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Final Staff's

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questions

CRIMINAL PENALTIES STUDY COMMITTEE

FINAL REPORT

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August 31, 1999, by:

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<p style="text-align: center;">Criminal Penalties Study Committee Final Report</p>

Executive Summary:

[to be drafted]

I. The Legislation that enacted Truth-in-Sentencing, this Committee's Charges, and this Committee's Working Structure

A. 1997 Act 283, the original "Truth-in-Sentencing" law

Truth-in-Sentencing came to Wisconsin on June 15, 1998 when 1997 Act 283 became law. Act 283 does a number of things. The act:

1. Establishes a truthful system of sentencing.
2. Abolishes parole.
3. Establishes extended supervision ("ES") for all offenders released from prison, and expands the penalty ranges to allow for ES.
4. Provides for prompt action against those who violate conditions of their ES.
5. Effectively abolishes intensive sanctions.
6. Calls for the creation of a new sentencing commission.
7. Establishes the Criminal Penalties Study Committee to make recommendations to the Legislature and the Governor on various topics necessary to implement Truth-in-Sentencing.

Act 283 also does not affect a number of things. The act:

1. Does not affect those offenders who commit crimes before December 31, 1999. They will be sentenced under the current law and be eligible for parole.

2. Does not affect probation as an option for criminal offenses.¹
3. Does not redefine crimes.
4. Does not address the numerous monetary implications of crime convictions, including fines, surcharges, and assessments.

Certain legislative policies are clear from Act 283. Wisconsin desires:

1. Truthful sentences.
2. Managed supervision of every inmate upon release from prison.
3. Prompt action when those on extended supervision violate their terms of supervision.
4. To establish a uniform system for classifying all Wisconsin felonies, including those in the criminal code, those not in the criminal code, and those in the drug code.

Certain technical aspects of Act 283 effect major changes to Wisconsin's criminal law:

1. A new, bifurcated sentence structure has been created for all felony sentences. Sentences will consist of a term of confinement in prison, followed by a term of extended supervision ("ES") in the community.
2. The maximum sentence lengths for all felonies were increased by 50%, or 1 year, whichever is greater, and the maximum term of confinement for all felonies under a bifurcated sentence were set as follows:

Class	<u>Maximum Confinement</u>	<u>Maximum Extended Supervision</u>	<u>Statutory Maximum</u>
A			Life
B	40	20	60
BC	20	10	30
C	10	5	15
D	5	5	10
E	2	3	5

3. The extended supervision portion of the bifurcated sentence may not be less than 25% of the length of the term of confinement in prison. The court may impose conditions on the ES term. An offender serving a

¹ Current law remains that probation is not an option for violation of a Class A felony.

bifurcated sentence is not eligible for parole, and must serve the entire term of confinement in prison without reduction for good behavior.

This **18-member** Criminal Penalties Study Committee was created and charged with making recommendations concerning six topics:

- a. Creation of a uniform classification system for all felonies, including felonies outside of the criminal code.
- b. Classification of each felony and Class A misdemeanor in a manner that places crimes of similar severity into the same classification.
- c. Consolidation of all felonies into a single criminal code.
- d. Creation of a sentencing commission to promulgate advisory sentencing guidelines for use by judges when imposing a bifurcated sentence.
- e. Development of temporary advisory sentencing guidelines for use by judges when imposing a bifurcated sentence.
- f. Changing the administrative rules of the Department of Corrections to ensure that a person who violates a condition of ES is returned to prison promptly and for an appropriate period of time.²

Originally, the committee was required to submit its report and recommendations to the legislature in the manner provided under Wis. Stat. sec. 13.172(2), and to the governor, no later than April 30, 1999. The report was to include any proposed legislation that is necessary to implement the recommendations made by the committee in its report.

The committee found the original deadline unrealistic in light of the magnitude of the tasks assigned to it. There were a total of 585 crimes to be reclassified: 264 felonies within the criminal code; 220 felonies outside the criminal code; and 10 1 Class A misdemeanors. Temporary sentencing guidelines took considerable time to develop; indeed, the former Wisconsin Sentencing Commission had taken more than five years to develop guidelines for 16 crimes. Further, it took other states between two and five years to do what this committee was asked to do in nine months, with a much smaller staff. Moreover, the committee had great difficulty in securing adequate and reliable data from the Department of Corrections (“DOC”) and the Circuit Court Automation Project (“CCAP”) to use as the committee studied. Finally, predicting the effect of changes to

² A synopsis of 1997 Act 283 may be found at Wisconsin Legislative Council Information Memorandum 98-11, and Wisconsin Legislative Fiscal Bureau Informational Paper # 55, “Felony Sentencing and Probation,” pp. 4-8

criminal classifications and sentencing guidelines was extremely complex. It took until late June 1999 to develop a satisfactory working computer model to predict the future number of prisoners, probationers, parolees, offenders on extended and the cost of incarceration and supervision. For all of these reasons, the committee requested a deadline extension, and on _____, 1999, Act ____ was enacted to extend the committee's deadline for submitting its report and recommendations to August 31, 1999.

B. Committee's Working Structure

To fulfill its statutory charges, the committee was subdivided into five subcommittees:

- Code Reclassification
- Sentencing Guidelines
- Extended Supervision Revocation
- Computer Modeling
- Education

Some committee members served on more than one subcommittee.³

The purpose of the subcommittee structure was to efficiently complete the committee's statutory charges. The first three subcommittees were formed to do the work to fulfill the six listed charges. The **code reclassification** subcommittee worked on creating a new classification system and arraying within that scheme crimes from the criminal code, the drug code, and crimes outside of the criminal code. The **sentencing guidelines** subcommittee developed temporary advisory guidelines for the most litigated crimes, and recommended the format for a sentencing commission. The **extended supervision revocation** subcommittee studied the revocation process, and recommended how it can be improved and streamlined.

The last two subcommittees were formed to address challenges which arose during the committee's work. The **computer modeling** subcommittee worked to develop computer software to accurately forecast the impact of certain policies on prison population and cost. The **education** subcommittee has presented programs to government leaders, judges, the bar, and the public about Truth-in-Sentencing and this committee's report and recommendations.

At the second full committee meeting in October 1998, it was agreed that the subcommittees would do the initial work on each charge, and bring back their recommendations to the full committee for review and consideration. The full committee would either approve the subcommittee's work or direct the subcommittee to continue its work given the full committee's reactions. This process continued throughout the committee's one year existence.

³ A list of which committee members served on each subcommittee is found at Appendix . . .

The full committee met 18 times, including three 2-day meetings. Full committee meeting time totaled approximately 105 hours. The full committee always met in person, usually in Madison, Wisconsin at the State Capitol.⁴ Each full committee meeting was transcribed, and minutes of each meeting were prepared and distributed to the committee members and any other interested persons.’

The subcommittees each met individually, some more than others, depending on the scope of their task. At least 40 subcommittee meetings were held, often in person, but sometimes via videoconference or telephone conference call.

Each full committee and subcommittee meeting was properly noticed pursuant to the open meetings law, Wis. Stat. ch. 19. An opportunity for public comment was provided for at each meeting. The committee heard from various members of the public concerning its statutory charges, including law enforcement officials, representatives of the public defender’s office, and victim’s rights representatives.

The committee employed one full-time attorney and one program and planning analyst. Employees from all areas of state government, including the Governor’s office, the Legislative Reference and Fiscal Bureaus, individual legislators and their staffs, the Department of Administration, the Department of Corrections, especially its Bureau of Technology Management, the State Public Defender’s Office, and the Department of Justice helped the committee complete its work. Numerous outside consultants, retained by the committee as well as paid for by federal grants, also helped the committee complete its work. Without the help of these individuals, the committee could not have fulfilled its statutory charges.

In the first stages of the committee’s work, it heard from representatives of a variety of different states about their experience in implementing Truth-in-Sentencing. These states included Minnesota, North Carolina, Virginia, Delaware, and Ohio.⁶ These presentations educated committee members on the ways other states had implemented their versions of Truth-in-Sentencing. These reports took place at the committee’s October and November 1998 meetings. The committee also heard special presentations concerning Wisconsin’s drug code in December 1998, on probation and parole revocation procedures in January 1999, and on strengthening community corrections and what extended supervision should look like in July 1999.

At committee meetings from February through July, subcommittees reported back on their work to the full committee for review and consideration by committee members. The conclusions of the committee’s study and its recommendations are related in subsequent sections of this report.

⁴ A list of the full committee meeting dates and places can be found at Appendix ____.

⁵ The transcripts of the committee’s meetings and copies of the committee’s **minutes** are available for review in the committee’s offices at 819 N. 6th St., Rm. 834, Milwaukee, WI 53202, and will be transmitted to the State Historical Society pursuant to Wis. Stat. s. _____

⁶ The vast majority of the cost and expenses associated with these visits were paid for through a federal technical assistance grant.

II. The Classification of Crimes

Statutory charges:

- “a. Creation of a uniform classification system for all felonies, including felonies outside of the criminal code.*
- b. Classification of each felony and Class A misdemeanor in a manner that places crimes of similar severity into the same classification.*
- c. Consolidation of all felonies into a single criminal code.”⁷*

A. The History of Crime Classification in Wisconsin

1. 1977 Penalty Classification Legislation

The State of Wisconsin first undertook the process of uniform crime classification more than twenty years ago.⁸ In legislation which was passed in 1977 and which took effect on June 1, 1978, crimes and forfeiture offenses codified in the Wisconsin Criminal Code were placed in one of several uniform penalty classes.’ Offenses codified elsewhere in the Statutes were not affect by the law.

The 1977 law created five classes of felonies, three classes of misdemeanors, and four classes of forfeitures. The penalty structure for felony and misdemeanor classes was as follows:¹⁰

CLASS	MAXIMUM TERM OF IMPRISONMENT	MAXIMUM AMOUNT OF FINE
Class A Felony	Life	---
Class B Felony	20 years	---
Class C Felony	10 years	\$ 10,000
Class D Felony	5 years	\$ 10,000
Class E Felony	2 years	\$ 10,000
Class A Misd.	9 months	\$ 10,000
Class B Misd.	90 days	\$ 1,000

⁷See 1997 Wis. Act 283 sec. (1)(e)1-3.

⁸See 1977 Wis. Laws 173.

⁹The 1977 legislation classified all Criminal Code offenses with the exception of abortion (Wis. Stat. sec. 940.04) and removal of shopping cart (Wis. Stat. sec. 943.55). The latter was a new forfeiture offense that had been enacted earlier in the 1977 legislative session. Both of these offenses remain unclassified to this day.

¹⁰See Wis. Stat. secs. 939.50 to 939.52 (1977).

Class C Misd.	30 days	\$500
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The Legislative Council Notes to the 1977 penalty classification bill¹¹ articulate the organizing principles used to place crimes and forfeitures into the new penalty classes. Critical to the placement process was the degree of actual or potential harm involved in the commission of crime:

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.*

2. Attributes of Classified Crimes

When the attributes of the 1977 crime classification system are analyzed, several features of that system may be observed:

- In each class provision is made for a maximum period of incarceration.
- Except for Class A and Class B felonies, provision is made in each class for a maximum fine.
- Except for Class A felonies, there are no mandatory penalties.
- There are no minimum penalties (presumptive or otherwise).¹³
- Except for Class A felonies, probation is an option for all felonies and misdemeanors.

An examination of the 1977 Criminal Code further reveals that, when the legislature enacted the penalty classification bill, there were no Chapter 939 penalty

¹¹ S.B. 14 (1977).

¹² S.B. 14 at 4-5 (1977).

¹³ The 1977 legislation specifically ridded the Criminal Code of minimum penalties. See, e. g., Wis. Stat. sec. 940.02 (1975) (penalty expressed as imprisonment for not less than five nor more than 25 years).

enhancers except for habitual **criminality**.¹⁴ Aggravating circumstances attending the commission of any crime were matters argued by the prosecutor and considered by the court when imposing sentences within the statutory maximum for the crime of conviction.

It is important to note that until Act 283 passed, Wisconsin operated under an **“indeterminate”** sentencing system. Under such a system, the sentence length imposed by a judge includes both time in prison and on parole. Offenders sentenced to prison, other than those sentenced to life, must serve a minimum of the greater of six months or 25% of the court-imposed sentence before becoming eligible for parole (“parole eligibility date”). The use of “good time” credit also affects the length of time an offender is imprisoned. The decision to grant discretionary parole (release from prison at any time between the parole eligibility date and the mandatory release date) is made by the Parole Commission. If discretionary parole is granted, the parolee is placed under DOC supervision for a period not to exceed the court-imposed sentence, less time already served. Offenders who reach their mandatory release date without being paroled are also placed under parole supervision for a period not to exceed the court-imposed sentence.¹⁵

When Act 283 was enacted, a **“determinate”** sentencing system was implemented. Under the new structure, courts impose a bifurcated (two-part) sentence. The sentence will consist of a term of confinement in prison followed by a term of extended supervision in the community. The offender must serve the entire length of the bifurcated sentence, and is not eligible for parole.¹⁶

B. Act 283 Mandates for Crime Classification

Among the charges given to the Criminal Penalties Study Committee by the Wisconsin legislature are the following:

- Creating a uniform classification system for all felonies, including felonies outside of the criminal code.”
- Classifying each felony and Class A misdemeanor in a manner that places crimes of similar severity into the same classification.*

In the text which follows the Committee responds to these legislative mandates. First, it proposes a whole new system for classifying felony offenses. Next it describes the method used to convert over 400 crimes to the new system. Finally, it proposes a specific crime classification for each of these offenses.

¹⁴ Wis. Stat. sec. 939.62 (1977). Concealing identity existed but was codified at Wis. Stat. sec. 946.62 (1977) and classified as a crime.

¹⁵ See Legislative Fiscal Bureau Informational Paper # 55 pp. 2-4.

¹⁶ *Id.* at pp. 4-7.

¹⁷ 1997 Wis. Act 283 sec. 454(1)(e)1.

¹⁸ 1997 Wis. Act 283 sec. 454(1)(e)2.

