6 years. Judge Barland asked who used the tool. Steve Street said probation and parole officers used it, and that judges increasingly requested its results. Steve Hurley asked what if any fiscal effect the tool has had on the cost of corrections. Steve Konarske said no cost studies have been done because the tool is still in its early stages. Steve Hurley asked what the role of the prosecutor and defense lawyer was at sentencing in light of the matrix. Steve Street said there has been no change in that respect, but that the tool adds an additional level of credibility to a recommendation of a presentence investigator by grounding it in research-based objective assessment.

Senator Huelsman asked whether Iowa had sufficient community facilities and residential-treatment facilities for all who require substance-abuse treatment. Steve Konarske said such programs are always overcrowded. People who cannot get into such programs are placed on waiting lists. Many such people are in locked, residential treatment facilities. Senator Huelsman asked if an offender had 5 prior convictions for operating while intoxicated, and another offender with 5 prior domestic abuse-causing injury convictions, what standard would be used to contrast these two individuals? Steve Street said the latter individual would be a higher risk, and require greater control.

Judge Fiedler inquired how much confidence the various players in the criminal justice system had in the matrix. Steve Street said that was not known as of yet, but that judges seemed intrigued with it. Secretary of Corrections Mike Sullivan commented that this system was developed to place those offenders who were revoked, and was only later used on the front end to aid in the sentencing decision. Steve Konarske agreed. Judge Fiedler asked whether it was possible for a judge to get a matrix result without ordering a full presentence. Steve Street said that the reason the LSI assessment, for example, fits so well within the context of a presentence investigation is that they inquire about the same items. Steve said it was possible to use the matrix without doing a presentence, and that doing the assessments for the matrix at the time of presentence investigation saves time. Bill Grosshans commented that the instrument takes about 45 minutes to conduct. A probation officer using the instrument gets 4 weeks to turn in the written report to the judge, however.

Tom Hammer asked what authority the judges had to order that an offender participate in community-based corrections. For example, in the second case scenario described above, would it be predictable that the

offender should still be in community corrections? Steve Konarske said that yes, judges sometimes do specify residential placements in court orders. He also confirmed that the parole officer's recommendation in the second scenario was revocation and incarceration of the offender.

Matt Frank asked whether they have had to allocate additional resources to do the various assessments. Steve Street said yes, to some extent, including psychologists and educators. Matt Frank asked whether they allocated additional resources to community supervision programs. Steve Street said that did not change significantly. He said that this tool allows agents to allocate their time to particular cases -- those with high need -- and that the agent can spend less time with those cases which fall lower in the matrix. Matt Frank asked about the statewide ratio of offender-to-agent. Steve Street listed with parole, 60 or 70-to-1, and with probation, 115 or 120-to-1. Steve Konarske said that at one time, those numbers were even higher.

Walter Dickey found their assessment of risk too offender-centered. He thought a judge seeking guidance about the risk somebody poses would not be satisfied with the information the matrix gave him, because risk is specific, often directed at individuals or places. The judge would want to know the likelihood of various interventions upon the risk that a person poses in those circumstances. For example, a domestic abuser should be kept away from his wife. A judge considering other interventions would want to know the likelihood of keeping them apart. Steve Street said that they are developing a comprehensive database that will allow them to track the effectiveness of various programs. Walter Dickey also asked about the overrides in the system. Why did certain crimes have automatic overrides to, say, moderate risk for OWI? What type of empirical or factual basis was there for that, or is it a political decision? Steve Konarske said that decision was based on: (1) current practices, and (2) those crimes which require more intensive supervision, e.g., a sex offense. Walter Dickey thought it important to distinguish and specify the difference between the high risk of somebody likely to recidivate and somebody unlikely to recidivate. Steve Street said that was the reason why more than a single assessment was done.

Judge Lamelas said judges do not look just at what sanctions are available, but when those sanctions should be used. She found it agent-specific as to when certain sanctions would be triggered. Another thing to look at was what would be the understanding between the offender and the agent and the courts and the community as to what a person must do to be sanctioned in a certain manner. Steve Street said that was why the matrix was designed, to aid in that determination. Judge Lamelas said she did not see in the matrix what it takes to get to a certain sanction. Steve Street said that that is where the staffing process is employed. Theoretically, it is a more proactive approach to getting individuals into proper programming.

Walter Dickey thought that truth-in-sentencing would be if a judge were to specify what behavior should result in revocation. Steve Konarske said one of the reasons to develop the matrix was concern about disparate treatment of offenders by different agents and judges. Steve Konarske asked that the software's definitions be displayed, including "noncompliant with supervision." Steve Hurley asked whether a drug offender with a drug-abuse problem who is on supervision and who relapses gets revoked? Steve Street said not necessarily. What the matrix does is, depending on where the individual is in the matrix, may or may not recommend revocation. If they are high treatment-high risk, it may so recommend, but not necessarily if the offender is high treatment-low risk.

Judge Lamelas did not think that the matrix analyzes certain difficult issues, such as a drug offender on probation who continues to use drugs. Steve Street said the matrix attempts to distinguish between



individuals whose substance use has no bearing on their criminal activity, and those individuals in which it does. The latter will be dealt with differently than the former. Steve Konarske agreed with Steve Street's distinction concerning substance use and its link to crime.

Judge Kremers said that from a truth-in-sentencing standpoint, what this committee decides about who will revoke makes all the difference. In Iowa, the judge decides that. In Wisconsin, first its up to the field agent, then a supervisor, then an administrative law judge. A judge's desires as to conditions of probation are advisory. In Iowa, they are mandatory. Steve Konarske confirmed such conditions are part of the court order. Walter Dickey mentioned 3 ways of dealing with this: (1) for the judge to list the conditions; (2) to change the statute for the judge to retain revocation authority; and (3) to give the judge the option. Judge Barland noted that under Wisconsin's truth-in-sentencing law, judges can impose mandatory conditions of extended supervision.

Judge Barland asked for a succinct definition of the LSI assessment. Steve Street said it had 10 areas, and the answer to a particular question relates to a risk factor in one of the areas. The assessment covers criminal history, family and marital relationships, living arrangements, employment, substance abuse, and attitude and orientation. Judge Barland mentioned it was not a very objective test. Steve Street agreed that to some extent it is based on responses to the assessor. Judge Fiedler discussed the relative administration of probation and parole revocations with Steve Konarske and Steve Street.

Greg Evens asked the presenters to discuss the types of treatment programs in Iowa. In addition to substance abuse and cognitive skills programming, Steve Konarske listed sex-offender treatment, batterer's education, OWI offender treatment, employment training skills, and life-skills planning, like financial planning. Also, mental health counseling exists. Steve Hurley asked what if any precautions are taken to prevent the pressure of a case load from becoming an incentive to revoke. Steve Street said that the matrix tool allowed agents to be more comfortable spending less time with low risk individuals. Steve Hurley asked about the coordination between the corrections department and the probation/parole office as to allocation of resources to programming as it influenced risk. Steve Street responded that the agent is to differentiate within the case load based upon the tool to allocate his or her time so that resources do not drive a risk decision.

The committee broke for lunch from 11:30 a.m. During lunch, the Governor's appointees to the committee met with him to discuss the status of the committee's work.

The committee reconvened at 12:30 p.m. Judge Barland said that the Governor expressed a great deal of interest in the committee's work, and wanted to hear frank reactions. Much of the discussion focused on the problems surrounding Milwaukee, including the matter of and confidence in community corrections.

Judge Barland raised the issue of the committee's reporting deadline of April 30, 1999. He discussed his conversation with Representative Scott Walker, who is prepared to introduce legislation for one realistic extension of that deadline. Judge Barland spoke about the difficulties the committee faces in securing proper data and modeling it. He proposed either July 31 or August 31, 1999, and opened up the issue up for discussion by the committee.

Judge Sykes asked whether it was the intent to allow the legislature sufficient time in the fall session to consider our proposals and get them enacted to train the judiciary and educate the public by the end of the year. Judge Barland said that if our report were delivered August 31, and

the legislature considered it and acted upon it in September or October, in its wisdom it may extend the truth-in-sentencing effective date of 12/31/99 a few months to allow for education. Judge Sykes confirmed that whatever deadline we choose, it should be before the fall session of the legislature begins. Senator Huelsman said that date is September 21, 1999.

Steve Hurley said August 31, 1999 is still optimistic. Judge Barland agreed. Walter Dickey said it depends on the type of report we issue, but he agreed with Steve Hurley that August 31, 1999 was not realistic. Bill Jenkins asked what our committee's product should be. Are we taking our challenge too far, or was he underestimating our task? Mike Brennan said it depends on how 1997 Act 283 was read. It delineates our charge. If our deliverable is a detailed North Carolina-type system, costed out within \$100, that is not realistic by August 31. But, for example, if it is delineating the nature of future Wisconsin sentencing guidance, a commission to promulgate and modify that, with examples of certain details, that is more reasonable.

Bill Jenkins suggested that the committee await the results of the January 21-22, 1999 meeting. He said that although our committee's structure for approaching the problem is solid, we cannot fix the data system, and we will have to make some judgements anyway. Judge Lamelas agreed. The sentencing guidelines subcommittee, which she chairs, has not met recently, and must see what type of sentencing guidance it would recommend to the committee.

Steve Hurley said that we have fundamental differences that we have not resolved: how to allocate resources. Judge Lamelas said that no matter how much time is spent, there will be some differences of opinion. Steve Hurley said basic decisions must be made. Will money be spent on violent offenders, nonviolent offenders, or in other ways? "Are we going to continue down the path of putting everybody away for as long as possible in every individual judge's discretion without regard to cost? And we have talked around this issue since the first day we met. And no one has taken it by the horns and had the Committee come to some consensus about this. And until we do, every subcommittee will continue to postpone making important decisions that they have to make."

Barbara Powell questioned the committee's role in considering cost. She felt another entity would worry in detail about cost, and that our job was to arrive at and recommend the proper classifications, guidelines, and aspects of extended supervision. Steve Hurley disagreed. He said for 12 years, costs have not been worried about. "They came to us to give them recommendations, and I intent to give them a recommendation about the fiscal impact."

Mr. McCann thought that once the costs are examined, the decisions will become much clearer. First, we recommend incarceration of violent offenders. It is obvious we divide on incarcerating so-called small-time drug traffickers. And there may be a consensus to use intermediate sanctions for some property offenders. He thought that some of our judgments will follow when you cost these problems out.

Mike Brennan said that he was spending one-half of his time developing the computer model. He noted a systemic problem with the way DOC and CCAP capture data. Easy accessibility is prevented because of the lack of a variable common to the 2 systems. The ultimate result is that he could have been hired 1 year before the committee began its work, and worked on the computer model that full year, and the model still would not be able to do what certain committee members wish it would do. He said the criminal justice policy debate must parallel the development of the computer model, and those decisions that can be made with the limited data we have should be made.

Judge Lamelas asked what our committee's charge said about cost. Judge Barland said the statute mentioned nothing about cost. He noted how our committee is in a unique position. The department of corrections, the judiciary, the Governor, and the department of administration, are all worried about the budget, and looking to us because we bridge these fields. "We are in a position to make some recommendations which will effect corrections and the criminal system for years to come." We should not simply do a quick reclassification and a tied-over kind of sentencing guidelines system and dump everything on a sentencing commission. These various entities will not always be speaking to each other. Because our committee crosses all of those gaps, we should do the best job we can. While its not explicit, implicit throughout our contacts with these entities is their worries about cost. We cannot ignore that.

