

1999 DRAFTING REQUEST

Bill

Received: 11/30/1998

Received By: olsenje

Wanted: As time permits

Identical to LRB:

For: Frank Lasee (608) 266-9870

By/Representing: Mark

This file may be shown to any legislator: NO

Drafter: olsenje

May Contact:

Alt. Drafters:

Subject: Criminal Law - homicide
Criminal Law - sentencing

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Death penalty for certain homicide cases

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	olsenje 12/29/1998	chanaman 02/09/1999		_____			State
/1			ismith 02/10/1999	_____	lrb-docadmin 02/10/1999	lrb-docadmin 02/02/2000	

FE Sent For:

<END>

11
2/8/00

3-12-10

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I?	olsenje CMM 11/30 /		IS 2/10/99	IS/HH 2/10/99			

FE Sent For:

<END>

10/10/2020

1073

Reg. F. Lasee by Mark
to 97 - 1671 for this session

1999

Date (time) needed

LRB - 1073 / 1

BILL

D-Note

JEO : CMY : [signature]

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . . of the statutes; relating to: . . .

[Dotted lines for text entry]

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: create → anal: → title: → head

For the subheading [old =S], execute: create → anal: → title: → sub

For the sub-subheading [old =P], execute: create → anal: → title: → sub-sub

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

SECTION #.

1997 BILL

refer out

1 **AN ACT to renumber 939.50 (1) (a), 939.50 (3) (a) and 973.015; to renumber and**
2 **amend 940.01 (1); to amend 301.048 (2) (b), 302.11 (1m), 303.065 (1), 304.02**
3 **(5), 304.06 (1) (b), 304.071 (2), 939.30 (2), 939.31, 939.32 (1) (a), 939.50 (2),**
4 **939.60, 939.624 (2), 939.625 (1) (b) 2., 939.63 (1) (a) 2., 961.335 (1), 971.17 (1),**
5 **972.03, 972.13 (6), 973.013 (1) (b), 973.0135 (3), 973.014 (1) (intro.), 973.032 (2)**
6 **(b), 973.09 (1) (c) and 978.07 (1) (c) 1.; to repeal and recreate 972.03; and to**
7 **create 301.046 (3) (cm), 304.06 (It), 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag),**
8 **940.01 (1) (b), 940.01 (1) (c), 940.01 (1) (d), 961.335 (1m), 967.02 (1m), 973.015,**
9 **973.016 and 973.017 of the statutes; relating to:** providing a penalty of either
10 death or life imprisonment for a 2nd or subsequent conviction for first-degree
11 intentional homicide, affecting parole eligibility and granting rule-making
12 authority.

Analysis by the Legislative Reference Bureau

Under current law, no state crime is punishable by the death penalty. This bill provides for either a death penalty (by lethal injection) or life imprisonment (with or

BILL

on eligibility for parole or supervised release

without ~~parole eligibility~~ restrictions) for first-degree intentional homicide committed by a person who has one or more previous convictions for first-degree intentional homicide or an equivalent crime under federal law, prior law of this state or the law of another state. A first conviction for first-degree homicide remains punishable by life imprisonment.

The procedure for determining whether ~~or not~~ the death penalty would be imposed is the subject of a proceeding that is separate from the regular trial. After a ~~trial~~ or subsequent conviction for first-degree intentional homicide, the court reconvenes the trial jury, or, if there was no jury trial or the trial jury is unable to continue, a new jury is summoned. The defendant may waive the right to a jury. Evidence is then presented regarding various aggravating or mitigating circumstances relating to the crime and the defendant.

If the jury is not waived, the jury hears the evidence and then gives an advisory sentence to the ~~court~~ of either life imprisonment or death. If the jury recommends life imprisonment, it may further recommend a complete or substantial restriction of the defendant's ~~parole~~ eligibility. The ~~court~~, not bound by the advisory sentence, then weighs the aggravating and mitigating circumstances and enters the sentence of either life imprisonment or death. If life imprisonment is imposed, the ~~court~~ may completely or substantially restrict the defendant's ~~parole~~ eligibility. If the ~~court~~ chooses the death sentence it ^{he or she} must set forth ^{his or her} its findings in writing. Any death sentence is subject to automatic appellate review by the supreme court.

The ~~court~~ ^{judge} that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner. One physician and 12 citizen witnesses must be present at the execution.

This bill applies only to those offenses committed on or after its effective date (the day after publication).

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

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

1 SECTION 1. 301.046 (3) (cm) of the statutes is created to read:

2 301.046 (3) (cm) The prisoner is not awaiting imposition of a death sentence.

3 ~~SECTION 2. 301.048 (2) (b) of the statutes is amended to read:~~

4 ~~301.048 (2) (b) He or she is a prisoner serving a felony sentence for a felony not~~
5 ~~punishable by death or life imprisonment and the department directs him or her to~~
6 ~~participate in the program.~~

7 ~~SECTION 3. 302.11 (1m) of the statutes is amended to read:~~

Second

judge

for parole or extended supervision

judge

*INS
2-3*

③

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1 302.11 **(lm)** An inmate serving a life term is not entitled to mandatory release.
2 Except as provided in ss. 304.06 (lt), 939.62 (2m) and 973.014, the parole commission
3 may parole the inmate as specified in s. 304.06 (1). An inmate awaiting imposition
4 of a death sentence is not eligible for parole.

5 **SECTION 4.** 303.065 (1) of the statutes is amended to read:

6 303.065 **(1)** The department may grant work release privileges to any person
7 incarcerated within the state prisons, except that no person serving a life sentence
8 may be considered for work release until he or she has reached parole eligibility
9 under s. 304.06 (1) (b) or (lt) or 973.014 (1) (a) or (b), **whichever** is applicable, and no
10 person serving a life sentence under s. 939.62 (2m) or 973.014 (1) (c) or awaiting
11 imposition of a death sentence may be considered for work release.