With regard to misdemeanor offenses, the limitations of Act 283’s mandates should be noted. The legislature directed the Committee to study the penalties “for all felonies and Class A misdemeanors.” Further, it charged the committee to classify “each felony and Class A misdemeanor in a manner that places crimes of similar severity into the same classification.”²⁰ However, it did not speak to the classification of misdemeanors that are presently unclassified. The latter, which constitute a large number of offenses, are scattered throughout the Wisconsin Statutes other than in the Criminal Code.

Given the magnitude of its other duties and a challenging time frame within which to conclude them, the Committee did not venture beyond its charge to explore the classification of unclassified misdemeanors. This means that even if all of the Committee’s recommendations regarding the classification of crimes are implemented, there will still be a considerable number of offenses (non-Criminal Code misdemeanors) that will remain unclassified. Classifying them may be a worthy endeavor for the future so that all Wisconsin crimes (wherever codified in the Statutes) are classified in a uniform system of crime classification.

C. Proposal for a New Felony Classification System

1. The Need for a New Classification System

As the Committee undertook the process of classifying over 400 felony offenses, it quickly became clear that current law does not have enough felony classes. There are only six felony categories (A, B, BC, C, D and E) and, as a practical matter, the vast majority of Criminal Code felonies are classified in only four of them (B, C, D and E). Given the number of crimes that must be placed in these few classes, the result is that a given category will have felonies classified within it which address considerably different kinds of behavior causing (or potentially causing) considerably different harm. For example, the present Class C category (10 years or \$10,000 or both) contains robbery, burglary and forgery.

Another problem with the present classification system is that the penalty differences among them are too great. As a result of various changes enacted since the original penalty classification system was adopted in 1977,²¹ the structure of felony classes (before treatment by 1997 Act 283) now appears as follows:

CLASS	MAXIMUM TERM OF IMPRISONMENT	MAXIMUM AMOUNT OF FINE
Class A Felony	Life	---
Class B Felony	40 years	---

¹⁹ 1997 Wis. Act 283 sec. 454(1)(e).

²⁰ 1997 Wis. Act 283 sec. 454(1)(e)2.

²¹ [Need to list these changes.]

Class BC Felony	20 years	\$ 10,000
Class C Felony	10 years	\$ 10,000
Class D Felony	5 years	\$ 10,000
Class E Felony	2 years	\$ 10,000

While it may appear that this system has a nicely graduated approach to felony penalties, some of its infirmities become clear when the allocation of offenses to each category are examined. Under current law only five felonies are assigned to Class BC. As a practical matter this means that for purposes of classifying mid-level and more serious felonies (not including those for which life imprisonment is the penalty), there is a 30-year gap between the maximum for Class C and that for Class B.

The five-year gap between Class D and C may not seem unreasonable in the current world of indeterminate sentencing; however, as the move is made to the determinate approach of Truth-in-Sentencing, this gap too is considerable. The classification system needs more categories in order to fill these gaps and allow the legislature's charge to "place crimes of similar severity into the same classification"²² to be fulfilled.

Finally, given the legislature's charge to classify the more than 200 felonies which are codified other than in the Criminal Code, the need for more classifications becomes even starker. For example, drug delivery and possession with intent to deliver are penalized according to the amount of the drug delivered or possessed. The legislature has created numerous amount categories and assigned specific penalties for each. To classify these numerous graduated offenses in a uniform classification system requires more felony classes than are available under present law. Beyond drug offenses are the more than 150 miscellaneous felonies scattered throughout the Statutes. Most of these are lower end felonies but the need to distinguish severity among them requires more felony categories on the lower end of the classification system.

For all of these reasons the Committee recommends that the present system of six felony classes be expanded to nine classes. This allows for closure of the large gaps that exist in present law. It also allows for the more precise and discriminating classification of the several hundred felonies that occupy the middle and lower ranges of the spectrum. In the chart which follows the proposed penalties for each class are presented.

2. Proposed Penalty Structure:

THE A-I FELONY CLASSIFICATION SYSTEM

In the terminology of 1997 Act 283, the maximum term of confinement plus the maximum period of extended supervision equals the maximum period of time that a person could be imprisoned on a sentence.

²² 1997 Wis. Act 283 sec. 454(1)(e)2.

FELONY CLASS	MAXIMUM TERM OF CONFINEMENT	MAXIMUM EXTENDED SUPERVISION	MAXIMUM FINE
A	Life		---
B	40 years	20 years	---
C	25 years	15 years	\$100,000
D	15 years	10 years	\$100,000
E	10 years	5 years	\$50,000
F	7.5 years	5 years	\$25,000
G	5 years	5 years	\$25,000
H	3 years	3 years	\$10,000
I	18 mos.	2 years	\$10,000

3. Observations About the New A-I Classification System

Terms of Confinement. Whenever a court sentences a person to prison for a felony committed on or after December 31, 1999, it must (except in the case of a life imprisonment felony or one involving application of the persistent repeater law²³) bifurcate the sentence, specifying both a term of confinement and a term of extended supervision. In the system proposed by the committee, the maximum terms of confinement are graduated rather evenly through the spectrum of felony offenses. With the exception of Class A felonies, there is no minimum period of confinement in any

²³ Wis. Stat. sec. _____ (not to be confused with regular repeater law).

category. This means that in the exercise of judicial discretion probation is an option in Classes B through I. However, if the court sentences the defendant to prison, the minimum period of confinement is one year.²⁴

Fines. When the Wisconsin legislature classified Criminal Code felonies and misdemeanors in 1977, it provided for \$10,000 maximum fines for felonies in Class C, D and E and for misdemeanors in Class A. No fines were established for felonies in Class A and B. When the new BC felony class was added years later, the same maximum fine was made applicable to it as well. The \$10,000 maximum has never been adjusted.

The Committee recommends that maximum fines in the A-I classification system be established in the following amounts:

Class A felony	No provision for a fine
Class B felony	No provision for a fine
Class C felony	\$100,000 maximum fine
Class D felony	\$100,000 maximum fine
Class E felony	\$50,000 maximum fine
Class F felony	\$25,000 maximum fine
Class G felony	\$25,000 maximum fine
Class H felony	\$10,000 maximum fine
Class I felony	\$10,000 maximum fine
Class A misdemeanor	\$10,000 maximum fine

The Committee acknowledges that fines play no role in the disposition of most felony cases. However, it believes that the schedule depicted above should be implemented for several reasons. First, it acknowledges the differing severity of the crimes in the various felony categories. Second, it reflects the changing value of money over time. Third, it addresses concerns that a \$10,000 fine for certain more serious crimes is simply not enough for certain offenders, for example, corporations convicted of reckless or negligent homicide (of which there have been several). Finally, it recognizes that with the classification of drug offenses, it is necessary to have sufficient fine exposure for higher-end offenses.

Certain felonies codified outside the Criminal Code have much higher fines than those in the proposed schedule. In specific instances the Committee has recommended that those higher fines be maintained. [Cross-reference to where this recommended or footnote as to what they are.]

Extended Supervision. The Committee recommends that statutory caps be placed on the maximum amount of extended supervision time the judge may impose at sentencing as follows:

²⁴ Wis. Stat. sec. 973.01(2)(b).

Class A felony	--- ²⁵
Class B felony	20 years
Class C felony	15 years
Class D felony	10 years
Class E felony	5 years
Class F felony	5 years
Class G felony	5years
Class H felony	3 years
Class I felony	2 years

The Committee believes that a fair reading of Act 283 would in some instances allow for much longer periods of extended supervision. Class B felonies are a useful example. Under Act 283 the maximum possible imprisonment for these felonies is 60 years in prison, but not more than 40 years of initial confinement absent revocation.²⁶ While at first blush this appears to leave 20 years for extended supervision, the act does not limit extended supervision to 20 years. Thus a court could theoretically sentence a person to one year in prison followed by 59 years of extended supervision.

This possibility may not have been intended; yet Act 283 seemingly permits it. The Committee suggests that limits be placed on extended supervision that allow for sufficient supervision given the nature of the crimes proposed for inclusion in each of the felony classes and the public safety and offender rehabilitation goals that underlie the notion of supervision upon release from prison. The Committee believes these purposes of extended supervision can realistically be accomplished within the proposed limits without consuming the resources of supervision so far into the future that no one knows what they will even be.

Act 283 makes no provision for extended supervision for misdemeanants who are sentenced to prison. The Committee believes that those misdemeanants who are dangerous enough to be sent to prison should be subject to supervision upon release from prison. Both community safety and offender rehabilitation goals would be advanced by such supervised transitioning upon release from prison. [Correcting legislation is attached in the Appendix.]

4. Method of Converting Crimes to the New A-I Classification System and Factors Influencing the Classification of Crimes

Crimes were initially placed in the new A-I classification system by determining the mandatory release (M.R.) date under current law when a court imposes the maximum

²⁵ When a court sentences a person for a Class A felony, it must make an extended supervision eligibility date determination. See 1997 Wis. Act 283 sec. 424. However, no such determination will be made for persons sentenced under the persistent repeater law (Wis. Stat. sec. 939.62(2m)) because they are not eligible for extended supervision. See 1997 Wis. Act 283 sec. _____

²⁶ See 1997 Wis. Act 283 secs. 322 and 419.

sentence. As a general rule M.R. is fixed by statute at two-thirds of the sentence actually imposed.²⁷ For the offender who receives the maximum sentence, M.R. is two-thirds of that maximum. Service of the sentence to M.R. reflects the longest period the defendant can be held in prison before being mandatorily paroled.²⁸ That parole is subject to revocation and the defendant may be returned to prison if conditions of parole are violated.

The Committee concluded that the maximum sentence of incarceration for each crime in the new Truth-in-Sentencing system ought to roughly parallel the maximum the person could serve in prison under the current indeterminate sentencing law before reaching M.R. To allow for the worst case scenario of a prisoner who under current law is held to M.R., the Committee applied the M.R. converter to the maximum possible sentence under current law before classifying each crime in the new A-I classification system. Once this initial calculation using M.R. was accomplished, the Committee then applied the criteria described below to determine whether any class adjustments were necessary.

The Committee believes that use of the M.R. converter to locate crimes in the new A-I classification system in no way conflicts with its understanding of the legislative intent underlying the movement to Truth-in-Sentencing. The clear message of Act 283 is that the legislature wants “absolute truth” in the sentencing process such that everyone (judges, prosecutors, defense attorneys, defendants, victims, witnesses, corrections officials and the public) knows that the offender will serve the entirety of the prison sentence and subsequent period of extended supervision as ordered by the court at sentencing. Act 283 does not require the imposition of longer prison sentences nor does it suggest that offenders should be held in confinement for periods of time longer than under current law. What it requires is “truth” in the meaning of sentences and the Committee believes its method for classifying crimes is fully consistent with that requirement.

Example: Under current law the offense of burglary is classified as a Class C felony for which the maximum possible sentence of incarceration is 10 years. If the judge sentences the defendant to the full 10-year term and he or she is held in custody until M.R., release to parole will occur after 6 2/3rds years. Using 6 2/3rds as the “M.R. converter,” the closest felony class in the new A-I system is Class F, for which the maximum period of incarceration is 7.5 years. Thus, as an initial matter, burglary would be categorized in Class F and the defendant sentenced to the maximum could actually serve slightly more time in prison than a burglar sentenced to the maximum under current law who serves to M.R. Following release from the institution, the defendant will be subject to extended supervision for up to 5 years for this Class F offense.

²⁷ Wis. Stat. sec. 302.11(1). There is no mandatory release for persons sentenced to life imprisonment. See Wis. Stat. sec. 302.11(1 m).

²⁸ For certain serious felonies mandatory release upon service of 2/3rds of the sentence is presumptive but may be denied by the parole commission. See Wis. Stat. sec. 302.11(lg).

[Expand - under old law, parole supervision was a maximum of 3 1/3 years, but ES supervision maximum of 5 years under the new law.]

Felony Class Adjustments. After application of the M.R. converter to initially place a crime in one of the new A-I classes, the Committee then considered whether an adjustment up or down was necessary so that crimes of similar severity are classified together. This was done in response to a specific charge from the legislature.²⁹ In making its final determination about the classification of offenses, the Committee also endeavored to:

- Allow enough incarceration exposure for the “worst case-worst offender” scenario. In making this assessment the Committee recognizes that the vast majority of crimes are less serious than the “worst case” and are committed by someone other than the “worst offender.” For these situations the appropriate disposition within the statutory maximum for the crime of conviction is left to judicial discretion (as assisted by sentencing guidelines to the extent guidelines are available). However, the Committee also recommends preservation of the habitual criminality statute³⁰ and certain penalty enhancers to allow for those cases where the maximum penalty for the underlying crime is insufficient.
- Show proper deference to judgments already made by the legislature about the relative severity of offenses.
- Classify crimes that involve death or serious injury (or the potential for such harm) in higher categories than those involving offenses against property or other non-violent behavior.
- Consider data about sentencing patterns and time actually served for offenses under current law when such data was available and when the Committee had some measure of confidence in its reliability.
- Account for the political reality that its recommendations must ultimately survive the scrutiny of both the legislature and the governor in order to become law.

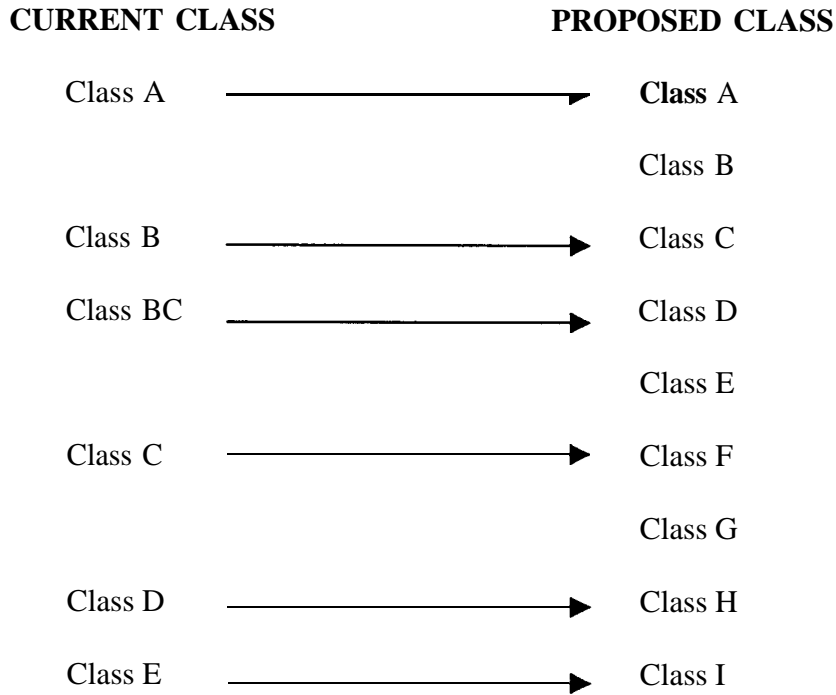
D. Classification of Criminal Code Offenses

1. Introduction

²⁹ See 1997 Wis. Act 283 sec. 454(1)(e)2.