Bill Jenkins said that cost is only one factor, however. Judge Barland agreed. Bill Jenkins said that once we get on that slippery slope, we will have to make some judgments about our recommendations in certain areas in which there are now deficits. "If the 31 st of August isn't enough, Steve, what is enough? I mean this can go on for more years than North Carolina, and Delaware, and other states. We've got to make some judgments based on information that's available."

Steve Hurley said he was unwilling to make a judgment without knowing what it will cost. He asked Judge Lamelas where a public servant "get[s] off saying, I don't care about cost." Judge Lamelas responded she did not say we should not care about cost: "We have a limited charge." Steve Hurley said cost is the charge of the public. He said one of the reasons we are in a bind now is that nobody in this system has cared about costs, and approached it like a blank check. He said that we better know what the cost is of our recommendations, and if we do not, we should not make recommendations.

Bill Jenkins said that path is like quicksand. His involvement in this committee has truly been a blessing to him. He is pleased to know that virtually every judge he has spoken with does his or her job not focused on cost. He would worry if that was the primary force behind their judgments. That does not mean we ignore cost. But this committee will not put the bottom line on cost either way. A fiscal bureau will examine every detail of our recommendations. How far will we go down that slippery slope? Bill Jenkins said not to ignore costs, but who knows if our numbers will match up with those Senator Huelsman and the legislature will use to make their decisions? Because our numbers will be second-guessed by a legislative fiscal bureau anyway, lets not let cost be the only driving factor. Steve Hurley said he is not suggesting it is the only driver, but one we have not gotten a handle on yet.

Judge Fiedler said his subcommittee has narrower issues, but he said it is approaching its task from the standpoint of resources, as far as what options are available. He does not take cost into account when he sentences, but rather considers the offender's risk, need for punishment, rehabilitatability, and what options are available in institutions versus the community to deal with the offender's treatment needs. "But if it gets down to the person is a danger, that's more of a concern to me than the fact that it costs \$22,000 a year to keep him in prison, as opposed to maybe \$2,000 a year in the community."

Steve Hurley said that the resources available are a function of cost. If a judge could place an offender in the community and save \$15,000 per year for his punishment, we should know that. "And we ought to be recommending to the Legislature that you bring the penalty down to these offenses and redirect your resources." The alternative is to keep the maximums in place for every offense so that every judge can send everybody to prison for as long as possible, because we refuse to put the resources in the community. He did not think that fulfills our responsibility. He thought the committee

should look at the history of the offenses and choose which should be treated in the community. "It's cheaper for us to do. Here's how much cheaper it is. Let's lower these sentences, redirect the resources, [so] we can conserve the resources for the truly dangerous and violent offenders." He pointed to the representatives of the states which presented to our committee, and how they considered cost. He looks at the current system of penalties and classifications which was passed without a fiscal note ever being attached to the legislation. "I've listened to the Governor, and looked at the budget, and say, this is getting out of control. And if we don't take it by the horns here, it isn't going to get done."

Walter Dickey commented that if we get to August 31, 1999, and make a recommendation without ballpark numbers of a variety of different options, people will laugh at us. Given the interest in this subject, including in its cost, political leaders, including the Governor, would be disappointed in our work if we did not come out with some indications of what the costs are going to be. Including cost in our recommendation is a realistic expectation of what the public asks. Mike McCann agreed.

Walter Dickey offered a suggestion. The Governor in his meeting with his appointees asked about any decisions the committee had made. Walter suggested that at our next meeting, we discipline ourselves to vote up or down on some important principles that we think ought to be reflected in everything that we do from here on in. Mike McCann's point that once we cost out incarcerating the violent offenders, we will be shocked at what little resources remain has stuck with Walter. Deciding upon a framework for discussion is important, and will progress the substantive discussion, as well as the decision for what new deadline we request. Mike McCann thought that was a good idea, and that an agenda of possible decisions should be drafted.

Nick Chiarkas agreed with Steve Hurley's point about costs. Any recommendations we make should be affordable. Bill Jenkins said that he understood, but that cost is not just dollars. Nick Chiarkas agreed. Bill agreed with Walter Dickey: although we do not intend to go out without looking at a fiscal note, we have to make some judgments about the exactness of that note. The resources associated with our recommendations are not just dollars. Walter Dickey said that although we may not ever agree on the costs involved, they are something on members' minds, and should be part of the calculus when making decisions on recommendations.

Judge Sykes said there was a general agreement that cost needs to be taken into consideration. What is important is how we spend the committee's time between now and when we can make those cost projections. She did not know whether the suggestion was that we defer all important decisions until that point and stop working, or continue to work and make our best criminal justice policy decisions in the meantime, and then when we find out what they are going to cost, make adjustments. She has always viewed the committee's charge, as a panel of people who either work in or are concerned with the criminal justice system, to be to recommend what the future corrections and sentencing policy of this state ought to be. We would offer the legislature various options: our best system and what it is going to cost, and then some less-costly alternatives. She has never viewed the committee's charge as having to wait to make some of these determinations until we know how much they will cost. Barbara Powell agreed with Judge Sykes.

Judge Barland agreed with Judge Sykes as well. He thought there was not a large difference of opinion, but just of emphasis. As Judge Barland read the discussion, the committee should defer to the January 21-22, 1999 meeting any time deadline to recommend to the legislature. At that meeting, we will be prepared to discuss certain issues and vote on certain issues, or at least certain general principles. For example, is revocation of extended supervision to be judicial, or administrative, or a combination of the two?

For guidelines, do we recommend a grid or non-grid approach? Between now and then in consulting with the subcommittees, we will arrive at a list of such decisions for the next meeting.

Mike McCann agreed with that approach. He asked Mike Brennan when we would be in a position to cost out without detail the impact of our policy choices. Mike Brennan detailed the history of hiring a computer technician. We interviewed IBM, which offered an approximate bid of \$150,000-i 75,000 bid for the work. We also interviewed Systems Seminar Consultants, which offered an approximate bid of \$55,000 for the work. The computer modeling subcommittee is looking for a simple working model at the earliest at May 1, 1999, although that deadline was not firm. Walter Dickey said that he thought the committee ought to vote on the task that person is to undertake. It cannot be too grand, so he thought there should be a consensus about what slice of the world it should be. Mike McCann thought the model could include the 8 or 10 crimes which constitute the most convictions and therefore the most substantial burden on the corrections system. Mike Brennan was reminded of Professor Mike Smith's comment that one missentenced armed robber, for 10 years, at \$20,000 per bed, is equivalent to our committee's entire budget. This brought home the importance of spending money to secure a working computer projection model.

Judge Barland spoke about the next meeting, which will take place over 2 days at the Concourse Hotel in Madison. This hotel was chosen because of its underground parking, given potential freezing temperatures, and central proximity for all. Bill Jenkins asked if there was a formal agenda for that meeting yet. Judge Barland said no, in light of the recent decision to set up agenda items for votes. Judge Sykes asked if the meeting would end at noon on Friday. Judge Fiedler thought it might be smart to end at 3 p.m. that day. It was agreed to leave the finishing time on Friday open. Jennifer Dubberstein, the committee's program assistant, distributed a memorandum concerning the arrangements made at the Concourse for the next meeting.

Judge Barland offered the committee's recognition and thank you to outgoing Corrections Secretary Mike Sullivan. He discussed Wisconsin's strong tradition of public servants, and spoke of the affection corrections employees exhibited to Mike Sullivan at a conference Judge Barland attended in October 1998. Judge Barland mentioned the tremendous efforts Mike Sullivan and his staff had made to help our committee do our work. Mike Sullivan appreciated Judge Barland's words, and the committee's recognition. He said it has been an honor and a privilege to serve the people of Wisconsin in the variety of corrections positions he has held. He feels the state's criminal justice challenges are in good hands as he looks around the committee. He implored the committee that in its deliberations decisions be made based on data rather than emotion. He said that the legislature, the Governor, and his department of administration look to this committee for a product that reflects thought, including an analysis of cost. Mike Sullivan wished our committee the best.

Judge Barland opened the meeting for public comments, but there were none. Judge Barland passed out a study done by Jennifer Dubberstein on first admissions for drug traffickers and drug offenders who were not traffickers by geographic population centers.

At 2 p.m., the committee adjourned until its next meeting, which will take place on January 21 and 22, 1999. The committee will next meet at 9:30 a.m. on January 21st in the Senate Room of the Concourse Hotel in Madison, Wisconsin. After the committee adjourned, its four subcommittees met for approximately one hour each to discuss their respective issues.



STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

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January 22, 1999

## MEMORANDUM

**To:** Michael Brennan, Staff Counsel, Criminal Penalties Study Committee

**From:** Jefren E. Olsen, Legislative Attorney, (608) 2664906

**Subject:** Minimum mandatory sentences of imprisonment

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This memorandum lists Wisconsin statutes that contain one of three types of minimum mandatory sentence of imprisonment. I have categorized the types of minimum mandatory sentences of imprisonment as follows:

1. ***“True ” minimum mandatory sentences of imprisonment.*** These statutes require a judge to sentence a convicted offender to a specified minimum term of imprisonment. The judge may not impose a lesser term of imprisonment, place the person on probation or impose only a fine.
2. ***“Presumptive ” minimum mandatory sentences of imprisonment.*** These statutes specify a minimum term of imprisonment but also give the court the discretion to sentence a convicted offender to a lesser term or place the person on probation.
3. ***Prescribed minimum sentences for which probation may be imposed instead.*** These statutes specify a minimum term of imprisonment, but the court has the discretion under s. 973.09 ( 1) (d), stats., to place the person on probation instead if the court orders the person to be confined as a condition of probation for the specified minimum period.

Also, as I mentioned during one of our telephone conversations, there are other statutes that might require some sort of minimum term, at least in some cases. For instance, some statutes appear to require a judge to impose a specified minimum term of imprisonment *if* the judge decides to sentence a convicted offender to imprisonment because they say something like “a person who violates this section *shall be imprisoned* for not less than X days *or* fined not less than \$Y *or* both.” I left crimes with this kind of penalty off of the list in this memorandum.

Other statutes appear to require a judge to sentence a convicted offender to a term of imprisonment but do not specify the minimum length of the term and do not appear to prohibit probation. Because s. 973.09 (1) (a), stats., says that probation may be imposed unless “prohibited

for a particular offense by statute” and none of these statutes appear to prohibit probation, I left them off of the list in this memorandum.

The list within each category is presented in ascending order of statutory citation and contains a brief title or description of the statute and the minimum penalties. For sake of completing this memorandum quickly, I have sometimes combined a number of related offenses together in one citation (e.g., operating while intoxicated, 2nd, 3rd, 4th and subsequent offenses) and I have not described the many presumptive minimums under s. 961.41 (1) and (1m), stats.

***Category 1: “True” minimum mandatory sentences of imprisonment***

346.65 (2) (b) to (e)	Operating a motor vehicle while intoxicated (5 days for 2nd offense; 30 days for 3rd offense; 60 days for 4th offense; 6 months for 5th and subsequent offenses)
346.65 (2j) (b) and (c)	Operating a commercial motor vehicle while intoxicated (5 days for 2nd offense; 30 days for 3rd and subsequent offenses)
939.62 (2m) (c)	Persistent repeat offenders-the “3 strikes, you’re out” and “2 strikes, you’re out” laws (life imprisonment without parole)
939.623	Repeat serious sex crimes (5 years)
939.624	Repeat serious violent crimes (5 years)

**NB:** All Class A felonies carry a “true” minimum mandatory sentence in the sense that the court must impose a sentence of life imprisonment and may not place the person on probation. See ss. 973.013 (1) (b) and 973.09 (1) (c), stats.

***Category 2: “Presumptive” minimum mandatory sentences of imprisonment***

939.63 (2) -	Committing a crime while possessing, using or threatening to use a firearm (3 years for 1st application of enhancer, 5 years for 2nd application of enhancer)
939.635	Battery or assault by a juvenile in a secured juvenile facility or to an aftercare agent (3 years for battery, 5 years for assault)
943.23 (1m)	Carjacking causing great bodily harm to another (10 years)
946.85 (1)	Engaging in a continuing criminal enterprise (10 years)
961.41 (1) and (1m)	Manufacturing, distribution or possession with intent to distribute various controlled substances (various minimums, all presumptive under s. 96 1.438)
961.49 (2) (am) and (b)	Distribution of or possession with intent to deliver a controlled substance on or near certain places (3 years for certain substances, one year for smaller amounts of THC)

***Category 3: Prescribed minimum sentences for which probation may be imposed instead.***

23.33 (13) (b) 2. and 3.	Intoxicated operation of an all-terrain vehicle (5 days for 2nd offense; 30 days for 3rd and subsequent offenses)
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30.80 (6) (a) 2. to 5.	Intoxicated boating law violations (5 days for 2nd offense; 30 days for 3rd offense; 60 days for 4th offense; 6 months for 5th and subsequent offenses)
134.50 (4)	Giving false information to a poultry dealer (30 days)
139.44 (1) and (1m)	Certain violations relating to cigarette taxes (one year)
343.05 (5) (a) 3.	Various operator's license violation (10 days for 3rd and subsequent offenses)
343.12 (5) (b) and (c)	Unlawful operation of a school bus (5 days for a 2nd offense; 10 days for 3rd and subsequent offenses)
343.43 (3) (b) and (c)	Unlawful use of license (5 days for 2nd offense; 10 days for 3rd and subsequent offenses)
343.44 (2g) (b) to (e)	Driving after revocation or suspension for refusal or OWI (5 days for 2nd offense; 30 days for 3rd offense; 60 days for 4th offense; 6 months for 5th and subsequent offenses)
343.44 (2m) (a) to (c)	Driving a commercial vehicle after revocation or suspension (6 days for 1st offense; 30 days for 2nd offense; 60 days for 3rd and subsequent offenses)
350.11 (3) (a) 2. and 3.	Intoxicated snowmobiling (5 days for 2nd offense; 30 days for 3rd and subsequent offenses)

There were also a few statutes that might fit into category 3, though I am unsure because they require that the person be imprisoned but do not specify a minimum period of imprisonment.

125.68 (12) (c)	Causing death through sale, etc. of denatured alcohol
215.12	Falsification of savings and loan association records
343.10 (8) (a) 2.	Violation of restrictions on occupational license, 2nd offense
343.44 (2) (b) 1.	Driving after revocation or suspension, 2nd offense

Finally, for your information I have attached printouts from the searches that I did of the current statute database. Printout A contains the result of a search for the phrase "shall be imprisoned". Printout B contains the results of search for all statutory units that contain the word "shall" and "sentence", "sentenced" or "sentences". Printout C contains the results of a search for statutes in which the phrases "not less" or "at least" occur with "imprison", "imprisoned", "imprisonment", etc., but excluding the phrase "shall be imprisoned".



STRICT SUPERVISION MODEL	<p><b>EXTENDED SUPERVISION</b></p> <p>Enhanced public safety by strict supervision of all offenders returning to a community setting from prison</p>		<p>Outcome-based Supervision</p> <ul style="list-style-type: none"> <li>Key components</li> <li>Movement to less restrictive supervision as a result of positive measurable changes</li> <li>Minimum of twice weekly face-to-face contacts</li> <li>Four additional collateral contacts per week</li> <li>Mandatory employment, school, and/or community service</li> <li>Mandatory electronic monitoring</li> </ul>	<p>B. Supervision Standard</p> <p>Outcome-based Supervision</p>	<p>Supervision Standards</p> <p>1. High Risk</p> <ul style="list-style-type: none"> <li>weekly face-to-face contacts</li> <li>two home visits per month</li> <li>electronic monitoring is at the agent's discretion (however, for certain sex-offenders, electronic monitoring is mandatory)</li> </ul> <p>2. Maximum</p> <ul style="list-style-type: none"> <li>face-to-face contact every 14 working days</li> <li>monthly home visits</li> <li>electronic monitoring is discretionary</li> </ul>
A. Primary Goal/ Population					

EXTENDED SUPERVISION	STRICT SUPERVISION MODEL	
<p>3. Medium</p> <ul style="list-style-type: none"> <li>monthly face-to-face contacts</li> <li>home visits every other month</li> </ul> <p>4. Minimum</p> <ul style="list-style-type: none"> <li>face-to-face contacts every three months, monthly reports by mail on those months when not reporting in person</li> <li>home visits at agent's discretion</li> </ul>		
<p>5. Contract Supervision (for some administrative/minimum cases)</p> <ul style="list-style-type: none"> <li>State has a contract with BI of Colorado to supervise certain minimum/administrative cases. These are phone-in contracts over a "900" telephone line. [These are usually "collection only" cases where an offender owes restitution/other court fiscal obligations. Offenders are stable in job, leisure activities, etc.]</li> </ul>		
<p>6. Intensive Sanctions (ends as a sentencing option on December 31, 1999)</p> <p>Phase system (four phase, the first in a secure facility, the other three in the community) where an offender is required to have numerous face-to-face contacts each week at the agent's office, offender's residence, work of school; mandatory urinalysis; mandatory work/school/community service; electronic monitoring is mandatory in two of the three community phases. Inmates earn their movement to other phases based on their behavior and minimum time requirements in each phase.</p>		C. Staff Caseload
<p>Ratios (Agents: Offenders) 1:20</p> <p>Ratios (Agents: Offenders) Numerous ratios presently:  - intensive sanctions 1:25  - enhanced supervision projects (Racine/Dane Counties) 1:17  - high risk (varies by region) 1:20 / 1:30  - traditional caseload average 1:72</p>	20 offenders to each agent	

STRICT SUPERVISION MODEL		EXTENDED SUPERVISION	
D. Purchase of Services/Resources	<ul style="list-style-type: none"> <li>• \$3,500 Per Offender</li> <li>• Halfway houses</li> <li>• Confinement beds</li> <li>• Alcohol and other drug abuse programming</li> <li>• Sex offender programming</li> <li>• Day reporting centers</li> <li>• Employment programming</li> <li>• Community service</li> </ul>	<ul style="list-style-type: none"> <li>• \$3,500 Per Offender</li> <li>• Housing (H/W, TLR)</li> <li>• Substance abuse programming</li> <li>• Sex offender programs</li> <li>• Employment, Readiness/job skills training</li> <li>• Community service</li> <li>• Day/report centers</li> <li>• Education</li> </ul>	
E. Hours of Work	Extend program operating hours to 24 hours per day, 7 days per week	<ul style="list-style-type: none"> <li>1. Traditional supervision M-F, 7:45am-4:30pm</li> <li>2. Intensive sanctions 7 days/week, 6:00am-10:00pm</li> <li>3. Absconder Unit (Milwaukee) 7 days/week, 6:00am-10:00pm</li> <li>4. Enhanced supervision (Racine/Dane) 7 days/week, hours vary</li> <li>5. R.O.P.E. (Milwaukee)</li> </ul>	
F. Absconders	Actively search, apprehend and process absconders	<ul style="list-style-type: none"> <li>1. Created and funded in 1998 in Milwaukee. There are currently 20 absconder agents assigned to actively search for absconders</li> <li>2. Enhanced supervision projects (Racine/Dane)</li> </ul>	
G. Transportation to the Community from Parole/MR		Mandatory DCC transport from prison to the community	
H. Institution Visits/Meetings		<ul style="list-style-type: none"> <li>1. Mandatory DCC staff transport from prison to community for intensive sanctions and certain sex offenders</li> <li>2. Offender is directed to report to the agent upon parole/MR</li> </ul>	
		DCC staff required to meet with offender/institution staff annually. In last year of institution of institution stay, DCC staff meet with offender/institution staff 6 months before extended supervision is to begin	
		Not required – at agent's discretion	

EXTENDED SUPERVISION	STRICT SUPERVISION MODEL	I. Urine Screening
<ul style="list-style-type: none"> <li>Mandatory</li> <li>Baseline urine screens on all offenders at point of release</li> <li>At least weekly urine screens</li> </ul>		
<ol style="list-style-type: none"> <li>1. Agent's discretion for traditional supervision model</li> <li>2. Mandatory weekly for intensive sanctions</li> <li>3. Federal requirement for truth-in-sentencing funds – 8% monthly of randomly selected parolees</li> </ol>		
Mandatory for all offenders upon return to the community		J. Electronic Monitoring
<ol style="list-style-type: none"> <li>1. Mandatory for intensive sanctions in two of the three phases</li> <li>2. Mandatory for some sex offenders</li> <li>3. Agent's discretion for traditional supervision</li> </ol>		
<ul style="list-style-type: none"> <li>Agents assigned/located in defined neighborhoods</li> <li>Active supervision</li> <li>Teams of staff and police</li> <li>Work with neighborhood associations/others</li> <li>The neighborhood is our client</li> </ul>		K. Neighborhood Supervision
<ol style="list-style-type: none"> <li>1. Developed in 1993, there is some form of neighborhood supervision in all regions of the state</li> <li>2. Enhanced supervision projects (Dane/Racine)-agents located in neighborhoods</li> </ol>		
<ol style="list-style-type: none"> <li>1. Streamlined revocation process for program removal</li> <li>2. Update re-incarceration forfeiture and</li> <li>3. Provide mechanism for return of offenders to secure confinement for up to 90 days (involuntary)</li> </ol>	<ol style="list-style-type: none"> <li>1. Streamlined and process procedures for confinement of offenders for violations of supervision</li> <li>2. Consistency in consequences for violations of the rules of supervision.</li> </ol>	L. Revocation/Return to Secure Confinement/Sanctions
<ol style="list-style-type: none"> <li>1. Traditional supervision model – revocation process outlined in Administrative Code 331</li> <li>2. Intensive sanctions - reduced and process provides return to secure confinement</li> <li>3. Sanctions - agent's discretion after consulting with supervisor</li> </ol>		