³⁰ Wis. Stat. sec. 939.62.

When the mandatory release (M.R.) converter is applied to move crimes from the six felony classes under current law to the proposed nine-class system, the natural flow of crimes may be depicted as follows:



Application of the M.R. converter thus means that current Class A felonies flow naturally to proposed Class A, current Class B felonies flow naturally to proposed Class C, current Class BC felonies flow naturally to proposed Class D, current Class C felonies flow naturally to proposed class F, current Class E felonies flow naturally to proposed Class H, and current Class E felonies flow naturally to proposed Class I. Although a crime in the new system may have a class designation different from present law, the impact of the natural flow depicted above is that the maximum time of confinement in prison until first release is roughly the same.

As a result of applying the M.R. converter, no crimes have a natural placement in proposed Class B, E or G. These “empty” categories were thus available to the Committee when application of its classification criteria suggested that a crime needed an upward or downward adjustment from wherever the M.R. converter naturally placed it. These “empty” categories were also very useful when the Committee undertook the task of classifying drug crimes and other felonies that are presently unclassified.

Before presenting its proposal for the classification of Criminal Code felonies (and all other felonies for that matter), the Committee makes one further introductory observation. The classification of a felony offense establishes the maximum incarceration, maximum fine, and maximum period of extended supervision when the court sentences a defendant on a **single count**. If a criminal episode involves the

commission of several crimes, the defendant will upon conviction face multiple sentences which may either be concurrent with or consecutive to one another.

2. Proposed Classification of Criminal Code Felonies

COLOR CODES

ENTRIES IN GREEN REFLECT
UPWARD CLASS ADJUSTMENT
AFTER APPLICATION OF M.R. CONVERTER.

ENTRIES IN BLUE REFLECT
NEW CRIMES RECOMMENDED
FOR ENACTMENT BY THE
LEGISLATURE OR EXISTING
CRIMES FOR WHICH
SIGNIFICANT AMENDMENTS
ARE PROPOSED.

ENTRIES IN RED REFLECT
DOWNWARD CLASS ADJUSTMENT
AFTER APPLICATION OF M.R.
CONVERTER.

ENTRIES IN BLACK REFLECT
THE NATURAL PLACEMENT
OF CRIMES IN A-I SYSTEM
AFTER APPLICATION OF THE
M.R. CONVERTER.

NOTE: Each entry in green and red is accompanied by a parenthetical which indicates “from.” Red and green entries mean that an adjustment has been made either upward (green) or downward (red) from the felony class where a crime would naturally be placed by application of the M.R. converter. The “from” indicates where natural placement would be.

CLASS A FELONIES (LIFE)

1 st Degree Intentional Homicide	940.01(1)(a) & (b)
Partial-Birth Abortion	940.16(2)
Absconding after being adjudicated delinquent for a Class A felony ³¹	946.50(1)
Treason	946.01(1)

³¹ This crime appears in each of the felony classes. It addresses the problem of the juvenile who has been adjudicated delinquent but then absconds before his/her dispositional hearing.

CLASS B (40 MAX PRISON; 20 E.S.)

Absconding after being adjudicated delinquent for a Class B felony	946.50(2)
Conspiracy to commit a crime for which the penalty is life imprisonment (from C)	939.3 1
Attempt to commit a crime for which the penalty is life imprisonment (from C)	939.32(1)(a)
1 st Degree Reckless Homicide (from C) ³²	940.02(1) and (1m)
1 st Degree Sexual Assault (from C)	940.225(1)
1 st Deg. Sex Assault of a Child (from C) ³³	948.02(1)
Repeated Sexual Assault of Same Child (from C) ³⁴	948.025
Kidnapping (Aggravated) (from A)	940.3 1(2)(a)
Hostage Taking (Aggravated) (from A)	940.305(1)

CLASS C (25 MAX PRISON; 15 E.S.)

1 st Deg. Reckless Homicide (“Len Bias” Law)	940.02(2)
2 nd Deg. Intentional Homicide	940.05(1) & (2g)
Mayhem	940.2 1
Abuse of Vulnerable Adult (intentional or reckless maltreatment resulting in death)	940.285(2)(b)1g
Abuse & Neglect of Patients & Residents (intentional or reckless abuse or neglect resulting in death of “vulnerable” person)	940.295(3)(b)1g
Hostage Taking (Unaggravated)	940.305(2)
Kidnapping (Unaggravated)	940.3 1(1) & (2)(b)
Arson of buildings	943.02
Carjacking	943.23(1g) and (1m)
Armed Robbery	943.32(2)

³² This chart reflects the classification of 1st Degree Reckless Homicide at the Class B level and 2nd Degree Intentional Homicide (which is 1st Degree Intentional Homicide mitigated by imperfect self-defense, heat of passion, etc.) at the Class C level. They would both be Class C felonies if the M.R. converter is applied. A further discussion of the classification of these offenses follows the list presented in the text accompanying this note.

³³ This crime has a **5-year** enhancer if the defendant is a person responsible for the welfare of the child. The Committee recommends that this enhancer be recast as a statutory sentencing aggravator. The underlying offense is classified as a B felony and 40 years’ exposure is sufficient to deal with circumstances where the aggravator is present.

³⁴ This crime should be a Class B felony only if the proof demonstrates that the repeated assaults all constituted violations of the First Degree Sexual Assault of a Child statute.

This crime has a **5-year** enhancer if defendant is a person responsible for the welfare of the child. The Committee recommends that the enhancer be recast as a statutory sentencing aggravator. The underlying offense is classified as a B felony and 40 years’ exposure is sufficient to deal with circumstances where the aggravator is present.

CLASS C (25 MAX PRISON; 15 E.S.) (continued)

Absconding after being adjudicated delinquent for a Class C felony	946.50(3)
Repeated Sexual Assault of Same Child ³⁵	948.025
Abduction of Another's Child by Force or Threat of Force	948.30(2)
2 nd Degree Sexual Assault (from D)	940.225(2)
2 nd Deg. Sex Assault of Child (from D) ³⁶	948.02(2)
Incest (from D)	948.06
Tampering with Household Products (causing death) (from A)	941.327(2)(b)4
Homicide by Intoxicated Use of Vehicle (Repeater with 1 or more Prior OWI-type convictions) - NEW CRIME ³⁷	940.09

CLASS D (15 MAX PRISON; 10 E.S.)

Absconding after being adjudicated delinquent for a Class D felony	946.50(4)
Continuing Criminal Enterprise	946.85(1)
Child Enticement	948.07
Soliciting a Child for Prostitution	948.08
2 nd Degree Reckless Homicide (from F)	940.06
Homicide by Intoxicated Use of Firearm (from H)	940.09(1g)
1 st Degree Reckless Injury (from F)	940.23(1)(a) & (b)
Child Neglect Resulting in Death (from F)	948.21(1)
Contributing to Delinquency of a Child (if death Is a consequence (from F)	948.40(4)(a)

³⁵ This crime should be a Class C felony if the evidence shows three or more violations of the Sexual Assault of a Child statute committed against the same victim within a specified period of time but fails to demonstrate that at least three of the repeated assaults all constituted violations of the First Degree Sexual Assault of a Child statute.

This statute has a 5-year enhancer if the defendant is a person responsible for the welfare of the child. The Committee recommends that this enhancer be recast as a statutory sentencing aggravator. The underlying offense is classified as a B felony under and 40 years' exposure is sufficient to deal with circumstances where the aggravator is present.

³⁶ This statute has a 5-year enhancer if the defendant is a person responsible for the welfare of the child. The Committee recommends that this enhancer be recast as a statutory sentencing aggravator. The underlying offense is classified as a C felony and 25 years' exposure is sufficient to deal with circumstances where the aggravator is present.

³⁷ This statute has a penalty doubler if there was a minor passenger in vehicle at the time of the offense. The Committee recommends that this penalty doubler be recast as a statutory sentencing aggravator. The underlying offense is classified as a C felony and 25 years' exposure is sufficient to deal with circumstances where the aggravator is present.

CLASS D (15 MAX PRISON; 10 E.S.) (continued)

Homicide by Intoxicated Use of Vehicle (No Prior OWI-Type Record) (from C) ³⁸	940.09(1)
Abuse of Vulnerable Adult (negligent maltreatment resulting in death)	940.285(2)(b) 1 g ³⁹
Abuse & Neglect of Patients & Residents (negligent abuse or neglect resulting in death of “vulnerable” person)	940.295(3)(b) 1 g ⁴⁰

CLASS E (10 MAX PRISON; 5 E.S.)

Absconding after being adjudicated delinquent for a Class E felony	946.50(5)
Abortion	940.04(2) ⁴¹
Abuse & Neglect of Patients & Residents (intentional, reckless or negligent abuse or neglect causing great bodily harm to a vulnerable person) (from F)	940.295(3)(b)1m
Robbery (Unarmed) (from F)	943.32(1)
Fleeing: Causing Death (H)	Traffic Code
Contributing to Death: Obstructing Emergency or Rescue Personnel (from F)	941.37(4)
Engaging in Racketeering Activity (from F)	946.84(1)
Physical Abuse of a Child (intentionally causing great bodily harm) (from F)	948.03(2)(a)
Abduction of Another’s Child (from F)	948.30(1)
Aggravated Burglary (from C)	943.1 O(2)
Aggravated Battery	NEW ⁴²
Aggravated Battery to Unborn Child	NEW ⁴³

³⁸ This statute has a penalty doubler if there was a minor passenger in vehicle at the time of the offense. The Committee recommends that this penalty doubler be recast as a statutory sentencing aggravator. The underlying offense is classified as a D felony and 15 years’ exposure is sufficient to deal with circumstances where the aggravator is present.

³⁹ This crime is listed as “new” because it breaks out negligent maltreatment resulting in death and classifies it at a lower level than intentional or reckless maltreatment resulting in death.

⁴⁰ This crime is listed as “new” because it breaks out negligent abuse or neglect resulting in death and classifies it at a lower level than intentional or reckless abuse or neglect resulting in death.

⁴¹ Sec. 940.04(2) is part of the pre-Roe v. Wade statute. The form of the crimes codified in sec. 940.04 date back to the 1956 revision of the Criminal Code. When the legislature instituted a classification system for Criminal Code felonies and misdemeanors in 1977, it did not classify the crimes in sec. 940.04. 1997 Wisconsin Act 283 charges the Criminal Penalties Study Committee with classifying all felonies. Thus these crimes are now recommended for classification. However, the Committee recommends that the legislature independently study whether sec. 940.04 should be repealed given the fact that post-Roe v. Wade abortion statutes now exist at secs. 940.13 and 940.15.

⁴² The proposed version of Aggravated Battery is similar to that codified in 940.19(5). The proposed statute would read as follows: “Whoever causes great bodily harm to another by an act done with intent to cause great bodily harm to that person or another is guilty of a Class E felony.”

⁴³ The proposed version of Aggravated Battery to Unborn Child is similar to that codified in 940.195(2). The proposed statute would read as follows: “Whoever causes great bodily harm to an unborn child by an

CLASS F (7.5 MAX PRISON; 5 E.S.)

Solicitation: Crime for which Penalty is Life Imprisonment	939.30(2)
Mutilating a Corpse	940.1 l(1)
Endangering Safety: Discharge Firearm from Vehicle	94 1.20(3)(a)
Sexual Exploitation by Therapist	940.22(2)
Abuse of Vulnerable Adults (intentional, reckless or negligent maltreatment causing great bodily harm)	940.285(2)(b)1m
Abuse & Neglect of Patients & Residents (intentional abuse or neglect causing great bodily harm)	940.295(3)(b)1r
Modifying Firearm to Make It a Machine Gun	941.26(1m) & (2)(b)
Possession of Explosives	941.31(1)
Administering Dangerous/Stupefying Drug to Facilitate Crime	941.32
Tampering with Household Products (causing great bodily harm)	941.327(2)(b)3
Burglary (Unaggravated)	943.10(1)
Loan Sharking	943.28
Unlawful Receipt of Payments to Obtain Loan for Another (~\$2500)	943.62(4)(c)
Computer Crimes (risk of death or great bodily harm to another)	943.70(2)(b)4
Pandering (if compensated from earnings of prostitute)	944.33(2)
Sabotage	946.02(1)
Sedition	946.03(1)
Assaults by Prisoners	946.43
Public Officer or Employee Assisting or Permitting Escape	946.44(1 g)
Bringing Firearm into Prison or Jail; Transferring Firearm to Prisoner	946.44(1m)
Failure to Prevent Sexual Assault of a Child	948.02(3)
Physical Abuse of a Child (intentionally causing bodily by conduct which creates high probability of great bodily harm)	948.03(2)(c)
Failure to Prevent Great Bodily Harm to a Child	948.03(4)(a)
Causing Mental Harm to a Child	948.04
Sexual Exploitation of a Child	948.05(1), (1m) & (2) ⁴⁴
Causing a Child under 13 to View or Listen to Sexual Activity	948.055(2)(a)
Child Sex Offender Working with Children	948.13(2)

act done with intent to cause great bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class E felony.”

⁴⁴ The classification of the crimes codified in sec. 948.05 includes amendments to that statute enacted in 1999 Wisconsin Act 3.

CLASS F (7.5 MAX PRISON; 5 E.S.) (continued)

Interference with Custody of Child with Intent to Deprive Custody Rights; Concealing Child	948.3 1(l)(b) & (3)
2 nd Degree Reckless Injury (from H)	940.23(2)(a) & (b)
Injury by Intoxicated Use of Vehicle (from H) ⁴⁵	940.25
1 st Deg. Reck. Endang. Safety (from H)	941.30(1)
Fleeing causing GBH (from I)	Traffic Code
Absconding after being adjudicated delinquent for a Class F felony	NEW

CLASS G (5 MAX PRISON; 5 E.S.)