	<b>STRICT SUPERVISION MODEL</b>	<b>EXTENDED SUPERVISION</b>
M. Technology	<ol style="list-style-type: none"> <li>1. Computers for each agent, program assistant and supervisor</li> <li>2. Program evaluation database which allows for all staff to have access to offender information. Ability to run reports on violation/re-offending patterns.</li> <li>3. Safety equipment-additional caged vehicles, radios, cellular pagers, restraints, Jaddad spray</li> <li>4. Electronic monitoring units/scanners</li> <li>5. Geographic Information System (GIS)</li> <li>6. Computer statistics</li> </ol>	<ol style="list-style-type: none"> <li>1. GIS - statewide</li> <li>2. Electronic monitoring - discussed</li> <li>3. Global positioning - if available/reliable</li> <li>4. Polygraph - expand statewide</li> <li>5. Pagers/cell phones - provide to all agents</li> <li>6. Juns monitoring - expand</li> <li>7. Remote alcohol units - expand</li> <li>8. Offender identification cards - create them/require offenders to carry them</li> </ol>
N. Victims		<ol style="list-style-type: none"> <li>1. Geographical Information System (limited use)</li> <li>2. Electronic monitoring</li> <li>3. Global positioning/tracking (tested)</li> <li>4. Polygraphs (or sax offenders (limited use)</li> <li>5. Pagers/cell phones</li> <li>6. Juns monitoring (domestic violence)</li> <li>7. Remote alcohol units</li> <li>8. Offender identification cards (Racine)</li> </ol>
		<ol style="list-style-type: none"> <li>1. 10,000 victims registered in the Parole Eligibility Notification System (PENS)</li> <li>2. Victim Advisory Committee</li> </ol>
O. Community Advisory Boards		Required community advisory boards statewide
P. Cost	\$8,881 per year	Beginning to implement boards
		\$8,881 per year
		<ol style="list-style-type: none"> <li>1. Probation and Parole - \$1,400 per year</li> <li>2. Intensive Sanctions - \$7,400 per year</li> </ol>

Q. Secure Beds	STRICT SUPERVISION MODEL	EXTENDED SUPERVISION
		<ul style="list-style-type: none"> <li>1. Use of county jails/reimbursement for felony non-criminal violations Milwaukee</li> <li>2. Milwaukee <ul style="list-style-type: none"> <li>• 125 beds at county jail</li> <li>• 300 beds at House of Correction</li> <li>• 300 beds at Racine Correctional Institution</li> <li>• 1048 bed facility to open February, 2000</li> </ul> </li> <li>3. Biennial Budget <ul style="list-style-type: none"> <li>• Secure p/p Hold Facilities</li> </ul> </li> </ul>

Attachment A--Penalties under Current Wisconsin Statutes

DRUG, SCHEDULE RELEVANT STATUTES	QUANTITY	DISTRIBUTION, MANUFACTURE, POSSESSION W/ INTENT
Tetrahydrocannabinol (THC) 961.14(4)(f) 961.41(1)(h) / 961.41(1m)(h)	≤500 grams 1-10 plants	\$500/---- to \$25,000/3yrs
	>500 but ≤2500 grams 11-50 plants	\$1,000/3mos to \$50,000/5yrs
	>2500 grams 51 or more plants	\$1,000/1yr to \$100,000/10yrs
Cocaine and Cocaine Base 961.16(2)(b)1 961.41(1)(cm) / 961.41(1m)(cm)	≤5 grams	up to \$500,000/10yrs
	>5 but ≤15 grams	----/1yr to \$500,000/15yrs
	>15 but ≤40 grams	----/3yrs to \$500,000/20yrs
	>40 but ≤100 grams	-----Kyr to \$500,000/30yrs
	>100 grams	----/10yrs to \$500,000/30yrs
Heroin 961.14(3)(k) 961.41(1)(d) / 961.41(1m)(d)	≤3 grams	\$1,000/---- to \$200,000/15yrs
	>3 but ≤10 grams	\$1,000/6mos to \$250,000/15yrs
	>10 but ≤50 grams	\$1,000/1yr to \$500,000/15yrs
	>50 but ≤200 grams	\$1,000/3yrs to \$500,000/15yrs
	>200 but ≤400 grams	\$1,000/5yrs to \$500,000/15yrs
	>400 grams	\$1,000/10yrs to \$1,000,000/30yrs
Lysergic Acid Diethylamide (LSD) 961.14(4)(j) 961.41(1)(f) / 961.41(1m)(f)	≤1 grams	\$1,000/----- to \$200,000/5yrs
	>1 but ≤5 grams	\$1,000/6mos to \$250,000/5yrs
	>5 grams	\$1,000/1yr to \$500,000/15yrs
Phencyclidine(PCP) 961.14(4)(n) Methamphetamine & Amphetamine 961.16(5)(a), (b) Methcathinone 961.14(7)(L) 961.41(1)(e) / 961.41(1m)(e)	≤3 grams	\$1,000/---- to \$200,000/5yrs
	>3 but ≤10 grams	\$1,000/6mos to \$250,000/5yrs
	>10 but ≤50 grams	\$1,000/1yr to \$500,000/15yrs
	>50 but ≤200 grams	\$1,000/3yrs to \$500,000/15yrs
	>200 but ≤400 grams	\$1,000/5yrs to \$500,000/15yrs

Wisconsin Sentencing Guidelines Form

BURGLARY

Wis. Stat. § 943.10(1)

(Pre-sentence investigator or person designated by the court prepares #1-13 and 15A-D before sentencing)

1-Court Case No.

Z-County

J-Sentencing Judge

4-Sentencing Date

5-Offender's Name: Last \_\_\_\_\_ First \_\_\_\_\_ M.I. \_\_\_\_\_

6-Sex  M  F

7-Birthdate

8-Employed at Time of Offense  Yes  No

9-Race  White  Black  Native American  Hispanic  Asian  Other \_\_\_\_\_

10-In Custody at Time of Adjudication

11-Offense Date

12-Name and phone number of person completing form:

13-Final Plea entered  Guilty  Not Guilty  No Contest  Alford

14-Offense Severity Assessment

Check all that apply:

A-Statutory Aggravating Factors

Rate offense severity at intermediate level or above if statutory aggravating factors are present.

\_\_\_\_\_ Defendant carried, used or possessed a firearm. Consider this an aggravating factor if enhancer uncharged/dismissed.

\_\_\_\_\_ Defendant concealed, disguised or altered usual appearance to hinder identification (formerly Wis. Stat. \_\_\_\_\_)

\_\_\_\_\_ Offense committed while wearing a bulletproof garment (formerly Wis. Stat. \_\_\_\_\_)

\_\_\_\_\_ Terrorism (suggested text under development?) (formerly Wis. Stat. \_\_\_\_\_)

B-Non-statutory aggravating factors:

Offender-related:

\_\_\_\_\_ Leader or organizer of criminal activity

\_\_\_\_\_ Offense involved more than one person

\_\_\_\_\_ Offense gang-related or associated with a criminal enterprise

\_\_\_\_\_ Offense planned/premeditated

\_\_\_\_\_ Conduct reflects more serious conduct than offense of conviction

\_\_\_\_\_ Defendant abused a position of trust or authority

\_\_\_\_\_ Weapon used or carried. Kind of weapon, if known \_\_\_\_\_

\_\_\_\_\_ Other

Victim-related:

\_\_\_\_\_ Vulnerable victim

\_\_\_\_\_ Victim injured physically

\_\_\_\_\_ Victim otherwise harmed. How? \_\_\_\_\_

Multiple victims

\_\_\_\_\_ Consequences to others beyond the immediate victim(s)

\_\_\_\_\_ Other

C-Non-statutory mitigating factors:

Offender-related:

\_\_\_\_\_ Minimal role

\_\_\_\_\_ Involvement pressured (but less than statutory coercion)

\_\_\_\_\_ Manipulated by co-actors

Other

Victim-related:

\_\_\_\_\_ Victim a voluntary/consenting participant

Other

D-Crime-specific factors:

Type of premises burgled \_\_\_\_\_ Was anyone present?  yes  no

Crime intended upon entry, if known \_\_\_\_\_

Other \_\_\_\_\_



**15-Risk Assessment Evaluation**

A-List (or attach) all convictions and/or juvenile adjudications (for offenses that would be crimes if committed by an adult):

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B-Check all that apply. Place offender in highest applicable category.

**C-High risk assessment:**

- present offense a violent felony committed while offender on legal status
- Offender has criminal convictions or juvenile adjudications for:
  - two (or more) offenses same as (or closely related to) present offense
  - four (or more) felonies
  - two (or more) violent felonies
  - four (or more) violent misdemeanors
  - two (or more) felonies and one (or more) violent misdemeanor
  - one (or more) violent felony and one (or more) violent misdemeanor

**D-Medium risk assessment:**

- present offense a non-violent felony committed while offender on legal status
- Offender has criminal convictions or juvenile adjudications for:
  - same offense as (or closely related to) present offense
  - two or three felonies
  - one felony and one (or more) violent misdemeanor
  - two violent misdemeanors

("Legal status" means offender on probation, parole, E.S., any form of juvenile supervision for the commission of an act that would be a crime if committed by an adult, or an absconder/escapee at time of offense.)

E-Does rating **improperly understate or overstate** future risk to public safety?  overstates;  understates. State reasons on the record and adjust risk assessment rating.

Reasons may include (check all that apply):

- convictions very old
- previous acts (not convictions/adjudications) reveal risk to public safety/likelihood to re-offend
- performance on bail
- physical condition;  mental health; treatment
- employment history
- other

**I&Burglary Chart**

Percent of all offenders placed on probation for this offense: \_\_\_\_\_

**Risk Assessment**

		Low	Medium	High
<b>Offense Severity</b>	<b>Mitigated</b>	PROBATION:		
	<b>Intermediate</b>			
	<b>Aggravated</b>			MAXIMUM:

-A Period of Extended Supervision must be assigned in all sentences; that period must be at least 5% of the prison component of the bifurcated sentence.

17-The guidelines indicate the following sentence:

\_\_\_\_\_probation \_\_\_\_\_prison (t\_\_\_\_\_ o \_\_\_\_\_ years)

18-Consider victim's statement and needs, impact of crime on victim.

19-Additional factors may warrant adjustment of the indicated sentence.

Check all that apply:

- uncharged read-in offenses
- greater/lesser punishment needed
- acceptance of responsibility; cooperation with authorities
- District Attorney/defense attorney recommendation
- restitution paid at great sacrifice before sentencing
- other

20-State sentence on the record.

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

21 -State if defendant eligible for boot camp.

## ATTACHMENT 2

### Offenses Included Under ASA 1 to AB 351

98

≈ 100

wt including  
code citaci

Total outside  
code : ≈ 220

**ATTACHMENT 2**

**Offenses Included Under ASA 1  
to AB 351**

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
71.83(2)(b)1	False income tax return; fraud	fine not to exceed \$10,000 or imprisoned not to exceed 5 years or both	fine not to exceed \$10,000 or imprisoned not more than 7 years and 6 months or both
71.83(2)(b)2	Officer of a corporation; false franchise or income tax return	fine not to exceed \$10,000 or imprisoned not to exceed 5 years or both, together with the cost of prosecution	fine not more than \$10,000 or imprisoned not more than 7 years and 6 months or both, together with the cost of prosecution
71.83(2)(b)3	Income tax evasion	fine not more than \$5,000 or imprisoned not more than 3 years or both, together with the costs of prosecution	fine not more than \$5,000 or imprisoned not more than 4 years and 6 months or both, together with the cost of prosecution
71.83(2)(b)4	Fraudulent claim for tax credit	fine not to exceed \$10,000 or imprisoned not to exceed 5 years or both, together with the cost of prosecution	fine not more than \$10,000 or imprisoned not more than 7 years and 6 months or both, together with the cost of prosecution
139.44( Im)	Tampering with cigarette meter	imprisoned not less than one year nor more than 10 years	imprisoned not less than one year nor more than 15 years
139.44(2)	False or fraudulent report or attempts to evade the cigarette tax	fine not less than \$1,000 nor more than \$5,000, or imprisoned not less than 90 days nor more than one year, or both	fine not less than \$1,000 nor more than \$5,000 or imprisoned not less than 90 days nor more than 2 years or both
139.44(8)(c)	Unlawful possession of cigarettes if the number exceeds 36,000	fine not more than \$10,000 or imprisoned not more than 2 years or both	fine not more than \$10,000 or imprisoned not more than 3 years or both
139.95(2)	Schedule I or II controlled substance not bearing drug tax stamp	fine not more than \$10,000 or imprisoned not more than 5 years or both	fine not more than \$10,000 or imprisoned not more than 7 years and 6 months or both
139.95(3)	False or fraudulent drug tax stamp	fine not more than \$10,000 or imprisoned not less than one year nor more than 10 years or both	fine not more than \$10,000 or imprisoned not less than one year nor more than 15 years or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
291.97(2)(b)	1. Transportation of hazardous waste to an unlicensed facility or site 2. Storage, treatment, transportation or disposal of any hazardous waste without a license	fine not less than \$1,000 nor more than \$100,000 or imprisoned not more than 5 years or both	fine not less than \$1,000 nor more than \$100,000 or imprisoned not more than 7 years and 6 months or both
291.97(2)(c)1	Second or subsequent violation of hazardous waste handling reporting requirements	fine not less than \$1,000 nor more than \$50,000 or imprisoned not more than one year in state prison or both	fine not less than \$1,000 nor more than \$50,000 or imprisoned not more than two years or both
291.97(2)(c)2	Second or subsequent violation of hazardous waste transportation, storage, treatment or disposal	fine not less than \$5,000 nor more than \$150,000 or imprisoned not more than 10 years or both	fine not less than \$5,000 nor more than \$150,000 or imprisoned not more than 15 years or both
341.605(3)	Unlawful transfer of license plates, insert tag, decal or other evidence of registration or the transfer of counterfeit, forged or fictitious license plates, insert tag, decal or other evidence of registration.	fine not more than \$5,000 or imprisoned not more than 5 years or both	fine not more than \$5,000 or imprisoned not more than 7 years and 6 months, or both
342.06(2)	False statement in an application for a vehicle title	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned not more than 7 years and 6 months, or both
342.065(4)(b)	Title for salvage vehicle, intent to defraud	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned not more than 7 years and 6 months, or both
342.155(4)(b)	Violation of mileage disclosure requirements with intent to defraud	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned not more than 7 years and 6 months or both
342.156(6)(b)	Transfers of leased vehicles, with intent to defraud	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned not more than 7 years and 6 months, or both
342.30(3)(a)	Alteration of vehicle identification number	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned not more than 7 years and 6 months, or both
342.32(3)	Counterfeiting and unlawful possession of certificate of title	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned not more than 7 years and 6 months, or both
346.17(3)(a)	Fleeing an officer	fine not less than \$300 nor more than \$10,000 and may be imprisoned not more than 2 years	fine not less than \$300 nor more than \$10,000 and may be imprisoned not more than 3 years

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
346.17(3)(b)	Fleeing an officer resulting in bodily harm, or damage to property	fine not less than \$500 nor more than \$10,000 and may be imprisoned not more than 2 years	fine not less than \$500 nor more than \$10,000 and may be imprisoned not more than 3 years
346.17(3)(c)	Fleeing an officer resulting in great bodily harm	fine not less than \$600 nor more than \$10,000 and may be imprisoned not more than 2 years	fine not less than \$600 nor more than \$10,000 and may be imprisoned not more than 3 years
346.17(3)(d)	Fleeing an officer resulting in death	fine not less than \$600 nor more than \$10,000 and may be imprisoned not more than 5 years	fine not less than \$500 nor more than \$10,000 and may be imprisoned not more than 7 years and 6 months
<b>346.65(5)</b>	Negligent use of a vehicle causing great bodily harm	fine not less than \$600 nor more than \$2,000 and may be imprisoned not less than 90 days nor more than 18 months	fine not less than \$600 nor more than \$2,000 and may be imprisoned not less than 90 days nor more than 2 years and 3 months
346.74(5)(b)	Striking a person or attended or occupied vehicle and not remaining at the scene if the accident involves injury to a person but the person does not suffer great bodily harm	fine not less than \$300 nor more than \$5,000 or imprisoned not less than 10 days nor more than one year or both	fine not less than \$300 nor more than \$5,000 or imprisoned not less than 10 days nor more than 2 years, or both
346.74(5)(c)	Striking a person or attended or occupied vehicle and not remaining at the scene if the accident involves injury to a person and the person suffers great bodily harm	fine not more than \$10,000 or imprisoned not more than 2 years or both	fine not more than \$10,000 or imprisoned not more than 3 years, or both
346.74(5)(d)	Striking a person or attended or occupied vehicle and not remaining at the scene if the accident involves death	fine no more than \$10,000 or imprisoned not more than 5 years or both	fine no more than \$10,000 or imprisoned not more than 7 years and 6 months, or both
939.50(3)(b)	Class B felony	imprisonment not to exceed 40 years	imprisonment not to exceed 60 years
<b>939.50(3)(bc)</b>	Class BC felony	fine not to exceed \$10,000 or imprisonment not to exceed 20 years, or both	fine not to exceed \$10,000 or imprisonment not to exceed 30 years, or both
939.50(3)(c)	Class C felony	fine not to exceed \$10,000 or imprisonment not to exceed 10 years, or both	fine not to exceed \$10,000 or imprisonment not to exceed 15 years, or both
939.50(3)(d)	Class D felony	fine not to exceed \$10,000 or imprisonment not to exceed 5 years, or both	fine not to exceed \$10,000 or imprisonment not to exceed 10 years, or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
<b>939.50(3)(e)</b>	Class E felony	fine not to exceed \$10,000 or imprisonment not to exceed 2 years, or both	fine not to exceed \$10,000 or imprisonment not to exceed 5 years, or both
961.41(1)(a)	Manufacture, distribution and delivery of a narcotic included in schedule I or II	fine not more than \$25,000 or imprisoned not more than 15 years or both	fine not more than \$25,000 or imprisoned not more than 22 years and 6 months or both
961.41(1)(b)	Manufacture, distribution and delivery of any other controlled substance included in schedule I, II or III, or a controlled substance analog of any other controlled substance included in schedule I or II	fine not more than \$15,000 or imprisoned not more than 5 years or both	fine not more than \$15,000 or imprisoned not more than 7 years and 6 months or both
961.41(1)(cm)1	Manufacture, distribution and delivery of cocaine or cocaine base, five grams or less	fine not more than \$500,000 and may be imprisoned not more than 10 years	fine not more than \$500,000 and may be imprisoned not more than 15 years
<b>961.41(1)(cm)2</b>	Manufacture, distribution and delivery of cocaine or cocaine base, more than 5 grams, but not more than 15 grams	fine not more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
<b>961.41(1)(cm)3</b>	Manufacture, distribution and delivery of cocaine or cocaine base, more than 15 grams, but not more than 40 grams	fine not more than \$500,000 and imprisoned not less than 3 years nor more than 20 years	fine not more than \$500,000 and imprisoned not less than 3 years nor more than 30 years
<b>961.41(1)(cm)4</b>	Manufacture, distribution and delivery of cocaine or cocaine base, more than 40 grams, but not more than 100 grams	fine not more than \$500,000 and imprisoned not less than 5 years nor more than 30 years	fine not more than \$500,000 and imprisoned not less than 5 years nor more than 45 years
<b>961.41(1)(cm)5</b>	Manufacture, distribution and delivery of cocaine or cocaine base, more than 100 grams	fine not more than \$500,000 and imprisoned not less than 10 years nor more than 30 years	fine not more than \$500,000 and imprisoned not less than 10 years nor more than 45 years
<b>961.41(1)(d)1</b>	Manufacture, distribution and delivery of <b>heroin, three grams or less</b>	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 15 years	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 22 years and 6 months
<b>961.41(1)(d)2</b>	Manufacture, distribution and delivery of heroin, more than 3 grams but not more than 10 grams	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 15 years	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 22 years and 6 months

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
961.41(1)(d)3	Manufacture, distribution and delivery of heroin, more than 10 grams but not more than 50 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1)(d)4	Manufacture, distribution and delivery of heroin, more than 50 grams but not more than 200 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 22 years and 6 months
961.41(1)(d)5	Manufacture, distribution and delivery of heroin, more than 200 grams but not more than 400 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 22 years and 6 months
961.41(1)(d)6	Manufacture, distribution and delivery of heroin, more than 400 grams	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 30 years	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 45 years
961.41(1)(e)1	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, three grams or less	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 7 years and 6 months
961.41(1)(e)2	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 3 grams but not more than 10 grams	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1)(e)3	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 10 grams but not more than 50 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1)(e)4	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 50 grams but not more than 200 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 22 years and 6 months
961.41(1)(e)5	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 200 grams but not more than 400 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 22 years and 6 months



<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
961.41(1)(e)6	Manufacture, distribution and delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 400 grams	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 30 years	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 45 years
961.41(1)(f)1	Manufacture, distribution and delivery of lysergic acid diethylamide, one gram or less	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 7 years and 6 months
961.41(1)(f)2	Manufacture, distribution and delivery of lysergic acid diethylamide, more than one gram but not more than 5 grams	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1)(f)3	Manufacture, distribution and delivery of lysergic acid diethylamide, more than 5 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1)(g)1	Manufacture, distribution and delivery of psilocin or psilocylin, one hundred grams or less	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$200,000 and may be imprisoned not more than 7 years and 6 months
961.41(1)(g)2	Manufacture, distribution and delivery of psilocin or psilocylin, more than 100 grams but not more than 500 grams	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$250,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1)(g)3	Manufacture, distribution and delivery of psilocin or psilocylin, more than 500 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1)(h)1	Manufacture, distribution and delivery of THC, five hundred grams or less, or 10 or fewer plants containing THC	fine not less than \$500 nor more than \$25,000 and may be imprisoned not more than 3 years	fine not less than \$500 nor more than \$25,000 and may be imprisoned not more than 4 years and 6 months
961.41(1)(h)2	Manufacture, distribution and delivery of THC, more than 500 grams but not more than 2,500 grams, or more than 10 plants containing THC but not more than 50 plants containing THC	fine not less than \$1,000 nor more than \$50,000 and imprisoned not less than 3 months nor more than 5 years	fine not less than \$1,000 nor more than \$50,000 and imprisoned not less than 3 months nor more than 7 years and 6 months