Homicide:Neg. Use of Weapon (from H)	940.08(1) & (2)
Homicide:Neg. Use of Vehicle (from I)	940.10(1) & (2)
Hiding a Corpse (from H)	940.1 1(2)
3 rd Degree Sexual Assault (from H)	940.225(3)
Abuse of Vulnerable Adult (intentional maltreatment under circumstances likely to cause great bodily harm) (from H)	940.285(2)(b)1r
Abuse & Neglect of Patients & Residents (intentional abuse under circumstances that are likely to cause great bodily harm) (from H)	940.295(3)(b)1r
Stalking (aggravated) ⁴⁶ (from H)	940.32(2m) & (3m)
Felony Intimidation of a Witness (from H)	940.43
Felony Intimidation of a Victim (from H)	940.45
Possession of Firearm by Felon (from I)	941.29
2 nd Deg. Reck. Endang. Safety (from I)	941.30(2)
Endangering Safety: Firing into Vehicle or Bldg. (from I)	941.20(2)
Theft from Person (from H) ⁴⁷	943.20(3)(d)2
Physical Abuse of Child (recklessly causing great bodily harm) (from H)	948.03(3)(a)
Child abandonment (from H)	948.20
Discharge of Firearm in a School Zone (from A misd.)	948.605(3)(a)
Homicide: Neg.Control of Vicious Animal (from F)	940.07

⁴⁵ This statute has a penalty doubler if there was a minor passenger in vehicle at the time of the offense. The Committee recommends that this penalty doubler be recast as a statutory sentencing aggravator. The underlying offense is classified as a F felony and 7.5 years' exposure is sufficient to deal with circumstances where the aggravator is present.

⁴⁶ The crime of stalking is aggravated if the defendant intentionally gains access to certain records in order to facilitate the violation or if defendant has a prior stalking or harassment conviction.

⁴⁷ Extracted from Wis. Stat. sec. 943.20(3)(d) but remove value requirement.

CLASS G (5 MAX PRISON; 5 E.S.) (continued)

Theft (> \$10,000)	NEW ⁴⁸
Receiving Stolen Property (> \$10,000)	NEW ⁴⁹
Fraudulent Use of Financial Transaction Card (> \$10,000)	NEW ⁵⁰
Retail Theft (> \$10,000)	NEW ⁵¹
Receiving Stolen Property from a Child (> \$5000)	NEW ⁵²
Hazing Resulting in Death	NEW ⁵³
Absconding after being adjudicated delinquent for a Class G felony	NEW

CLASS H (3 MAX PRISON; 3 E.S.)

Solicitation to Commit a Felony (other than A or I)	939.30(1)
Abortion	940.04(1) ⁵⁴
Assisting Suicide	940.12
Battery (causing great bodily harm by an act done with intent to cause bodily harm)	940.19(4)

⁴⁸ The ordinary crime of Theft (sec. 943.20) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the property stolen. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law.

⁴⁹ The crime of Receiving Stolen Property (sec. 943.34) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the property involved. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law.

⁵⁰ The crime of Fraudulent Use of a Financial Transaction Card (penalty sec. 943.4 l(S)(c)) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the money, goods, services or property illegally obtained. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law.

⁵¹ The crime of Retail Theft (sec. 943.50) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the property involved. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law.

⁵² The crime of Receiving Stolen Property from a Child (sec. 948.62) is classified in Felony Classes G, H and I and in Misdemeanor Class A according to the value of the property involved. The crimes are designated as “new” in the sense that the values used to differentiate the penalties are different than those used in present law. The value cutoffs are lower than those used in the Receiving Stolen Property statute (sec. 943.34) and other companion statutes like theft and retail theft to take into account the fact that the stolen property is received from a child.

The Committee recommends retaining the \$500 value codified in sec. 948.62(2)(a). It constitutes part of the prima facie proof that the property received from a child was stolen and that the person receiving the property knew it was stolen

⁵³ The Committee recommends classifying hazing resulting in death at the G felony level, thus providing for a greater penalty when death results and a lesser penalty (H felony) when great bodily harm results. See Wis. Stat. sec. 948.5 1(3)(b).

⁵⁴ Sec. 940.04(1) is part of the pre-Roe v. Wade statute. The form of the crimes codified in sec. 940.04 date back to the 1956 revision of the Criminal Code. ~~When the~~ legislature instituted a classification system for Criminal Code felonies and misdemeanors in 1977, it did not classify the crimes in sec. 940.04. 1997 Wisconsin Act 283 charges the Criminal Penalties Study Committee with classifying all felonies. Thus these crimes are now recommended for classification. However, the Committee recommends that the legislature independently study whether sec. 940.04 should be repealed given the fact that post-Roe v. Wade abortion statutes now exist at secs. 940.13 and 940.15.

CLASS H (3 MAX PRISON; 3 E.S.) (continued)

Battery (intentionally causing bodily harm to another by conduct that creates substantial risk of great bodily harm)	940.19(6)
Battery to Unborn Child (causing great bodily harm by an done with intent to cause bodily harm)	940.195(4)
Battery by Prisoners	940.20(1)
Battery to Law Enforcement Officers & Firefighters	940.20(2)
Battery to Probation and Parole-Agents and Aftercare Agents	940.20(2m)(b)
Battery to Jurors	940.20(3)
Battery or Threat to Witnesses	940.20 1
Battery to Emergency Department Workers, EMT's, etc.	940.20(7)(b)
Battery or Threat to Judge	940.203(2)
Battery or Threat to Dep't of Revenue Employe	940.205(2)
Battery or Threat to Dep't of Commerce & Workforce Dev.	940.207(2)
Unsafe Burning of Buildings	941.11
Using Tear Gas Device: Bodily Harm to Peace Officer	941.26(2)(f)
Using Pepper Spray Device: Bodily Harm to Peace Officer	941.26(4)(d)
Tampering with Household Products (if act creates a high probability of great bodily harm to another)	941.327(2)(b)2
Arson with Intent to Defraud	943.04
Theft (agg. circumstances ⁵⁵)	943.20(3)(d)
Misappropriation of Personal Identifying Information or Personal Identification Documents	943.201
Vehicle Theft ("take & drive")	943.23(2)
Threats to Injure or Accuse of a Crime	943.30
Fraudulent Writings	943.39
Fraudulent Destruction of Certain Writings	943.40
Criminal Slander of Title	943.60(1)
Crime against Computers ⁵⁶ (amend amt to > 5000)	943.70(2)(b)3 or (3)(b)3
Obscenity (if 2 or more prior obscenity violations or if crime involves wholesale transfer or distribution of obscene material)	944.21(5)(c) & (e)
Soliciting Prostitutes	944.32
Keeping Place of Prostitution	944.34
Bribery of Participant in a Contest	945.08(1)
Bribery of Public Officers and Employees	946.10
Perjury	946.3 1

⁵⁵ See Wis. Stat. sec. 943.20(3)(d) but remove value requirement.

⁵⁶ This felony is committed if the damage is greater than \$2500 or if it causes an interruption or impairment of governmental operations or public communication, of transportation or of a supply of water, gas or other public service. The Committee recommends elevating the damage cutoff referred to in the preceding sentence to \$5000 in order to maintain consistency with other Class H felonies having a value level.

CLASS H (3 MAX PRISON; 3 E.S.) (continued)

False Swearing	946.32(1)
Felony Escape	946.32(3)
Obstructing Officer (by providing information or or evidence that results in conviction of innocent person)	946.41(2m)
Felony Failure to Report to Jail	946.425(1), (1m)(b) & (1 r)(b)
Assisting or Permitting Escape	946.44(1)
False Information re: Kidnapped or Missing Persons	946.48(1)
Bail Jumping	946.49(1)(b)
Bribery of a Witness	946.61(1)
Simulating Legal Process (if the act is meant to induce payment of claim or simulates criminal process)	946.68(1 r)(b) & (c)
Impersonating a Peace Officer (with intent to commit a Crime or aid & abet commission of a crime)	946.70(2)
Tampering with Public Records	946.72(1)
Aiding Escape from Mental Institution (with intent to commit crime against sexual morality with or upon the inmate of the institution)	946.74(2)
Harassment (if defendant has prior conviction or intentionally gains access to certain records in order to facilitate the violation)	947.013(1v) & (1x)
Physical Abuse of a Child (intentionally causing bodily harm)	948.03(2)(b)
Physical Abuse of a Child (recklessly causing bodily harm by conduct creating a high probability of great bodily harm)	948.03(3)(c)
Failing to Act to Prevent Bodily Harm to a Child	948.03(4)(b)
Causing Child between 13 and 17 to View or Listen to Sexual Activity	948.055(2)(b)
Sexual Assault of Student by a School Instructional Staff Person	948.095(2)
Unauthorized Placement for Adoption	948.24(1)
Contributing to Delinquency of a Child (if child's act which is encouraged or contributed to is a violation of criminal law punishable as a felony)	948.40(4)(b)
Selling or Giving Dangerous Weapon to Person under 18 (if the person under 18 discharges the firearm and the discharge causes the death of any person)	948.60(2)(c)
Instigating Fights between Animals (2 nd or subsequent violation)	951.18(2)
Harassment of Police or Fire Department Animals (causing death to the animal)	951.18(2)(m)

CLASS H (3 MAX PRISON; 3 E.S.) (continued)

Abuse of Vulnerable Adult (intentional maltreatment causing bodily harm) (from I)	940.285(2)(b)2
Abuse & Neglect of Patients & Residents (intentional abuse or neglect causing bodily harm) (from I)	940.295(3)(b)2
Abuse & Neglect of Patients & Residents (reckless or negligent abuse or neglect causing great bodily harm) (from I)	940.295(3)(b)3
False Imprisonment (from I)	940.30
Stalking (if victim suffers bodily harm or defendant has prior conviction against same victim)	940.32(3)
Disarming a Peace Officer	941.21
Selling, Possessing, Using or Transporting Machine Gun (from I)	941.26(2)(a)
Sale or Commercial Transportation of Tear Gas Device (from I)	941.26(2)(e)
Using or Threatening to Use a Tear Gas or Pepper Spray Device during Commission of a Crime to Cause Bodily Harm or Bodily Discomfort to Another (from I)	94 1.26(2)(g) & (4)(e)
Selling, Transporting or Possessing a Short-Barreled Shotgun or Rifle (from I)	941.28(3)
Selling, Manufacturing or Possessing an Electric Weapon (from I)	941.295(1)
Using or Possessing a Handgun with Armor Piercing Bullets during Commission of Certain Crimes (from I)	941.296(2)
Selling, Delivering or Possessing a Firearm Silencer (from I)	941.298(2)
Making, Transferring, Possessing or Using an Improvised Explosive Device or Possessing Materials or Components with Intent to Assemble an Improvised Explosive Device (from I)	941.3 1(2)(b)
Possession, Manufacture or Transfer of a Fire Bomb (from I)	943.06(2)
Hazing Resulting in Great Bodily Harm (from I) ⁵⁷	948.5 1(3)(b)
Fleeing causing Bodily Harm (from I)	Traffic Code
Forgery and Forgery-Uttering (from F)	943.38(1) & (2)
Theft of Library Material (> \$2500) (from F)	943.61(5)(c)
Theft (> \$5000 but < \$10,000)	NEW ⁵⁸
Receiving Stolen Property (> \$5000 but < \$10,000)	NEW ⁵⁹

⁵⁷ If death results from the hazing, the Committee has recommended that the crime be classified as a G felony.

⁵⁸ See footnote to crime of Theft (943.20) in Class G list.

⁵⁹ See footnote to crime of Receiving Stolen Property (943.34) in Class G list.

CLASS H (3 MAX PRISON; 3 E.S.) (continued)

Fraudulent Use of Financial Transaction Card (> \$5000 but < \$10,000)	NEW ⁶⁰
Retail Theft (> \$5000 but < \$10,000)	NEW ⁶¹
Receiving Stolen Property from a Child (> \$2000 but < \$5000)	NEW ⁶²
Absconding after being adjudicated delinquent for a Class G felony	NEW

CLASS I (18 mo. MAX PRISON; 2 yrs. E.S.)

Violation of a Condition of Lifetime Supervision of Serious Sex Offenders	939.615(7)(b)2 ⁶³
Abortion	940.04(4) ⁶⁴
Abortion (various provisions)	940.15(2),(5) & (6) ⁶⁵
Battery (causing substantial bodily harm by an act done with intent to cause bodily harm)	940.19(2)
Battery to Unborn Child (causing substantial bodily harm by an act done with intent to cause bodily harm)	940.195(2)
Injury by Negligent Handling of Dangerous Weapon, Explosives or Fire	940.24
Abuse of Vulnerable Adult (reckless or negligent maltreatment under circumstances likely to cause great bodily harm)	940.285(2)(b)3
Abuse of Residents of Penal Facilities	940.29
Interfering with Fire Fighting	941.12(1)
Placing Foreign Objects in Edibles	941.325
Tampering with Household Products	941.327(2)(b)1
False Information Concerning Act that Constitutes Tampering with Household Products	941.327(3)

⁶⁰ See footnote to crime of Fraudulent Use of Financial Transaction Card (943.41) in Class G list.

⁶¹ See footnote to crime of Retail Theft (943.50) in Class G list.

⁶² See footnote to crime of Receiving Stolen Property from a Child (948.62) in Class G list.

⁶³ Under circumstances specified in this statute, the sentence imposed for a violation thereof must be consecutive to the sentence for whatever crime constitutes a violation of lifetime supervision of serious sex offenders. The Committee recommends repeal of this mandatory consecutive sentencing provision just as it has recommended repeal of other mandatory consecutive sentencing provisions. While a consecutive sentence may be desirable in any given case, that decision should be left to the sound discretion of the judge.

⁶⁴ Sec. 940.04(4) is part of the pre-Roe v. Wade statute. The form of the crimes codified in sec. 940.04 date back to the 1956 revision of the Criminal Code. When the legislature instituted a classification system for Criminal Code felonies and misdemeanors in 1977, it did not classify the crimes in sec. 940.04. 1997 Wisconsin Act 283 charges the Criminal Penalties Study Committee with classifying all felonies. Thus these crimes are now recommended for classification. However, the Committee recommends that the legislature independently study whether sec. 940.04 should be repealed given the fact that post-Roe v. Wade abortion statutes now exist at secs. 940.13 and 940.15.

⁶⁵ Sec. 940.15 is the post-Roe v. Wade abortion statute.

CLASS I (18 mo. MAX PRISON; 2 yrs. E.S.) (continued)

Obstructing Emergency or Medical Personnel with Reasonable Grounds to Believe the Interference May Endanger Another's Safety	941.37(3)
Soliciting a Child to Participate in Criminal Gang Activity	941.38(2)
Criminal Damage to or Graffiti on Religious and Other Property	943.012
Arson of Property other than Building	943.03
Possession of Burglarious Tools	943.12
Theft of Trade Secrets	943.205(3)
Vehicle Theft ("drive or operate")	943.23(3)
Removing Major Part of a Vehicle without Consent	943.23(5)
Transfer of Encumbered Property	943.25(1) and (2)
Possession of Records of Usurious Loans	943.27
Threats to Communicate Derogatory Information	943.3 1
Certain Financial Transaction Card Crimes	943.41(8)(b) and (c)
Theft of Library Material (> \$1000 but < \$2500)	943.61(5)(c)
Unlawful Receipt of Payments to Obtain Loan for Another (if value of payment exceeds \$500 but does exceed \$2500)	943.62(4)(b)
Computer Crime (committed to defraud or obtain property)	943.70(2)(b)2 and (3)(b)2
Unauthorized Release of Animals (3 rd or subsequent violation)	943.75(2)
Bigamy	944.05(1)
Adultery	944.16
Unlawful Visual Representations of Nudity	944.205(2)
Commercial Gambling	945.03
Dealing in Gambling Devices	945.05(1)
Permitting Seditious Assembly	946.03(2)
Flag Desecration	946.05(1)
Special Privileges from Public Utilities	946.1 1(1)
Misconduct in Public Office	946.12
Private Interest in Public Contracts	946.13(1)
Purchasing Claims at Less than Full Value	946.14
Public Construction Contracts at Less than Full Value	946.15(1) & (3)
Failure to Comply with Officer's Attempt to Take Person	946.415(2)
Harboring or Aiding Felons	946.47(1)
Bail Jumping by a Witness	946.49(2)
Destruction of Documents Subject to Subpoena	946.60(1) & (2)
Communicating with Jurors	946.64
Obstructing Justice	946.65(1)
Simulating Legal Process	946.68(1r)(a)

CLASS I (18 mo. MAX PRISON; 2 yrs. E.S.) (continued)

Falsely Assuming to Act as a Public Officer or Employee	946.69(2)
Premature Disclosure of Search Warrant	946.76
Harassment (if person has prior conviction for harassing same victim within last 7 years)	947.013(1t)
Bomb Scares	947.015
Physical Abuse of a Child (recklessly causing bodily harm)	948.03(3)(b)
Exposing a Child to Harmful Material	948.11(2)(a) & (am)
Possession of Child Pornography	948.12
Failure to Support (for 120 or more consecutive days)	948.22(2)
Concealing Death of Child	948.23
Interference with Custody of a Child	948.31(2)
Giving Dangerous Weapon to Person under 18 Years	948.60(2)(b)
Possession of a Dangerous Weapon on School Premises (2 nd and subsequent convictions)	948.61(2)(b)
Mistreating an Animal (if mistreatment results in mutilation, disfigurement or death of animal or if the animal is police or fire department animal and the animal is injured)	95 1.18(1)
Exposing a Domestic Animal to Poisonous or Controlled Substances (if animal is a police or fire department animal and the animal is injured)	951.18(1)
Instigating Fights Between Animals (1 st offense)	951.18(2)
Harassment of Police or Fire Department Animal and Causing Injury to the Animal	951.18(2)
Criminal Damage to Property (Aggravated) (from H) (Raise damage amount in (2)(d) from \$1000 to \$2000)	943.01(2)
Damage or Threat to Property of Witness (from H)	943.011
Criminal Damage; Threat; Property of Judge (from H)	943.013
Criminal Damage; Threat; Property of Dep't of Revenue Employee (from H)	943.015
Graffiti to Certain Property (from H) (Raise damage amount in (2)(d) from \$1000 to \$2000)	943.017(2)
Graffiti to Property of Witness (from H)	943.017(2m)
Theft of Telecommunications Service ⁶⁶ (from H)	943.45(3)(d)
Theft of Cellular Telephone Service ⁶⁷ (from H)	943.455(4)(d)
Theft of Cable Television Service ⁶⁸ (from H)	943.46(4)(d)

⁶⁶ This offense involves theft of telecommunications service for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense.

⁶⁷ This offense involves theft of cellular telephone service for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense.

⁶⁸ This offense involves theft of cable television service for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense.

CLASS I (18 mo. MAX PRISON; 2 yrs. E.S.) (continued)

Theft of Satellite Cable Programming ⁶⁹ (from H)	943.47(3)(d)
Fleeing: Endangering (from H)	Traffic Code
Stalking (from A misdemeanor)	940.32(2)
Criminal Damage to Railroads (including shooting a firearm at a train) (from A misdemeanor)	943.07(1)& (2)
Possession of Firearm in School Zone (from A misd.)	948.605(2)(a)
Abuse of Vulnerable Adult (intentional maltreatment under circumstances likely to cause bodily harm)	940.285(2)(b)2 ⁷⁰
Abuse & Neglect of Patients & Residents (intentional abuse or neglect under circumstances likely to cause bodily harm)	940.295(3)(b)2 ⁷¹
Abuse & Neglect of Patients & Residents (reckless or negligent abuse or neglect under circumstances likely to cause great bodily harm)	940.295(3)(b)3 ⁷²
Theft (> \$2000 but < \$5000)	NEW ⁷³
Receiving Stolen Property (> \$2000 but < \$5000)	NEW ⁷⁴
Fraudulent Use of Financial Transaction Card (> \$2000 but < \$5000)	NEW ⁷⁵
Retail Theft (> \$2000 but < \$5000)	NEW ⁷⁶
Receiving Stolen Property from a Child (> \$500 but < \$2000)	NEW ⁷⁷
Fraud on Hotel or Restaurant Keeper or Taxicab Operator (if value of service > \$2000)	NEW ⁷⁸
Issuing Worthless Checks (> \$2000)	NEW ⁷⁹

⁶⁹ This offense involves theft of satellite cable programming for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense.

⁷⁰ This offense is “new” in the sense that it breaks out intentional maltreatment under circumstances likely to cause bodily harm and classifies it lower than the same conduct that actually causes bodily harm.

⁷¹ This offense is “new” in the sense that it breaks out intentional abuse or neglect under circumstances likely to cause bodily harm and classifies it lower than the same conduct that actually causes bodily harm.

⁷² This offense is “new” in the sense that it breaks out reckless or negligent abuse or neglect under circumstances likely to cause great bodily harm and classifies it lower than the same conduct that actually causes great bodily harm.

⁷³ See footnote to crime of Theft (943.20) in Class G list.

⁷⁴ See footnote to crime of Receiving Stolen Property (943.34) in Class G list.

⁷⁵ See footnote to crime of Fraudulent Use of Financial Transaction Card (943.41) in Class G list.

⁷⁶ See footnote to crime of Retail Theft (943.50) in Class G list.

⁷⁷ See footnote to crime of Receiving Stolen Property from a Child (948.62) in Class G list.

⁷⁸ The crime of Fraud on Hotel or Restaurant Keeper or Taxicab Operator (943.21) is listed as “new” because the fraud level has been raised from \$1000 to \$2000 in order for the crime to be classified as a felony. This is consistent with other “value” changes that are recommended.

⁷⁹ The crime of Issue of Worthless Check (943.24) is listed as “new” because the value level has been raised from \$1000 to \$2000 in order for the crime to be classified as a felony. This is consistent with other “value” changes that are recommended.

CLASS I (18 mo. MAX PRISON; 2 yrs. E.S.) (continued)

Removing or Damaging Encumbered Real Property (if security is impaired by > \$2000)	NEW ⁸⁰
Fraudulent Insurance or Employee Benefit Claim (>\$2000)	NEW ⁸¹
Absconding after being adjudicated delinquent for a Class I felony	NEW
Solicitation to Commit a Class I Felony	939.30(2) (amendment)

⁸⁰The crime of Removing or Damaging Encumbered Real Property (943.26) is listed as “new” because the value of the security impaired has been raised from \$1000 to \$2000. This is consistent with other “value” changes that are recommended.

*The crime of Fraudulent Insurance or Employee Benefit Claim (943.395) is listed as “new” because the fraud level has been raised from \$1000 to \$2000. This is consistent with other “value” changes that are recommended.

CLASS A MISDEMEANOR (9 MOS. MAX JAIL)

EXCEPT AS NOTED BELOW, ALL OFFENSES CURRENTLY CLASSIFIED AS CLASS A MISDEMEANORS REMAIN IN THAT CLASSIFICATION.

Theft of Telecommunications Service (from I felony)	943.45(3)(c)
Theft of Cellular Telephone Service (from I felony)	943.455(4)(c)
Theft of Cable Television Service (from I felony)	943.46(4)(c)
Theft of Satellite Cable Programming (from I felony)	943.47(3)(c)
Carrying Firearm in Public Building (from B misdemeanor)	941.235(1)
Theft (< \$2000)	NEW ⁸²
Receiving Stolen Property (< \$2000)	NEW ⁸³
Fraudulent Use of Financial Transaction Card (< \$2000)	NEW ⁸⁴
Retail Theft (< \$2000)	NEW ⁸⁵
Receiving Stolen Property from a Child (< \$500)	NEW ⁸⁶
Fraud on Hotel or Restaurant Keeper or Taxicab Operator (< \$2000)	NEW ⁸⁷
Issuing Worthless Checks (< \$2000)	NEW ⁸⁸
Removing or Damaging Encumbered Real Property (if security is impaired by < \$2000)	NEW ⁸⁹
Fraudulent Insurance or Employee Benefit Claim (< \$2000)	NEW ⁹⁰
Demolition of Historic Building without Authorization	NEW ⁹¹

**See footnote to crime of Theft (943.20) in the Class G list.

⁸³ See footnote to crime of Receiving Stolen Property (943.34) in the Class G list.

⁸⁴ See footnote to crime of Fraudulent Use of Financial Transaction Card (943.41) in the Class G list.

⁸⁵ See footnote to crime of Retail Theft (943.50) in Class G list.

⁸⁶ See footnote to crime of Receiving Stolen Property from a Child (948.62) in the Class G list.

⁸⁷ See footnote to crime of Fraud on Hotel or Restaurant Keeper or Taxicab Operator (943.21) in the Class I list.

⁸⁸ See footnote to crime of Issue of Worthless Checks (943.24) in the Class I list.

⁸⁹ See footnote to crime of Removing or Damaging Encumbered Real Property (943.26) in the Class I list.

⁹⁰ See footnote to crime of Fraudulent Insurance or Employee Benefit Claim in the Class I list.

⁹¹ This crime is presently codified at sec. 943.014 but is not classified. Its penalty is currently imprisonment for not more than 9 months. The committee recommends classifying this offense as a Class A misdemeanor.

NEW STATUTES/REPEALS/AMENDMENTS

1. New: OWI Homicide Repeater
2. New: Lesser Included Misdemeanor for Fleeing
3. Repeal: 94 1.29 Repeater⁹²
4. Add Carjacking (943.23(1r)) to Felony Murder Statute⁹³
5. Repeal Use of a Child to Commit Class A Felony (948.36)⁹⁴
6. Repeal Solicitation of a Child to Commit a Class A Felony (948.35(1)(b)).⁹⁵
7. Amend Felony Murder statute (940.03) to provide that the maximum penalty for the underlying offense may be increased by not more than 15 years. Under present law the increase is 20 years, but applying the MR converter (2/3 of maximum imprisonment under present law), which has been used to convert all felonies to the new A-I classification system, this number (20) should be reduced to 15.
8. Repeal Solicitation of a Child to Commit a Class B Felony (948.35(1)(c)).⁹⁶
9. Several existing statutes are reported as “new” because the values which distinguish grades of offense have been adjusted. See, e.g., theft, retail theft, receiving stolen property, fraudulent use of a financial transaction card, receiving stolen property from a child, issuance of worthless check, fraud on hotel or restaurant or taxicab operator, removing or damaging encumbered real property, fraudulent insurance or employee benefit claims, etc.
10. Several changes are recommended for the Battery (940.19) and Battery to Unborn Child (940.195) statutes.
11. Repeal Criminal Damage to Certain Coin-Operated or Card-Operated Machines with Intent to Commit Theft (943.01(2g)). The harm addressed by this statute is adequately addressed by several other crimes, including Damage to Property (943.01), Attempted Theft (943.20 and 939.32), and Entry Into Locked Coin Box (943.125).
12. Rename Fornication statute (944.15) to “Public Fornication” to more accurately describe the offense codified therein.

⁹² Possession of Firearm by Felon (sec. 94 1.29) has been reclassified to a 5-year felony from its present status as a 2-year offense. The severity of the offense and the potential for violence posed by those who are prohibited from possessing firearms prompted this reclassification. The new 5-year exposure is sufficient to deal even with repeat offenders who, under the present law, face 5 years’ imprisonment.

⁹³ Armed carjacking resulting in death is currently classified as a Class A felony. The Committee recommends treating this offense like armed robbery and including it within the catalogue of offenses that receive felony murder treatment under sec. 940.03.

⁹⁴ In essence this statute adds 5 years to a life term if a person who has attained the age of 17 years advises, hires, counsels, procures, etc. a person 17 years of age or younger to commit a Class A felony and the latter is actually committed by the child. In the view of the Committee sec. 939.05(2)(c) makes the adult in these circumstances a party to the Class A felony and he or she would thus face life imprisonment. This is sufficient exposure and the 5-year enhancer is unnecessary.