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
961.41(1)(h)3	Manufacture, distribution and delivery of THC, more than 2,500 grams, or more than 50 plants containing THC	fine not less than \$1,000 nor more than \$100,000 and imprisoned not less than one year nor more than 10 years	fine not less than \$1,000 nor more than \$100,000 and imprisoned not less than one year nor more than 15 years
961.41(1)(i)	A substance included in schedule IV	fine not more than \$10,000 or imprisoned not more than 3 years or both	fine not more than \$10,000 or imprisoned not more than 4 years and 6 months or both
961.41(1)(j)	A substance included in schedule V	fine not more than \$5,000 or imprisoned not more than one year or both	fine not more than \$5,000 or imprisoned not more than 2 years or both
961.41(1m)(a)	Possession with intent to manufacture, distribute or deliver of a narcotic included in schedule I or II	fine not more than \$25,000 or imprisoned not more than 15 years or both	fine not more than \$25,000 or imprisoned not more than 22 years and 6 months or both
961.41(1m)(b)	Possession with intent to manufacture, distribute or delivery any other controlled substance included in schedule I, II or III, or a controlled substance analog of a controlled substance included in schedule I or II	fine not more than \$15,000 or imprisoned not more than 5 years or both	fine not more than \$15,000 or imprisoned not more than 7 years and 6 months or both
961.41(1m)(cm)1	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, five grams or less	fine not more than \$500,000 and may be imprisoned not more than 10 years	fine not more than \$500,000 and may be imprisoned not more than 15 years
961.41(1m)(cm)2	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, more than 5 grams but not more than 15 grams	fine not more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1m)(cm)3	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, more than 15 grams but not more than 40 grams	fine not more than \$500,000 and imprisoned not less than 3 years nor more than 20 years	fine not more than \$500,000 and imprisoned not less than 3 years nor more than 30 years
961.41(1m)(cm)4	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, more than 40 grams but not more than 100 grams	fine not more than \$500,000 and imprisoned not less than 5 years nor more than 30 years	fine not more than \$500,000 and imprisoned not less than 5 years nor more than 45 years
961.41(1m)(cm)5	Possession with intent to manufacture, distribute or delivery cocaine or cocaine base, more than 100 grams	fine not more than \$500,000 and imprisoned not less than 10 years nor more than 30 years	fine not more than \$500,000 and imprisoned not less than 10 years nor more than 45 years

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
961.41(1m)(d)1	Possession with intent to manufacture, distribute and deliver heroin, three grams or less	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 15 years	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 22 years and 6 months
961.41(1m)(d)2	Possession with intent to manufacture, distribute and deliver heroin, more than 3 grams but not more than 10 grams	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 15 years	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 22 years and 6 months
961.41(1m)(d)3	Possession with intent to manufacture, distribute and deliver heroin, more than 10 grams but not more than 50 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1m)(d)4	Possession with intent to manufacture, distribute and deliver heroin, more than 50 grams but not more than 200 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 22 years and 6 months
961.41(1m)(d)5	Possession with intent to manufacture, distribute and deliver heroin, more than 200 grams but not more than 400 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 22 years and 6 months
961.41(1m)(d)6	Possession with intent to manufacture, distribute and deliver heroin, more than 400 grams	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 30 years	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 45 years
961.41(1m)(e)1	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, three grams or less	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 5 years	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than 7 years and 6 months
961.41(1m)(e)2	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 3 grams but not more than 10 grams	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1m)(e)3	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 10 grams but not more than 50 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
961.41(1m)(e)4	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 50 grams but not more than 200 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 3 years nor more than 22 years and 6 months
961.41(1m)(e)5	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 200 grams but not more than 400 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than 5 years nor more than 22 years and 6 months
961.41(1m)(e)6	Possession with intent to manufacture, distribute and deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 400 grams	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 30 years	fine not less than \$1,000 nor more than \$1,000,000 and imprisoned not less than 10 years nor more than 45 years
961.41(1m)(f)1	Possession with intent to manufacture, distribute and deliver lysergic acid diethylamide, one gram or <b>less</b>	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than <b>5 years</b>	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than <b>7 years and 6 months</b>
961.41(1m)(f)2	Possession with intent to manufacture, distribute and deliver lysergic acid diethylamide, more than one gram but not more than 5 grams	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1m)(f)3	Possession with intent to manufacture, distribute and deliver lysergic acid diethylamide, more than 5 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months
961.41(1m)(g)1	Possession with intent to manufacture, distribute and deliver psilocin or psilocylin, one hundred grams or less	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than <b>5 years</b>	fine not less than \$1,000 nor more than \$100,000 and may be imprisoned not more than <b>7 years and 6 months</b>
961.41(1m)(g)2	Possession with intent to manufacture, distribute and deliver psilocin or psilocylin, more than 100 grams but not more than 500 grams	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 5 years	fine not less than \$1,000 nor more than \$200,000 and imprisoned not less than 6 months nor more than 7 years and 6 months
961.41(1m)(g)3	Possession with intent to manufacture, distribute and deliver psilocin or psilocylin, more than 500 grams	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 15 years	fine not less than \$1,000 nor more than \$500,000 and imprisoned not less than one year nor more than 22 years and 6 months

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
961.41(1m)(h)1	Possession with intent to manufacture, distribute or deliver THC, five hundred grams or less, or 10 or fewer plants containing THC	fine not less than \$500 nor more than \$25,000 and may be imprisoned not more than <b>3 years</b>	fine not less than \$500 nor more than \$25,000 and may be imprisoned not more than 4 years and 6 months
961.41(1m)(h)2	Possession with intent to manufacture, distribute or deliver THC, more than 500 grams but not more than 2,500 grams, or more than 10 plants containing THC but not more than 50 plants containing THC	fine not less than \$1,000 nor more than \$50,000 and imprisoned not less than 3 months nor more than 5 years	fine not less than \$1,000 nor more than \$50,000 and imprisoned not less than 3 months nor more than 7 years and 6 months
961.41(1m)(h)3	Possession with intent to manufacture, distribute or deliver THC, more than 2,500 grams or more than 50 plants containing THC	fine not less than \$1,000 nor more than \$100,000 and imprisoned not less than one year nor more than 10 years	fine not less than \$1,000 nor more than \$100,000 and imprisoned not less than one year nor more than 15 years
961.41(1m)(i)	Possession with intent to manufacture, distribute or deliver a substance included in schedule IV	may be fined not more than \$10,000 or imprisoned not more than 3 years or both	may be fined not more than \$10,000 or imprisoned not more than 4 years and 6 months or both
961.41(1m)(j)	Possession with intent to manufacture, distribute or deliver a substance included in schedule V	may be fined not more than \$5,000 or imprisoned not more than one year or both	may be fined not more than \$5,000 or imprisoned not more than two years or both
961.41(1n)(c)	Possession of any amount of piperidine	may be fined not more than \$250,000 or imprisoned not more than 10 years or both	may be fined not more than \$250,000 or imprisoned not more than 15 years or both
961.41(2)(a)	Manufacture, distribution or delivery or intent to manufacture, distribute or deliver a counterfeit substance included in schedule I or II which is a narcotic <b>drug</b>	may be fined not more than \$25,000 or imprisoned not more than 15 years or both	may be fined not more than \$25,000 or imprisoned not more than 22 years and 6 months or both
961.41(2)(b)	Manufacture, distribution or delivery or intent to manufacture, distribute or deliver any other counterfeit substance included in schedule I, II or III	may be fined not more than \$15,000 or imprisoned not more than 5 years or both	may be fined not more than \$15,000 or imprisoned not more than 7 years and 6 months or both
961.41(2)(c)	Manufacture, distribution or delivery or intent to manufacture, distribute or deliver a counterfeit substance included in schedule IV	may be fined not more than \$10,000 or imprisoned not more than 3 years or both	may be fined not more than \$10,000 or imprisoned not more than 4 years and 6 months or both
961.41(2)(d)	Manufacture, distribution or delivery or intent to manufacture, distribute or deliver a counterfeit substance included in schedule V	may be fined not more than \$5,000 or imprisoned not more than one year or both	may be fined not more than \$5,000 or imprisoned not more than two years or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
961.41(3g)(a)1	Possession of a narcotic included in schedule I or II	upon a first conviction, not more than \$5,000 or imprisoned not more than one year or both. Second or subsequent offense, fine not more than \$10,000 or imprisoned not more than 2 years or both	upon a first conviction, not more than \$5,000 or imprisoned not more than two years or both. Second or subsequent offense, fine not more than \$10,000 or imprisoned not more than 3 years or both
961.41(3g)(a)2	Possession or attempted possession of heroin	may be fined not more than \$5,000 or imprisoned not more than one year or both	may be fined not more than \$5,000 or imprisoned not more than two years or both
961.41(4)(am)3	Distribution or delivery of imitation controlled substance	may be fined not more than \$5,000 or imprisoned not more than one year or both	may be fined not more than \$5,000 or imprisoned not more than 2 years or both
961.42(2)	Keeping of a drug house	may be fined not more than \$25,000 or imprisoned not more than one year or both	may be fined not more than \$25,000 or imprisoned not more than two years or both
961.43(2)	Acquire or obtain a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge	may be fined not more than \$30,000 or imprisoned not more than 4 years or both	may be fined not more than \$30,000 or imprisoned not more than 6 years or both
961.455(1)	Use of a person who is 17 years of age or under for the purpose of the manufacture, distribution or delivery of a controlled substance	may be fined not more than \$50,000 or imprisoned not more than 10 years or both	may be fined not more than \$50,000 or imprisoned not more than 15 years or both

**ATTACHMENT 3**

**Additional Offenses Included by  
LRB 0252/1**

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**ATTACHMENT 3**

**Additional Offenses Included by  
LRB 0252/1**

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
11.61(l)(a) and (b)	Criminal violations of campaign finance statutes	fine not more than \$10,000 or imprisoned not more than 3 years or both	fine not more than \$10,000 or imprisoned for not more than 4 years and 6 months or both
12.60(1)(a)	Criminal violations of elections statutes	fine not more than \$10,000 or imprisoned not more than 3 years in the Wisconsin state prisons or both	fine not more than \$10,000 or imprisoned for not more than 4 years and 6 months or both
13.05	Logrolling by members of the Legislature prohibited	fine not less than \$500 nor more than \$1,000 or imprisoned for not less than one year nor more than 3 years or both	fine not less than \$500 nor more than \$1,000 or imprisoned for not less than one year nor more than 4 years and 6 months or both
13.06	Granting of executive favor by members of the Legislature prohibited	fine not less than \$500 nor more than \$1,000 or imprisoned for not less than one year nor more than 2 years or both	fine not less than \$500 nor more than \$1,000 or imprisoned for not less than one year nor more than 3 years or both
13.69(6m)	Criminal violations of lobby law statutes	fine not more than \$10,000 or imprisoned for not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
23.33(13)(cg)	Causing death or injury by interfering with all-terrain vehicle route or trail sign standard	fine not more than \$10,000 or imprisoned for not more than 2 years or both if the violation causes the death or injury	fine not more than \$10,000 or imprisoned for not more than 3 years or both if the violation causes the death or injury
26.14(8)	Intentionally setting tires to land of another or a marsh	fine not more than \$10,000 or imprisoned not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
29.99(1)(c)	Possession of fish with a value exceeding \$1,000 in violation of statutes	fine of not more than \$10,000 or imprisonment for not more than 2 years or both	fine of not more than \$10,000 or imprisonment for not more than 3 years or both