⁹⁵ In the view of the Committee the penalties under the general solicitation statute (939.30) are sufficient to address the dangers of inchoate solicitation. Whether the actor solicited a child to commit an offense is an aggravating circumstance to be considered by the court at sentencing.

⁹⁶ In the view of the Committee the penalties under the general solicitation statute (939.30) are sufficient to address the dangers of inchoate solicitation. Whether the actor solicited a child to commit an offense is an aggravating circumstance to be considered by the court at sentencing.

13. Repeal mandatory consecutive sentencing provision of the Gun-free School Zone statute (sec. 948.605(4)).⁹⁷

2. Proposed Classification of Criminal Code Class A Misdemeanors

Act 283 directs this Committee to study the penalties “for all felonies and Class A misdemeanors.” It further provides that the committee shall classify “each felony and Class A misdemeanor in a manner that places crimes of similar severity into the same classification.” There is no directive in Act 283 to classify misdemeanors that are presently unclassified.

The Committee has examined all crimes currently assigned status as Class A misdemeanors in the Criminal Code. In conducting this review it relied upon the compendium of misdemeanors in the attached memorandum from the Legislative Reference Bureau. Reference is made to specific items in this memorandum in the analysis which follows.

The Committee makes the following recommendations regarding Class A misdemeanors:

- Stalking⁹⁸ (item # 11 on page 2) should be elevated to a Class I felony.
- Criminal Damage to Railroad Property⁹⁹ (item # 37 on page 3) should be elevated to a Class I felony.
- The “value” level at which the following crimes listed on page 4 are classified as Class A misdemeanors should be raised to a new ceiling of \$2,000:
 1. Theft” (item # 42)
 2. Fraud on Hotel or Restaurant Keeper or Taxicab Operator” (item # 44)
 3. Issuance of Worthless Check¹⁰² (item # 48)

⁹⁷ The Gun-free School Zone statute provides that, if a term of imprisonment is imposed for a violation of sec. 948.605, the court shall impose the sentence consecutive to any other sentence. The committee recommends repeal of this mandatory provision. Imposing a sentence of incarceration for a violation of this statute is discretionary with the judge; no jail term is mandated. Further, the committee believes the court should have the same discretion to impose a concurrent or consecutive sentence for a violation of this law that it has for virtually every other violation of the criminal law, including many more serious crimes.

⁹⁸ Wis. Stat. sec. 940.32(2) (1997).

⁹⁹ Wis. Stat. sec. 943.07(1) & (2) (1997).

¹⁰⁰ Wis. Stat. sec. 943.20(3)(a) (1997).

¹⁰¹ Wis. Stat. sec. 943.21(3)(a) (1997).

¹⁰² Wis. Stat. sec. 943.24(1) (1997).

4. Removing or Damaging Encumbered Real Property¹⁰³
(item # 49)
 5. Receiving Stolen Property¹⁰⁴ (item # 50)
 6. Fraudulent Insurance and Employee Benefit Program
Claims¹⁰⁵ (item # 54)
 7. Financial Transaction Card Crimes¹⁰⁶ (item # 55)
 8. Retail Theft¹⁰⁷ (item # 56)
- Possession of a Firearm in a School Zone¹⁰⁸ (a segment of item #96 on page 6) should be elevated to a Class I felony.
 - Discharge of a Firearm in a School Zone¹⁰⁹ (a segment of item #96 on page 6) should be elevated to a Class G felony.
 - All other Class A misdemeanors listed in the attached compendium should remain slated as Class A misdemeanors.
 - Carrying Firearm in a Public Building” (not listed on attached compendium) should be elevated from a Class B misdemeanor to a Class A misdemeanor.
 - Fornication’¹¹ should be renamed “Public Fornication” to more accurately depict the nature of the offense and should remain classified as a Class A misdemeanor.

[INSERT JEFREN OLSON LIST HERE]

3. Attributes of the New Classes

[TEXT STILL BEING DEVELOPED]

¹⁰³ Wis. Stat. sec. 943.26(1) (1997).

¹⁰⁴ Wis. Stat. sec. 943.34(1)(a) (1997).

¹⁰⁵ Wis. Stat. sec. 943.395(2)(a) (1997).

¹⁰⁶ Wis. Stat. sec. 943.41(8)(c) (1997).

¹⁰⁷ Wis. Stat. sec. 943.50(4)(a) (1997).

¹⁰⁸ Wis. Stat. sec. 948.605 (2) (1997).

¹⁰⁹ Wis. Stat. sec. 948.605(3) (1997).

¹¹⁰ Wis. Stat. sec. 941.235(1) (1997).

¹¹¹ Wis. Stat. sec. 944.15 (1997).

4. Specific Comments re: Certain Crimes

HOMICIDE & SERIOUS INJURY OFFENSES

[TEXT STILL BEING DEVELOPED]

[ATTACH CHART]

BATTERY AND INJURY OFFENSES AGAINST RESIDENTS OF CERTAIN FACILITIES

[TEXT STILL BEING DEVELOPED]

5. Enhancers/Habitual Criminality

[TEXT STILL BEING DEVELOPED]

E. Classification of Chapter 961 Drug Offenses

1. Introduction

Most of Wisconsin's drug offenses are codified in Chapter 961 of the Statutes. This chapter is not part of the Wisconsin Criminal Code,¹¹² though many of the Code's general provisions apply to drug prosecutions¹¹³ and, unless there is a specific provision to the contrary, so do the provisions of the Wisconsin Code of Criminal Procedure.¹¹⁴

Chapter 961 is a relatively self-contained drug code for the state. Beyond the complex set of crimes codified therein, it has its own declaration of legislative intent, its own set of definitions, and its own system of sanctions. At present its felonies and misdemeanors are not classified in either the A-E felony classification system or the A-C misdemeanor classification system provided for in Wis. Stat. secs. 939.50 to 939.51.

The Committee used the same process for converting drug offenses to the new A-I classification system that it used for Criminal Code offenses as well as non-drug non-Criminal Code felonies.¹¹⁵ The factors described earlier in this report which guided the classification of crimes in the new system were applied to drug offenses as well. However, with specific regard to drug crimes, the Committee also took into account the statement of legislative intent codified in Wis. Stat. sec. 961.001 as well as the interplay between the federal and state governments in the enforcement of overlapping drug laws.

2. Impact of Proposed Classification of Drug Offenses

Under current law drug offenses are not classified; each has a specific penalty articulated in Chapter 961. For drugs that are stratified by amounts delivered or possessed with the intent to deliver, different penalty systems are used. In some instances the maximum amount of imprisonment escalates with the amount of the drug. In others presumptive minimum penalties are used to distinguish among amounts. In yet others a combination of these approaches is used.

Bringing drugs within a uniform system for classifying crimes (a charge given to the Committee by the legislature) means that the penalty structure for these offenses will be expressed in terms of a maximum fine and a maximum term of imprisonment. Once a drug offense is placed in a given felony classification, the penalty range for that classification will apply.

¹¹² Chapters 939 to 951 comprise the Wisconsin Criminal Code. See Wis. Stat. sec. 939.01.

¹¹³ Wis. Stat. sec. 939.20 provides: "Sections 939.22 to 939.25 [definitions of criminal intent, criminal recklessness, criminal negligence, and other miscellaneous words and phrases] apply only to crimes defined in chs. 939 to 951. Other sections in ch. 939 [the general provisions of Wisconsin's substantive criminal law] apply to crimes defined in other chapters of the statutes as well as to those defined in chs. 939 to 951."

¹¹⁴ Wis. Stat. sec. 967.01 provides in pertinent part that "Chapters 967 to 979 [the Wisconsin Criminal Procedure Code] shall govern all criminal proceedings....."

¹¹⁵ [Cross-reference to that part of the report which goes through that process.]

There is at least a two-fold impact of such classification. First, for all felony classes into which drugs have been placed, there is no minimum term of imprisonment and no minimum fine (presumptive or mandatory). In appropriate cases the judge would have the discretion to place the offender on probation. The Committee agrees that this is a desirable outcome of classifying drug offenses. It believes that judges should have the same full range of penalties available to them when sentencing drug offenders as they have when sentencing persons convicted of such dangerous offenses as homicide (other than first-degree intentional homicide), armed robbery, sexual assault, or aggravated burglary. It also believes that the exercise of sound judicial discretion in sentencing drug offenders should not be restricted by minimum penalties when the legislature has not seen fit to so restrict discretion when sentencing offenders convicted of other serious felonies like those noted **above**.¹¹⁶

Another impact of classification is the reduction in maximum fines. Under current law fines top out at \$100,000 for THC (marijuana), \$500,000 for cocaine, \$500,000 for LSD, \$500,000 for methamphetamine, amphetamine, phencyclidine (PCP) and methcathinone, and \$1,000,000 for heroin. These amounts double for repeat offenders. As a practical matter these enormous amounts are not imposed on state law offenders and, if the drug defendant has sizable assets linked to his or her illicit activities, the forfeiture laws will be utilized to seize them. The latter is most attractive to the authorities because it results in some or all of the forfeited assets being retained by law enforcement agencies for official use.¹¹⁷ The Committee recommends that its proposed fine structure for other classified felonies be applied to drug felonies as well. The maximum fines in the uniform fine structure are more than sufficient to encompass the kinds of fines judges impose in state drug prosecutions today.

These changes are in no way intended to deprecate the seriousness of drug offenses or to minimize the impact drugs have had on modern society. Rather, they bring drugs into the kind of uniform classification system which the Committee believes was intended by the legislature when it commanded that “a uniform classification system for all felonies, including felonies outside of the criminal code”¹¹⁸ be created.

¹¹⁶ The Committee recognizes that some presumptive minimum penalties are used in the penalty enhancer statutes. It will be recommending that these be repealed as well for the same reasons as those articulated in the text accompanying this note.

¹¹⁷ See Wis. Stat. sec. 96 1.55 et seq.

¹¹⁸ See 1997 Wis. Act 283 sec. 454(1)(e)1.

3. Proposed Classification of Drug Offenses

COLOR CODES

ENTRIES IN GREEN REFLECT
UPWARD CLASS ADJUSTMENT
AFTER APPLICATION OF M.R. CONVERTER.

ENTRIES IN BLUE REFLECT
NEW CRIMES RECOMMENDED
FOR ENACTMENT BY THE
LEGISLATURE OR EXISTING
CRIMES FOR WHICH
SIGNIFICANT AMENDMENTS
ARE PROPOSED.

ENTRIES IN RED REFLECT
DOWNWARD CLASS ADJUSTMENT
AFTER APPLICATION OF M.R.
CONVERTER.

ENTRIES IN BLACK REFLECT
THE NATURAL PLACEMENT
OF CRIMES IN A-I SYSTEM
AFTER APPLICATION OF THE
M.R. CONVERTER.

NOTE: Each entry in green and red is accompanied by a parenthetical which indicates “from ____.” Red and green entries mean that an adjustment has been made either upward (green) or downward (red) from the felony class where a crime would naturally be placed by application of the M.R. converter. The “from” indicates where natural placement would be.

KEY TO ABBREVIATIONS

DELIVERY: Manufacture, distribution or delivery

COCAINE: Cocaine or cocaine base

METH: Phencyclidine, amphetamine, methamphetamine or methcathinone

LSD: lysergic acid diethylamide

PSILOCIN: psilocin or psilocybin

THC: tetrahydrocannabinols (marijuana). **NOTE:** All weight values for THC should also be expressed in terms of the number of plants with the converter of 1 plant = 50 grams applied.

CLASS A (LIFE)

NO ENTRIES

CLASS B (40 MAX PRISON; 20 E.S.)

NO ENTRIES

CLASS C (25 MAX PRISON; 15 E.S.)

Delivery of COCAINE > 40 g ¹¹⁹	961.41(1)(cm)4
Possession of COCAINE w/intent to deliver > 40 g ¹²⁰	961.41(1m)(cm)4
Delivery of HEROIN, > 50 g ¹²¹	961.41(1)(d)4
Possession of HEROIN w/intent to deliver > 50 g ¹²²	961.41(1m)(d)4
Delivery of METH > 50 g (from E) ¹²³	961.41(1)(e)4
Possession of METH w/intent to deliver > 50 g (from E) ¹²⁴	961.41(1m)(e)4

¹¹⁹ The Committee recommends that all cocaine delivery offenses involving more than 40 grams be classified as a C felony. It further recommends that the categories of 40- 100 grams and more than 100 grams for this offense be eliminated. Using the Class C felony classification for all offenses over 40 grams provides the courts with 25 years of real prison time within which to sentence the most serious of offenders who are prosecuted under state law. The Committee has taken into consideration the fact that the most serious violators of cocaine delivery laws are prosecuted in the federal system. In the view of the Committee 25 years of exposure for state crimes is sufficient and the additional categories of 40-100 and more than 100 grams are therefore unnecessary.

¹²⁰ See preceding note.

¹²¹ The Committee recommends that all heroin delivery offenses involving more than 50 grams be classified as a C felony. It further recommends that the categories of 50-200 grams, 200-400 grams, and more than 400 grams for this offense be eliminated. Using the Class C felony classification for all offenses over 50 grams provides the courts with 25 years of real prison time within which to sentence the most serious of offenders who are prosecuted under state law. The Committee has taken into consideration the fact that the most serious violators of heroin delivery laws are prosecuted in the federal system. In the view of the Committee 25 years of exposure for state crimes is sufficient and the additional categories of 50-200, 200-400, and more than 400 grams are therefore unnecessary.

¹²² See preceding note.

¹²³ The Committee recommends that all delivery methamphetamine, amphetamine, phencyclidine (PCP) and methcathinone offenses involving more than 50 grams be classified as a C felony. It further recommends that the categories of 50-200 grams, 200-400 grams, and more than 400 grams for these offenses be eliminated. Using the Class C felony classification for all offenses over 50 grams provides the courts with 25 years of real prison time within which to sentence the most serious of offenders who are prosecuted under state law. The Committee has taken into consideration the fact that the most serious violators of these delivery laws are subject to prosecution in the federal system. In the view of the Committee 25 years of exposure for state crimes is sufficient and the additional categories of 50-200, 200-400, and more than 400 grams are therefore unnecessary. The Committee has considered the threat to public safety posed by recent increases in methamphetamine activity (most notably in the rural parts of western Wisconsin) and has noted the pending legislation to treat this substance on a par with heroin, which the recommendation of the Committee does. See 1999 A.B. 3 18.