<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
29.99(1 m)(c)	Possession of clams with a value exceeding \$1,000 in violation of statutes	fine of not more than \$10,000 or imprisonment for not more than 2 years or both	fine of not more than \$10,000 or imprisonment for not more than 3 years or both
29.99(1 lm)(a)	Illegal shooting, shooting at, killing, taking, catching or possessing a bear	fine of not more than \$5,000 or imprisonment for not more than one year or both for the second and any subsequent violation	fine of not more than \$5,000 or imprisonment for not more than 2 years or both for the second and any subsequent violation
29.99(1 lp)(a)	Entering the den of a hibernating black bear and harming the bear	fine of not more than \$10,000 or imprisonment for not more than one year or both	fine of not more than \$10,000 or imprisonment for not more than 2 years or both
30.547	Falsifying boat certificate or title, or altering hull or engine serial numbers	fine not more than \$5,000 or imprisoned not more than 5 years or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
30.80(2g)(b)	Failure to render aid in a boating accident that involves injury to a person but not great bodily harm	fine not less than \$300 nor more than \$5,000 or imprisoned not more than one year or both	fine not less than \$300 nor more than \$5,000 or imprisoned for not more than 2 years or both
30.80(2g)(c)	Failure to render aid in a boating -accident that involves injury to a person and the person suffers great bodily harm	fine not more than \$10,000 or imprisoned not more than 2 years or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both
30.80(2g)(d)	Failure to render aid in a boating accident that involves the death of a person	fine not more than \$10,000 or imprisoned not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
36.25(6)(d)	Improper release of mines and explored mine land information by employes of the Geological and Natural History Survey or Department of Revenue	fine not less than \$50 nor more than \$500, or imprisoned in the county jail for not less than one month nor more than 6 months, or imprisoned in the Wisconsin state prisons for not more than 2 years	fine not less than \$50 nor more than \$500 or imprisoned for not less than one month nor more than 3 years
47.03(3)(d)	Illegal use of the term "blind-made"	fine not more than \$1,000 or imprisoned not more than one year or both	fine not more than \$1,000 or imprisoned for not more than 2 years or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
49.127(8)(a)2.	Illegal use of food stamps with a value over \$100, first offense	fine not more than \$10,000 or imprisoned not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
49.127(8)(b)2.	Illegal use of food stamps with a value over \$100, second and subsequent offenses	fine not more than \$10,000 or imprisoned not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
49.141(7)(a)	Committing a fraudulent act in connection with providing items or services under W-2	fine not more than \$25,000 or imprisoned for not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both
49.141(7)(b)	Committing other fraudulent acts to obtain W-2 benefits or payments	fine not more than \$10,000 or imprisoned for not more than one year or both	fine not more than \$10,000 or imprisoned for not more than 2 years or both
49.141(9)(a)	Solicitation or receiving of a kickback, bribe or rebate in connection with providing items or services under W-2	fine not more than \$25,000 or imprisoned for not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both
49.141(9)(b)	Offering or paying a kickback, bribe or rebate in connection with providing items or services under W-2	fine not more than \$25,000 or imprisoned for not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both
49.141(10)(b)	Improper charging by a provider for W-2 services	fine not more than \$25,000 or imprisoned for not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both
49.49(1)(b)1.	Committing a fraudulent act in connection with providing items or services under medical assistance	fine not more than \$25,000 or imprisoned for not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both
49.49(2)(a)	Soliciting or receiving a kickback, bribe or rebate in connection with providing medical assistance	fine not more than \$25,000 or imprisoned for not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both
49.49(2)(b)	Offering or paying a kickback, bribe or rebate in connection with providing medical assistance	fine not more than \$25,000 or imprisoned for not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
49.49(3)	Fraudulent certification of qualified medical assistance facilities	fine not more than \$25,000 or imprisoned not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both
49.49(3m)(b)	Improper charging by a provider for medical assistance services	fine not more than \$25,000 or imprisoned not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both
49.49(4)(b)	Improper charging by a facility for medical assistance services	fine not more than \$25,000 or imprisoned not more than 5 years or both	fine not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both
49.95(1)	Illegal intent to secure public assistance if the value exceeds \$1,000 but does not exceed \$2,500	fine not more than \$500 or imprisoned for not more than 5 years or both	fine not more than \$500 or imprisoned for not more than 7 years and 6 months or both
51.15(12)	False statement related to emergency mental health detentions	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned for not more than 7 years or both
55.06(1 l)(am)	False statement related to protective services placements	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
66.4025(1)(b)	False statement related to securing or assisting in the securing of housing for persons of low income in order to receive at least \$2,500 but not more than \$25,000	fine not more than \$10,000 or imprisoned for not more than 2 years or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both
66.4025(1)(c)	False statement related to securing or assisting in the securing of housing for persons of low income in order to receive more than \$25,000	fine not more than \$10,000 or imprisoned for not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
69.24(1)(intro)	Fraudulent or destroyed vital statistical record	fine not more than \$10,000 or imprisoned not more than 2 years or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both
70.47(18)(a)	Tampering with records of the Board of Review with intent to injure or defraud	fine not more than \$1,000 or imprisoned not more than 2 years or both	fine not more than \$1,000 or imprisoned for not more than 3 years or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
86.192(4)	Tampering with road signs if the tampering results in the death of a person	fine up to \$10,000 or imprisoned not more than 2 years, or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both
97.43(4)	Use of meat from dead or diseased animals	fine not less than \$500 nor more than \$5,000 or imprisoned for not more than 5 years or both	fine not less than \$500 nor more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
97.45(2)	Violation of horsemeat labeling requirements	fine not less than \$500 nor more than \$5,000 or , imprisoned for not more than 5 years or both	fine not less than \$500 nor more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
100.26(2)	Violation of commission merchant duties and responsibilities	fine of not less than \$50 nor more than \$3,000, or by imprisonment for not less than 30 days nor more than 3 years, or both	fine not less than \$50 nor more than \$3,000 or imprisoned for not less than 30 days nor more than 4 years and 6 months or both
100.26(5)	Violations of dairy license requirements, DATCP orders or regulations and false advertising	fine not less than \$100 nor more than \$1,000 or imprisoned for not more than one year or both	fine not less than \$100 nor more than \$1,000 or imprisoned for not more than 2 years or both
100.26(7)	Fraudulent drug advertising prohibited	fine not less than \$500 nor more than \$5,000 or imprisoned not more than one year or both for each offense	fine not less than \$500 nor more than \$5,000 or imprisoned for not more than 2 years or both for each offense
101.143(10)(b)	Intentional destruction of a PECFA record	fine not more than \$10,000 or imprisoned for not more than 10 years or both	fine not more than \$10,000 or imprisoned for not more than 15 years or both
101.94(8)(b)	Intentional violation of manufactured home laws that threaten health and safety	fine not more than \$1,000 or imprisoned not more than one year or both	fine not more than \$1,000 or imprisoned for not more than 2 years or both
102.835(11)	Intent to evade collection of uninsured employer levies under the worker's compensation law	fine not more than \$5,000 or imprisoned for not more than 3 years or both, and shall be liable to the state for the cost of prosecution	fine not more than \$5,000 or imprisoned for not more than 4 years and 6 months or both, and shall be liable to the state for the cost of prosecution
102.835(18)	Discharge or discrimination by employer against employe who has been the subject of a worker's compensation levy	fine not more than \$1,000 or imprisoned for not more than one year or both	fine not more than \$1,000 or imprisoned for not more than 2 years or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
102.85(3)	Violation of an order to cease operation because of a lack of worker's compensation insurance	fine not more than \$10,000 or imprisoned for not more than 2 years or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both
108.225(11)	Intent to evade collection of unemployment compensation levies under employment compensation law	fine not more than \$5,000 or imprisoned for not more than 3 years or both	fine not more than \$5,000 or imprisoned for not more than 4 years and 6 months or both
108.225(18)	Discharge or discrimination by employer against employe who has been the subject of an unemployment compensation levy	fine not more than \$1,000 or imprisoned for not more than one year or both	fine not more than \$1,000 or imprisoned for not more than 2 years or both
114.20(18)(c)	False statement related to aircraft registration	fine not more than \$5,000 or imprisoned not more than 5 years or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
125.075(2)	Injury or death by providing alcohol beverages to a minor	fine not more than \$10,000 or imprisoned for not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
125.085(3)(a)2.	Receiving money or other considerations for providing false proof of age	fine not more than \$10,000 or imprisoned for not more than 2 years or both	fine not more than \$ 10,000 or imprisoned for not more than 3 years or both
125.105(2)(b)	Impersonating an agent, inspector or employe of DOR or DOJ in commission of a crime	fine not more than \$10,000 or imprisoned for not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
125.66(3)	Sale and manufacturing of liquor without permits	fine not more than \$10,000 or imprisonment for not more than 10 years or both	fine not more than \$10,000 or imprisonment for not more than 15 years or both
125.68(12)(b)	Delivering alcohol from denatured alcohol	fine not less than \$1,000 nor more than \$5,000 or imprisoned not less than one year nor more than 10 years or both	fine not less than \$1,000 nor more than \$5,000 or imprisoned for not less than one year nor more than 15 years or both
125.68(12)(c)	Sale or disposal of denatured alcohol resulting in death	imprisoned for not more than 10 years	imprisoned for not more than 15 years