¹²⁴ See preceding note.

CLASS D (15 MAX PRISON; 10 E.S.)

Delivery of COCAINE > 15 g but ≤ 40 g	961.41(1)(cm)3
Possession of COCAINE w/ int. to deliver > 15 but ≤ 40 g	961.41(1m)(cm)3
Delivery of HEROIN, > 10 g but ≤ 50 g	961.41(1)(d)3
Possession of HEROIN w/intent to deliver > 10 g but ≤ 50 g	961.41(1m)(d)3
Delivery of METH > 10 g but ≤ 50 (from E)	961.41(1)(e)3
Possession of METH w/intent to deliver > 10 g but ≤ 50 g (from E)	96 1.4 1(1 m)(e)3

CLASS E (10 MAX PRISON; 5 E.S.)

Delivery of COCAINE > 5 g but ≤ 15 g	961.41(1)(cm)2
Possession of COCAINE w/ int. to deliver > 5 but ≤ 15 g	961.41(1m)(cm)2
Delivery of HEROIN, > 3 g but ≤ 10 g	961.41(1)(d)2
Possession of HEROIN w/intent to deliver > 3 g but ≤ 10 g	961.41(1m)(d)2
Delivery of METH > 3 g but ≤ 10 (from H)	961.41(1)(e)2
Possession of METH w/intent to deliver > 3 g but ≤ 10 g (from H)	961.41(1m)(e)2
Delivery of LSD > 5 g	961.41(1)(f)3
Possession of LSD w/intent to deliver > 5 g	961.41(1m)(f)3
Delivery of THC > 10,000 g ¹²⁵	NEW STATUTE
Possession of THC w/ intent to deliver > 10,000 g ¹²⁶	NEW STATUTE
Delivery of a narcotic drug included in Schedule I or II	961.41(1)(a)
Possession w/intent to deliver a narcotic drug included in Schedule I or II	961.41(1m)(a)
Delivery of PSILOCIN > 500 grams	961.41(1)(g)3
Possession w/intent to deliver PSILOCIN > 500 grams	961.41(1m)(g)3
Delivery or possession w/intent to deliver a counterfeit substance included in Schedule I or II which is a narcotic drug	96 1.4 1(2)(a)

CLASS F (7.5 MAX PRISON: 5 E.S.)

Delivery of COCAINE > 1 g but ≤ 5 g	961.41(1)(cm)1
Possession of COCAINE w/ int. to deliver > 1 but ≤ 5 g	961.41(1m)(cm)1
Delivery of HEROIN ≤ 3g	961.41(1)(d)1
Possession of HEROIN w/intent to deliver ≤ 3 g	961.41(1m)(d)1
Delivery of METH ≤ 3 (from H)	961.41(1)(e)1
Possession of METH ≤ 3 g (from H)	961.41(1m)(e)1
Delivery of LSD > 1 g but ≤ 5 g (from H)	941(1)(f)2
Possession of LSD w/intent to deliver > 1 g but ≤ 5 g (from H)	961.41(1m)(f)2

¹²⁵ Under current law the maximum penalties for delivery of THC apply to deliveries of 2500 g or more. Considering the great range between this amount and the amount at which federal authorities are likely to become interested in the case (100-400 kilograms) and given that state cases can involve amounts well in excess of 2500 g, the Committee recommends that the amount categories on the higher end be as follows: >10,000, 2500 to 10,000, and 1000-2500 grams.

¹²⁶ See preceding note.

CLASS F (7.5 MAX PRISON; 5 E.S.) (continued)

Delivery of THC > 2500 g but ≤ 10,000 g	NEW STATUTE
Possession of THC w/intent to deliver > 2500 g but ≤ 10,000 g	NEW STATUTE
Delivery of PSILOCIN >100 but ≤ 500 grams	961.41(1)(g)2
Possession of PSILOCIN w/intent to deliver >100 but ≤ 500 g	961.41(1m)(g)2
False or fraudulent drug tax stamp	139.95(3)
Possession of any amount of piperidine	961.41(1n)(c)
Use of a person who is 17 years of age or under for the purpose of the delivery of a controlled substance ¹²⁷	961.455(1)

CLASS G (5 MAX PRISON; 5 E.S.)

Delivery of COCAINE ≤ 1 g ¹²⁸	NEW STATUTE
Possession of COCAINE w/ int. to deliver ≤ 1 g ¹²⁹	NEW STATUTE
Delivery of LSD ≤ 1 g (from H)	961.41(1)(f)1
Possession of LSD w/intent to deliver < 1 g (from H)	961.41(1m)(f)1
Delivery of THC > 1000 but ≤ 2500 g ¹³⁰	961.41(1)(h)3
Possession of THC w/intent to deliver > 1000 but ≤ 2500 ¹³¹	961.41(1m)(h)3
Delivery of PSILOCIN < 100 grams	961.41(1)(g)1
Possession of PSILOCIN w/intent to deliver < 100 grams	961.41(1m)(g)1

CLASS H (3 MAX PRISON; 3 E.S.)

Delivery of THC > 200 but ≤ 1000 g	961.41(1)(h)2
Possession of THC w/intent to deliver > 200 but ≤ 1000 g	961.41(1m)(h)2
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	961.41(1)(b)
Delivery or possession with intent to deliver any other counterfeit substance included in Schedule I, II or III	961.41(2)(b)

¹²⁷ Statute should be amended to prohibit use of a person “under the age of 17 years” for the purpose of delivering a controlled substance. This would be consistent with recent amendments to Wisconsin’s Juvenile Code.

¹²⁸ The Committee recommends creation of a new category for delivery of cocaine to cover amounts of 1 gram or less. This encompasses the vast majority of state delivery cases and the 5 year penalty of Class G is sufficient for offenses in this category. As a matter of fact sentencing data available from the Department of Corrections (as substantiated by the experience of experts who assisted the Committee) reveal that the vast majority sentences statewide for deliveries of 5 grams or less (the lowest category under current law), when adjusted for truth in sentencing and time **actually** served, result in actual incarceration well within the **5-year** range.

¹²⁹ See previous footnote.

¹³⁰ Under current law the lower end THC weight categories are 500 g or less and more than 500 but less than 2500 grams. The Committee recommends that the amounts be more stratified to more accurately reflect the diversity of violations and to structure penalties accordingly. Thus it recommends that the lower end amount ranges be as follows: >1000 but ≤ 2500 g, > 200 but < 1000 g, and ≤ 200 g.

¹³¹ See preceding note.

CLASS H (3 MAX PRISON; 3 E.S.) (continued)

Possession with intent to deliver any other controlled substance included in Schedule 1, II or III, or a controlled substance analog of a controlled substance included in Schedule I or II	961.41(1m)b
Possession of a Schedule I or II controlled substance not bearing drug tax stamp	139.95(2)
Delivery of a substance included in Schedule IV	961.41(1)(i)
Possession with intent to deliver a substance included in Schedule IV	961.41(1m)(i)
Delivery or possession with intent to deliver a counterfeit substance included in Schedule IV	961.41(2)(c)
Acquire or obtain a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge	961.43(2)
Possession or attempted possession of gammahydroxybutric acid, gammahydroxybutyrolactone, ketamine or flunirazepam ¹³² (from I)	961.41(3g)(f)

CLASS I (18 MO. MAX PRISON; 2 YRS E.S.)

Delivery of THC \leq 200 g	961.41(1)(h)1
Possession of THC w/intent to deliver \leq 200 g	961.41(1m)(h)1
Fraudulent drug advertising	100.26(7)
Delivery of a substance included in Schedule V	961.41(1)(i)
Possession with intent to deliver a substance included in Schedule V	961.41(1m)(j)
Delivery or possession with intent to deliver a counterfeit substance included in Schedule V	961.41(2)(d)
Possession of a narcotic included in Schedule I or II ¹³³ 961.41(3g)(a)1	
Possession or attempted possession of Heroin	961.41(3g)(a)
Distribution or delivery of imitation controlled substance	961.41(4)(am)3
Keeping of a drug house	961.42(2)

¹³² The substances included in the text accompanying this footnote include what have come to be known as "date rape" drugs.

¹³³ A first offense under this statute is now punishable by 1 year and subsequent offenses are punishable by 2 years. The Committee recommends deleting this distinction, classifying all offenses as Class I felonies, and treating the fact of prior conviction as a sentencing factor or, when appropriate, as a basis for invoking repeat offender laws.

4. Depiction of Controlled Substances Offenses with Stratified Penalties in the A-I Classification System

ALL OFFENSES INCLUDE DELIVERY & POSSESSION WITH INTENT TO DELIVER

COKE = COCAINE
 HEROIN = HEROIN
 METH = METHAMPHETIMINE AMPHETAMINE, PHENCYCLIDINE (PCP) AND METHCATHINONE
 PSILOCIN = PSILOCIN AND PSILOCYBIN
 LSD = LYSERGIC ACID DIETHYLAMIDE
 THC = TETRAHYDROCANNABINOLS (MARIJUANA)

A	B	C	D	E	F	G	H	I
		COKE > 40 g		PSILOSIN > 500 g				
			COKE > 15 g but ≤ 40 g		PSILOSIN > 100 g but ≤ 500 g			
		HEROIN > 50 g		COKE > 5 g but ≤ 15 g		PSILOSIN ≤ 100 g		
			HEROIN > 10 g but < 50 g		COKE > 1 g but < 5 g			
				HEROIN > 3 g but ≤ 10 g	-	COKE ≤ 1 g		
					HEROIN < 3 g			
		METH > 50 g		THC > 10,000g				
			METH > 10 g but < 50 g		THC > 2500but < 10,000g			
				METH > 3 g but ≤ 10 g		THC > 1000but ≤ 2500 g		
					METH ≤ 3 g		THC >200 but ≤ 1000 g	
				LSD > 5 g				THC ≤ 200 g
					LSD > 1g but < 5 g			
						LSD < 1 g		

5. Additional Recommendations Regarding Controlled Substances Offenses

In addition to the classification of drug offenses described above, the Committee also makes the following recommendations regarding the provisions of Chapter 961 of the Statutes:

1. The penalty doubler for second and subsequent offenses¹³⁴ should be recast to resemble the general habitual criminality statute¹³⁵ but should remain codified in sec. 961.46 with the procedures now specified therein. In particular the Committee recommends that if a defendant is a second or subsequent drug offender,¹³⁶ the maximum incarceration penalty¹³⁷ may be increased as follows:
 - Four years if the present offense is a Class E, F, G, H or I felony.
 - Six years if the present offense is a Class C or D felony.¹³⁸
2. Simple possession or attempted possession of (a) cocaine or cocaine base,¹³⁹ (b) lyseric acid diethylamide, phencyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin,¹⁴⁰ and (c) tetrahydrocannabinols (THC),¹⁴¹ all of which are misdemeanors, should retain their present misdemeanor penalties unless the offender qualifies as a second or subsequent offender,¹⁴² in which case the possession or attempted possession offense should be classified as a Class I felony. The Committee makes no recommendation for changing the penalties of other misdemeanor offenses codified in Chapter 961. Nor does it classify those misdemeanors because doing so would be beyond the charge given to the Committee by the legislature.¹⁴³

¹³⁴ See Wis. Stat. sec. 961.48.

¹³⁵ See generally Wis. Stat. sec. 939.62.

¹³⁶ Persons qualifying as second or subsequent offenders are described in Wis. Stat. sec. 961.48(3).

¹³⁷ The proposal speaks of increasing the maximum period of incarceration for repeat drug offenders. It does not increase fines. Further, any reference to doubling minimum penalties should be deleted because of the general recommendation against the use of minimum penalties for drug and non-drug offenses alike.

¹³⁸ No drugs felonies are proposed for classification in Class A or B.

¹³⁹ See Wis. Stat. sec. 961.41(3g)(c).

¹⁴⁰ See Wis. Stat. sec. 961.41(3g)(d).

¹⁴¹ See Wis. Stat. sec. 961.41(3g)(e).

¹⁴² Persons qualifying as second or subsequent offenders are described in Wis. Stat. sec. 961.48(3).

¹⁴³ 1997 Wis. Act 283 sec. 454(1)(e)2 directs the Criminal Penalties Study Committee to classify "each felony and Class A misdemeanor." There is no direction to classify what are currently unclassified misdemeanors (like those in Chapter 961) though doing so may be desirable at some point in the future.

3. The penalty enhancer for distribution of or possession with intent to deliver a controlled substance on or near certain places (e.g., within 1,000 ft. of a park, jail or correctional facility, school, youth center, etc.)¹⁴⁴ should be set at 5 years. The provisions for **minimum** penalties associated with this enhancer should be repealed for the reasons articulated above. The judge should have the full range of penalties available when exercising sentencing discretion in these kinds of cases.
4. The penalty doubler for distribution to **prisoners**¹⁴⁵ should be recast as a statutory sentencing aggravator which may result in a lengthier disposition but which does not otherwise increase the maximum term of imprisonment. In this regard the Committee notes that one who distributes to a prisoner within the precincts of a prison, jail or other correctional facility will be subject to the penalty enhancer described in the preceding paragraph.
5. The penalty doubler for distribution to persons under age 18¹⁴⁶ should be recast as a sentencing enhancer which increases the maximum term of imprisonment by 5 years. The provision for doubling fines and presumptive minimum penalties should be repealed.
6. The penalty enhancer for distribution or possession with intent to deliver certain controlled substances on public transit **vehicles**¹⁴⁷ should be recast as a statutory sentencing aggravator which may result in a lengthier disposition but which does not otherwise increase the maximum term of imprisonment. The Committee believes that existing penalty ranges proposed for delivery and possession with intent to deliver are adequate to deal with the aggravating circumstance of delivery or possession with intent to deliver a controlled substance while on a public transit vehicle.

¹⁴⁴ See Wis. Stat. sec. 96 1.49.

¹⁴⁵ See Wis. Stat. sec. 96 1.465.

¹⁴⁶ See Wis. Stat. sec. 961.46.

¹⁴⁷ See Wis. Stat. sec. 961.492.

F. Classification of Non-Drug Non-Criminal Code Felonies

1. Introduction

The non-drug non-Criminal Code felonies analyzed in this section of the Committee's report, which number approximately 150, are scattered throughout the Wisconsin Statutes. These crimes are not part of the Wisconsin Criminal Code,¹⁴⁸ though many of the Code's general provisions apply to them¹⁴⁹ and, unless there is a specific provision to the contrary, so do the provisions of the Wisconsin Code of Criminal Procedure.¹⁵⁰ Under current law these felonies are not classified. Each offense has its own special penalty provision expressed in terms of incarceration or fine or both.

The Committee used the same approach for classifying non-drug non-Criminal Code offenses that it used for classifying Criminal Code felonies and drug felonies.¹⁵¹ It used the mandatory release date under present law to convert these crimes into the A-I felony classification system. It then employed the classification factors discussed earlier to determine whether to make any class adjustments after the M.R. converter was applied.

2. Impact of Classification on the Nature of Non-Drug Non-Criminal Code Penalties

Under current law these miscellaneous offenses are not classified; each has a specific penalty articulated for the particular statute and different penalty systems are used. In some instances a maximum fine and a maximum amount of imprisonment are specified. In others minimum fines and minimum periods of incarceration are included. For some of the latter probation is an option, but if the court elects to incarcerate, then the minimum period of incarceration must be imposed.

Bringing these miscellaneous offenses within a uniform system for classifying crimes (a charge given to the Committee by the legislature) means that the penalty structure for these offenses will be expressed in terms of a maximum fine and a maximum term of imprisonment. Once a crime is placed in a given felony classification, the penalty range for that classification will apply.

There is at least a two-fold impact of such classification. First, with the exception of 5th offense OWI for which a minimum mandatory term of imprisonment is preserved

¹⁴⁸ Chapters 939 to 951 comprise the Wisconsin Criminal Code. See Wis. Stat. sec. 939.01.

¹⁴⁹ Wis. Stat. sec. 939.20 provides: "Sections 939.22 to 939.25 [definitions of criminal intent, criminal recklessness, criminal negligence, and other miscellaneous words and phrases] apply only to crimes defined in chs. 939 to 95 1. Other sections in ch. 939 [the general provisions of Wisconsin's substantive criminal law] apply to crimes defined in other chapters of the statutes as well as to those defined in chs. 939 to 95 1."

¹⁵⁰ Wis. Stat. sec. 967.01 provides in pertinent part that "Chapters 967 to 979 [the Wisconsin Criminal Procedure Code] shall govern all criminal proceedings....."

¹⁵¹ [Cross-reference to that portion of the report.]

to maintain consistency in the structure of penalties for all OWI offenders, for all felony classes into which these miscellaneous felonies have been placed, there is no minimum term of imprisonment. In appropriate cases the judge would have the discretion to place the offender on probation. The Committee supports this result. It believes that judges should have the same full range of penalties available to them when sentencing violators of these miscellaneous offenses as they have when sentencing persons convicted of such dangerous offenses as homicide (other than first-degree intentional homicide), armed robbery, sexual assault, or aggravated burglary. It also believes that the exercise of sound judicial discretion in sentencing these offenders should not be restricted by minimum penalties when the legislature has not seen fit to so restrict discretion when sentencing offenders convicted of other serious felonies like those noted above.“*"

Another impact of classification occurs in the area of maximum fines. Under current law maximum fines vary with each offense. The Committee recommends that its proposed fine structure for other classified felonies be applied to these miscellaneous felonies as well with the exception of a few offenses for which the legislature is established particularly high fines for obvious reasons. As to the latter the Committee recommends that the current maximum fines be preserved. Further, unless specifically noted, the Committee recommends that minimum fines be abandoned. As a general principle it believes the court should have full discretion in deciding when to impose a fine and, if so, in what amount.

¹⁵² The Committee recognizes that some presumptive minimum penalties are used in the penalty enhancer statutes. It will be recommending that these be repealed as well for the same reasons as those articulated in the text accompanying this note.

3. Proposed Classification of Non-Drug Felonies
Codified Outside the Criminal Code

NOTE: THE LIST OF NON-DRUG FELONIES CODIFIED OTHER THAN IN THE WISCONSIN CRIMINAL CODE WAS DERIVED FROM DOCUMENTATION PREPARED BY THE WISCONSIN LEGISLATIVE REFERENCE BUREAU.

COLOR CODES

ENTRIES IN GREEN REFLECT
UPWARD CLASS ADJUSTMENT
AFTER APPLICATION OF M.R. CONVERTER.

ENTRIES IN BLUE REFLECT
NEW CRIMES RECOMMENDED
FOR ENACTMENT BY THE
LEGISLATURE OR EXISTING
CRIMES FOR WHICH
SIGNIFICANT AMENDMENTS
ARE PROPOSED.

ENTRIES IN RED REFLECT
DOWNWARD CLASS ADJUSTMENT
AFTER APPLICATION OF M.R.
CONVERTER.

ENTRIES IN BLACK REFLECT
THE NATURAL PLACEMENT
OF CRIMES IN A-1 SYSTEM
AFTER APPLICATION OF THE
M.R. CONVERTER.

NOTE: Each entry in green and red is accompanied by a parenthetical which indicates “from ____.” Red and green entries mean that an adjustment has been made either upward (green) or downward (red) from the felony class where a crime would naturally be placed by application of the M.R. converter. The “from” indicates where natural placement would be.

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
11.6 1 (l)(a) and (b)	Criminal violations of campaign finance statutes	Fine not more than \$10,000 or imprisoned not more than 3 <i>years</i> or both	Class I
12.60(1)(a)	Criminal violations of elections statutes	Fine not more than \$10,000 or imprisoned not more than 3 <i>years</i> in the Wisconsin state prisons or both	Class I
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 <i>years</i> or both	Class I
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 <i>years</i> or both	Class I
13.69(6m)	Criminal violations of lobby law statutes	Fine not more than \$10,000 or imprisoned for not more than 5 <i>years</i> or both	Class H
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 <i>years</i> or both if the violation causes the death or injury	Class H (from I)
26.14(8)	Intentionally setting fires to land of another or a marsh	Fine not more than \$10,000 or imprisoned not more than 5 <i>years</i> or both	Class H
29.971(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 <i>years</i> or both	Class I
29.97 1(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 <i>years</i> or both	Class I
29.97 1(11 m)(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 <i>one year</i> or both for the second and any subsequent violation	Class A misd. penalties (9 mos. or \$10,000 or both)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
29.971(11 p)(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	Class A misd. penalties (9 mos. or \$10,000 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	Class H
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	Class A misd. penalties (9 mos. or \$10,000 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	Class I
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	Class H
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	Class I
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	Class A misd. penalties (9 mos. or \$10,000 or both)
49.127(8)(a)2.	Illegal use of food stamps with a value over \$100 but less than \$5000 - first offense	Fine not more than \$10,000 or imprisoned not more than 5 years or both	Class I (from H)
49.127(8)(b)2.	Illegal use of food stamps with a value over \$100 but less than \$5000 - second and subsequent offenses	Fine not more than \$10,000 or imprisoned not more than 5 years or both	Class H
49.127(8)(c)	Illegal use of food stamps with value of \$5000 or more - Any offense	Fine not more than \$250,000 or imprisoned not more than 20 years or both.	Class G (from D)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class H
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 oneyear or both	Class A misd. penalties (9 mos. or \$10,000 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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class H
49.95(1)	Illegal intent to secure public assistance if the value exceeds \$2,500	Fine not more than \$10,000 or imprisoned for not more than 10 years or both (Class C felony)	PENALTY UNDER REVIEW
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	Class H
55.06(11)(am)	False statement related to protective services placements	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
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	Class I
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	Class H
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	Class I
70.47(1S)(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	Class I
7 1.83(2)(b) 1.	False income tax return; fraud	Fine not to exceed \$10,000 or imprisoned not to exceed 5 years or both	Class H
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	Class H

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class I
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	Class H
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	Class H (from I)
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	Class H
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	Class H
100.26(2)	Violation of commission merchant duties and responsibilities	Fine 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	Class I
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	Class A misd. penalties (9 mos. or \$10,000 or both)
100.26(7)	Fraudulent drug advertising	Fine not less than \$500 nor more than \$5,000 or imprisoned not more than one year or both for each offense	Class A misd. penalties (9 mos. or \$10,000 or both)
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	Class G (from F)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
10 1.94(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 <i>year</i> or both	Class A misd. penalties (9 mos. or \$10,000 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 <i>3 years</i> or both, and shall be liable to the state for the cost of prosecution	Class I
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 <i>orteyear</i> or both	Class A misd. penalties (9 mos. or \$10,000 or both)
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 <i>2years</i> or both	Class I
108.225(11)	Evading collection of unemployment compensation levies under employment compensation law	Fine not more than \$5,000 or imprisoned for not more than <i>3 years</i> or both	Class I
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 <i>orteyear</i> or both	Class A misd. penalties (9 mos. or \$10,000 or both)
114.20(18)(c)	False statement related to aircraft registration	Fine not more than \$5,000 or imprisoned not more than <i>5 years</i> or both	Class H
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 <i>5 years</i> or both	Class H - if great bodily harm results Class G - if death results
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 <i>2 years</i> or both	Class I

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class H
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	Class F
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	Class F
125.68(12)(c)	Sale or disposal of denatured alcohol resulting in death	Imprisoned for not more than 10 years	Class E (from F)
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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE
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	Class H KEEP OLD MAX FINE
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	Class A misd. penalties (9 mos. or \$10,000 or both)
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	Class F

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class H
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	Class H
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	Class I
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	Class I
139.44(1)	Use or manufacturing of counterfeit cigarette stamps	Imprisonment not less than one year nor more than 10 years	Class G (from F)
139.44(1m)	Tampering with cigarette meter	Imprisoned not less than one year nor more than 10 years	Class G (from F)
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	Class A misd. penalties (9 mos. or \$10,000 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	Class I
139.95(2)	Possessing a 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	Class H
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	Class F
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	Class H KEEP OLD MAX FINE

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
146.35(5)	Female genital mutilation	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class H
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	Class A misd. KEEP OLD MAX FINE
146.70(10)(a)	Filing of false 91 1 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	Class H
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	Class F
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	Class F
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	Class I KEEP OLD MAX FINE
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	Class I KEEP OLD MAX FINE
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	Class G (from F)
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	Class A misd. penalties (9 mos. or \$10,000 or both)
181.0129(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	Class I

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class I
200.09(2)	Fraudulently obtaining or using a certificate of authority to issue any security by a public service corporation	Fine of not less than \$500, or by imprisonment in the state prison not less than one or more than 10 years , or by both fine and imprisonment	Class I (from F)
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	Class I
214.93	Filing of a false document with the Division of Savings and Loans	Imprisoned for not more than 20 years	Class F (from D)
2 15.02(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	Class I
215.12	Falsification of records and dishonest acts, savings and loans	Imprisoned in the Wisconsin state prisons for not to exceed 20 years	Class F (from D)
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	Class I
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	Class H
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	Class I
221.0625(2) (intro)	Illegal loans to bank officials	Imprisoned for not more than 10 years	Class F

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
221.0636(2)	Theft by bank employe or officer	imprisoned for not more than 20 years	Class H (from D)
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	Class I
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	Class F
28587(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	Class I KEEP OLD MAX FINE
29 I .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	Class H KEEP OLD MAX FINE
29 1.97(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	Class I KEEP OLD MAX FINE
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	Class F KEEP OLD MAX FINE
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	Class I. KEEP OLD MAX FINE
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	Class I

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class H
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	Class H
342.065(4)(b)	Failing to obtain title for salvage vehicle, with intent to defraud	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
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	Class H
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	Class H
342.30(3)(a)	Alteration of vehicle identification number	Fine not more than \$5,000 or imprisoned not more than 5 years , or both	Class H
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	Class H
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	Class A misd. penalties (9 mos. or \$10,000 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	Class 1 A new Class A misd. Fleeing is being proposed.
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	Class H (from I)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class F (from I)
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	Class E (from H)
346.65(2)(e)	OWI - 5 th or subsequent offense	Fine not less than \$600 nor more than \$2000 and imprisoned not less than 6 mos. nor more than 5 years	Class H KEEP MIN. FINE & MIN. MANDATORY 6 MOS. JAIL
346.65(5)	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	Class I
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 <i>oneyear</i> or both	Class A misd. penalties (9 mos. or \$10,000 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	Class I
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	Class H
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 2years or both	Class H (from I)
446.07	Violation of Chiropractic Examining Board statutes	Fine not less than \$100 nor more than \$500 or imprisoned not more than <i>oneyear</i> or both	Class A misd. penalties (9 mos. or \$10,000 or both)

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
447.09	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	Class I
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	Class H
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	Class H
450.15(2)	Placing of prescription drugs: (a) in public place; or (b) upon private premises without consent of owner or occupant	Fine not less than \$100 nor more than \$1,000 or imprisoned not less than one year nor more than 5 years or both	Class H
551.58(1)	Willful violation of securities law	Fine not more than \$5,000 or imprisoned not more than 5 years or both	Class H
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	Class H
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	Class G
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	Class G
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	Class I

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class H
565.50(2)	Forged or altered lottery ticket	Fine not more than \$10,000 or imprisoned for not more than 5 years or both	Class I (from H)
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	Class A misd. penalties (9 mos. or \$10,000 or both) (from I)
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	Class I
64 I. 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	Class H
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	Class H
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	Class A misd. penalties (9 mos. or \$10,000 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	Class A misd. penalties (9 mos. or \$10,000 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	Class A misd. penalties (9 mos. or \$10,000 or both)
783.07	Failure or neglect to respond to a writ of mandamus	Fine not more than \$5,000 per officer or imprisonment for a term not exceeding 5 years	Class H

Statute	Offense	Current Penalty (prior to 1997 Act 283)	Proposed Class: A - I System
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	Class E (from D)
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	Class H
968.34(3)	Illegal use of pen register or trap and trace device	Fine not more than \$10,000 or imprisoned not more than <i>one</i> year or both	Class A misd. penalties (9 mos. or \$10,000 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	Class H
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	Class I (from H)

G. Miscellaneous Recommendations

[TEXT STILL BEING DEVELOPED]