Statute	Offense	Current Penalty	Proposed Penalty
132.20(2)	Trafficking in counterfeit trademarks and other commercial marks with intent to deceive	fine not more than \$250,000 or imprisoned for not more than 5 years or both, or, if the person is not an individual, be fined not more than \$1,000,000	fine not more than \$250,000 or imprisoned for not more than 7 years and 6 months or both, or, if the person is not an individual, be fined not more than \$1,000,000
133.03(1)	Unlawful contracts or conspiracies in restraint of trade or commerce	fine not more than \$100,000 if a corporation, or, if any other person, \$50,000, or be imprisoned for not more than 5 years, or both	fine not more than \$100,000 if a corporation, or, if any other person, may be fined not more than \$50,000 or imprisoned for not more than 7 years and 6 months or both
133.03(2)	Monopolization of any part of trade or commerce	fine not more than \$100,000 if a corporation, or, if any other person, \$50,000, or be imprisoned for not more than 5 years or both	fine not more than \$100,000 if a corporation, or, if any other person, may be fined not more than \$50,000 or imprisoned for not more than 7 years and 6 months or both
134.05(4)	Bribery of an agent, employe or servant	fine of not less than \$10 nor more than \$500, or by such fine and by imprisonment for not more than one year	fine of not less than \$10 nor more than \$500 or by such fine and by imprisonment for not more than 2 years
134.16	Fraudulently receiving deposits	imprisoned in the Wisconsin state prisons not more than 10 years nor less than one year or fined not more than \$10,000	imprisoned in the Wisconsin state prisons for not less than one year nor more than 15 years or fined not more than \$10,000
134.20(1)(intro)	Fraudulent issuance or use of warehouse receipts or bills of lading	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
134.205(4)	Issuance of warehouse receipts without entering item into register with intent to defraud	fine not more than \$5,000 or imprisoned not more than 5 years, or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
134.58	Unauthorized use of armed persons to protect persons or property or to suppress strikes	fine not more than \$1,000 or imprisoned not less than one year nor more than 3 years or both	fine not more than \$1,000 or imprisoned for not less than one year nor more than 4 years and 6 months or both
134.74(7)(b)	Intentional violation of prize notification laws	fine not more than \$10,000 or imprisoned for not more than 2 years or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
139.44(1)	Use or manufacturing of counterfeit cigarette stamps	imprisonment not less than one year nor more than 10 years	imprisonment not less than one year nor more than 15 years
146.345(3)	Sale of human organs for transplantation prohibited	fine not more than \$50,000 or imprisoned for not more than 5 years or both	fine not more than \$50,000 or imprisoned for not more than 7 years and 6 months or both
146.35(5)	Female genital mutilation prohibited	fine not more than \$10,000 or imprisoned for not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
146.60(9)(am)	Second violation of failing to comply with notice of release of genetically engineered organisms into the environment requirements	fine not less than \$1,000 nor more than \$50,000 or imprisoned for not more than one year or both	fine not less than \$1,000 nor more than \$50,000 or imprisoned for not more than 2 years or both
146.70(10)(a)	Filing of false 911 report	fine not more than \$10,000 or imprisoned not more than 5 years or both for any other offense committed within 4 years after the first offense	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both for any other offense committed within 4 years after the first offense
154.15(2)	Falsification or withholding of information related to a declaration to a physician	fine not more than \$10,000 or imprisoned not more than 10 years or both	fine not more than \$10,000 or imprisoned for not more than 1.5 years or both
154.29(2)	Falsification or withholding of information related to a do-not-resuscitate order	fine not more than \$10,000 or imprisoned for not more than 10 years or both	fine not more than \$10,000 or imprisoned for not more than 15 years or both
166.20(11)(b)1.	Knowing and willful failure to report release of a hazardous substance, first offense	fine not less than \$100 nor more than \$25,000 or imprisoned for not more than 2 years or both	fine not less than \$100 nor more than \$25,000 or imprisoned for not more than 3 years or both
166.20(11)(b)2.	Knowing and willful failure to report release of a hazardous substance, second and subsequent offenses	fine not less than \$200 nor more than \$50,000 or imprisoned for not more than 2 years or both	fine not less than \$200 nor more than \$50,000 or imprisoned for not more than 3 years or both
167.10(9)(g)	Violation of fireworks manufacturing licensure requirement	fine not more than \$10,000 or imprisoned not more than 10 years or both	fine not more than \$10,000 or imprisoned for not more than 15 years or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
175.20(3)	Violation of amusement place licensure requirements	fine of not less than \$25 and not more than \$1,000, or by imprisonment for not less than 30 days in the county jail and not more than one year in the state prison, or by both such fine and imprisonment	fine not less than \$25 nor more than \$1,000 and may be imprisoned for not less than 30 days nor more than 2 years or both.
180.0129(2)	Filing of a false document with DFI, business corporation	fine not more than \$10,000 or imprisoned for not more than 2 years or both	tine not more than \$10,000 or imprisoned for not more than 3 years or both
181.69	Filing of a false document with DFI, nonstock corporations	imprisoned in the Wisconsin state prisons not more than 3 years or in the county jail not more than one year or fined not more than \$1,000	imprisoned for not less than one year nor more than 4 years and 6 months or fined not more than \$1,000
184.09(2)	Fraudulently obtaining or using a certificate of authority to issue any security by a public service corporation	fine of not less than five hundred dollars, or by imprisonment in the state prison not less than one or more than 10 years, or by both fine and imprisonment	fine not less than \$500 or imprisoned in the state prison for not less than one nor more than 15 years or both
185.825	Filing of a false document with DFI, cooperatives	fine not more than \$1,000 or imprisoned not more than 3 years or both	fine not more than \$1,000 or imprisoned for not more than 4 years and 6 months or both
214.93	Filing of a false document with the Division of Savings and Loans	imprisoned for not more than 20 years	imprisoned for not more than 30 years
215.02(6)(b)	Illegal disclosure of information by employes of the Division of Savings and Loans	fine not less than \$100 nor more than \$1,000, or imprisoned not less than 6 months nor more than 2 years or both	fine not less than \$100 nor more than \$1,000 or imprisoned for not less than 6 months nor more than 3 years or both
215.12	Falsification of records and dishonest acts, savings and loans	imprisoned in the Wisconsin state prisons for not to exceed 20 years	imprisoned in the Wisconsin state prisons for not more than 30 years
215.21(21)	Giving or accepting money for loans, savings and loans	fine not to exceed \$10,000 or imprisoned in the Wisconsin state prisons not to exceed 2 years or both	fine not more than \$10,000 or imprisoned in the Wisconsin state prisons for not more than 3 years or both



<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
218.21(7)	False statement related to a motor vehicle salvage dealer license	fine not more than \$5,000 or imprisoned not more than 5 years or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
220.06(2)	Illegal disclosure of information by employes of the Division of Banking	fine of not less than \$100 nor more than \$1,000, or imprisonment in the Wisconsin state prisons not less than 6 months nor more than 2 years, or both	fined not less than \$100 nor more than \$1,000 or imprisoned for not less than 6 months nor more than 3 years or both
221.0625(2)(intro)	Illegal loans to government officials	imprisoned for not more than 10 years	imprisoned for not more than 15 years
221.0636(2)	Theft by bank employe or officer	imprisoned for not more than 20 years	imprisoned for not more than 30 years
221.0637(2)	Illegal commission to bank office and employes	fine not more than \$10,000 or imprisoned for not more than 2 years or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both
221.1004(2)	False statements related to records, reports and legal processes, state banks	fine not less than \$1,000 nor more than \$5,000, or imprisoned not less than one year nor more than 10 years, or both	fine not less than \$1,000 nor more than \$5,000 or imprisoned for not less than one year nor more than 15 years or both
285.87(2)(b)	Intentional violations of air pollution statutes and rules, second and subsequent convictions	fine not more than \$50,000 per day of violation or imprisonment for not more than 2 years or both	fine not more than \$50,000 per day of violation or imprisonment for not more than 3 years or both
299.53(4)(c)2.	False statement to DNR related to used oil facilities, second or subsequent violations	fine not more than \$50,000 or imprisonment for not more than 2 years or both	fine not more than \$50,000 or imprisonment for not more than 3 years or both
302.095(2)	Illegal delivery of articles to inmates by prison or jail employes	imprisoned for not more than 2 years or fined not more than \$500	imprisoned for not more than 3 years or fined not more than \$500
344.48(2)	Forged proof of security for past accidents	fine not more than \$1,000 or imprisoned not more than one year or both	fine not more than \$1,000 or imprisoned for not more than 2 years or both
350.11(2m)	Causing death or injury by interfering with snowmobile route or trail sign or standard	fine not more than \$10,000 or imprisoned for not more than 2 years or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
446.07	Violation of Chiropractic Examining Board statutes	fine not less than \$100 nor more than \$500 or imprisoned not more than one year or both	fine not less than \$100 nor more than \$500 or imprisoned for not more than 2 years or both
<b>447.09</b>	Violation of Dental Examining Board statutes, second or subsequent offenses	fine not more than \$2,500 or imprisonment for not more than 2 years or both for the 2nd or subsequent conviction within 5 years	fine not more than \$2,500 or imprisonment for not more than 3 years or both for the 2nd or subsequent conviction within 5 years
450.11(9)(b)	Delivery or possession with intent to manufacture or deliver a prescription drug in violation of the Pharmacy Examining Board statutes	fine not more than \$10,000 or imprisoned not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
450.14(5)	Illegal delivery of poisons	fine not less than \$100 nor more than \$1,000 or imprisoned not less than one year nor more than 5 years or both	fine not less than \$100 nor more than \$1,000 or imprisoned for not less than one year nor more than 7 years and 6 months or both
450.15(2)	Placing of prescription drugs	fine not less than \$100 nor more than \$1,000 or imprisoned not less than one year nor more than 5 years or both	fine not less than \$100 nor more than \$1,000 or imprisoned for not less than one year nor more than 7 years and 6 months or both
551.58(1)	Willful violation of securities law	fine not more than \$5,000 or imprisoned not more than 5 years or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
552.19(1)	Willful violation of corporate take-over laws	fine not more than \$5,000 or imprisoned not more than 5 years or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
553.52(1)	Willful violation of fraudulent and prohibited practices statutes under state franchise investment law	fine not more than \$5,000 or imprisoned for not more than 5 years or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
553.52(2)	Fraud in connection with the offer or sale of any franchise	fine not more than \$5,000 or imprisoned for not more than 5 years or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
562.13(3)	Facilitation of off-track wagering and possession of fraudulent wagering tickets with intent to defraud	fine not more than \$10,000 or imprisoned for not more than 2 years or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
562.13(4)	Tampering with race animals; illegal killing of race dogs; counterfeiting race tickets with intent to defraud; illegal race activities	fine not more than \$10,000 or imprisoned for not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
565.50(2)	Forged or altered lottery ticket	fine not more than \$10,000 or imprisoned for not more than 5 years or both	line not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
565.50(3)	Possession of forged or altered lottery ticket	fine not more than \$10,000 or imprisoned for not more than 2 years or both	fine not more than \$10,000 or imprisoned for not more than 3 years or both
601.64(4)	Intentional violation of any insurance statute or rule	fine not more than \$5,000 or imprisoned for not to exceed 3 years or both	fine not more than \$5,000 or imprisoned for not more than 4 years and 6 months or both
641.19(4)(a)	Willful violation or failure to comply with statutes or false statements related to employe welfare funds and plans	fine not more than \$5,000 or imprisoned not more than 5 years or both	fine not more than \$5,000 or imprisoned for not more than 7 years and 6 months or both
641.19(4)(b)	Willful and unlawful use of employe welfare funds	fine not more than \$10,000 or imprisoned not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months
765.30(1)(intro)	Marriage outside state to circumvent state law	fine not less than \$200 nor more than \$1,000, or imprisoned not more than one year, or both	fine not less than \$200 nor more than \$1,000 or imprisoned for not more than 2 years or both
765.30(2)(intro)	False marriage license statement; unlawful issuance of marriage license; false solemnization of marriage	fine not less than \$100 nor more than \$1,000, or imprisoned not more than one year, or both	fine not less than \$100 nor more than \$1,000 or imprisoned for not more than 2 years or both
768.07	Violation of actions abolished statutes	fine not less than \$100 nor more than \$1,000 or imprisoned for not more than one year, or both	fine not less than \$100 nor more than \$1,000 or imprisoned for not more than 2 years or both
783.07	Failure or neglect to respond to a writ of mandamus	tine not more than \$5,000 per officer or imprisonment for a term not exceeding 5 years	fine not more than \$5,000 per officer or imprisonment for not more than 7 years and 6 months
946.85(1)	Engaging in a continuing criminal enterprise	imprisoned not less than 10 years nor more than 20 years, and fined not more than \$10,000	imprisoned for not less than 10 years nor more than 30 years, and fined not more than \$10,000

<b>Statute</b>	<b>Offense</b>	<b>Current Penalty</b>	<b>Proposed Penalty</b>
968.31(1)(intro)	Illegal interception and disclosure of wire, electronic or oral communications	fine not more than \$10,000 or imprisoned for not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both
968.34(3)	Illegal use of pen register or trap and trace device	fine not more than \$10,000 or imprisoned not more than one year or both	fine not more than \$10,000 or imprisoned for not more than 2 years or both
968.43(3) [formerly 756.13(3), affected by Supreme Court Order 98-08]	Violation of an oath by a stenographic reporter or typewriter operator in connection with a grand jury	imprisoned for not more than 5 years	imprisoned for not more than 7 years and 6 months
977.06(2)(b)	False statement to qualify for assignment of a Public Defender	fine not more than \$10,000 or imprisoned for not more than 5 years or both	fine not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both