12 **SECTION 5.** 304.02 (5) of the statutes is amended to read:

13 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
14 sentence under s. 939.62 (2m) or 973.014 (1) (c) or awaiting imposition of a death
15 sentence is not eligible for release to parole supervision under this section.

16 **SECTION 6.** 304.06 (1) (b) of the statutes is amended to read:

17 304.06 **(1) (b)** Except as provided in sub. (lm) or s. 302.045 (3), 961.49 (2) or
18 973.0135, the parole commission may parole an inmate of the Wisconsin state
19 prisons or any felon & any person serving at least one year or more in a county house
20 of correction or a county reforestation camp organized under s. 303.07, when he or
21 she has served 25% of the sentence imposed for the offense, or 6 months ~~th~~, whichever
22 is greater: Except as provided in sub. (lt) or s. 939.62 (2m) or 973.014, the parole
23 commission may parole an inmate serving a life term when he or she has served 20
24 years, as modified by the formula under s. 302.11 (1) and subject to extension using
25 the formulas under s. 302.11 (2). The person serving the life term shall be given

BILL

1 credit for time served prior to sentencing under s. 973.155, including good time under
 2 s. 973.155 (4). The secretary may grant special action parole releases under s.
 3 304.02. The department or the parole commission shall not provide any convicted
 4 offender or other person sentenced to the department's custody any parole eligibility
 5 or evaluation until the person has been confined at least 60 days following
 6 sentencing. The parole commission may not parole an inmate who is awaiting
 7 imposition of a death sentence.

8 SECTION 7. 304.06 (1t) of the statutes is created to read:

9 304.06 (1t) If the prisoner is serving a life term imposed under s. 973.015, the
 10 prisoner is eligible for parole only when authorized by the sentencing court under s.
 11 973.015 (3) (c).

12 SECTION 8. 304.071 (2) of the statutes is amended to read:

13 304.071 (2) If a prisoner is not eligible for parole under s. ~~304.06 (1t) or~~
 14 ~~939.62 (2m), 961.49 (2), 973.014 (1) (c) or 973.032 (5),~~ he or she is not eligible for
 15 parole under this section.

16 SECTION 9. 939.22 (7) of the statutes is created to read:

17 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for
 18 which one or more of the possible penalties is death or life imprisonment.

19 SECTION 10. 939.30 (2) of the statutes is amended to read:

20 939.30 (2) For a solicitation to commit a crime ~~for which the penalty is~~
 21 punishable by death or life imprisonment, the actor is guilty of a Class C felony. For
 22 a solicitation to commit a Class E felony, the actor is guilty of a Class E felony

23 SECTION 11. 939.31 of the statutes is amended to read:

24 **939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4) and **961.41**
 25 (lx), whoever, with intent that a crime be committed, agrees or combines with

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1 another for the purpose of committing that crime may, if one or more of the parties
2 to the conspiracy does an act to effect its object, be fined or imprisoned or both not
3 to exceed the maximum provided for the completed crime; except that for a
4 conspiracy to commit a crime ~~for which the penalty is punishable by death or life~~
5 imprisonment, the actor is guilty of a Class B felony.

6 **SECTION 12.** 939.32 (1) (a) of the statutes is amended to read:

7 939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is~~
8 punishable by death or life imprisonment is guilty of a Class B felony.

9 **SECTION 13.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

10 **SECTION 14.** 939.50 (1) (ag) of the statutes is created to read:

11 939.50 (1) (ag) Class AA felony.

12 **SECTION 15.** 939.50 (2) of the statutes is amended to read:

13 939.50 (2) A felony is a Class ~~AA~~ A, B, BC, C, D or E felony when it is so
14 specified in chs. 939 to 951.

15 **SECTION 16.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

16 **SECTION 17.** 939.50 (3) (ag) of the statutes is created to read:

17 939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined
18 under s. 973.015.

19 **SECTION 18.** 939.60 of the statutes is amended to read:

20 **939.60 Felony and misdemeanor defined.** A crime punishable by death or
21 imprisonment in the Wisconsin state prisons is a felony Every other crime is a
22 misdemeanor.

23 **SECTION 19.** 939.624 (2) of the statutes is amended to read:

24 939.624 (2) If a person has one or more prior convictions for a serious violent
25 crime or a crime punishable by death or life imprisonment and subsequently

proof w/ state

BILL

SECTION 19

1 commits a serious violent crime, the court shall sentence the person to not less than
2 5 years' imprisonment, but otherwise the penalties for the crime apply, subject to any
3 applicable penalty enhancement. The court shall not place the defendant on
4 probation.

5 **SECTION 20.** 939.625 (1) (b) 2. of the statutes is amended to read:

6 939.625 (1) (b) 2. If the maximum term of imprisonment for a felony is more
7 than 5 years or is a life term or the felony is punishable by death, the maximum term
8 of imprisonment for the felony may be increased by not more than 5 years.

9 **SECTION 21.** 939.63 (1) (a) 2. of the statutes is amended to read:

10 939.63 (1) (a) 2. If the maximum term of imprisonment for a felony is more than
11 5 years or is a life term or the felony is punishable by death, the maximum term of
12 imprisonment for the felony may be increased by not more than 5 years.

13 **SECTION 22.** 940.01 (1) of the statutes is renumbered 940.01 (1) (a) and
14 amended to read:

15 940.01 (1) (a) (title) General penalty. Except as provided in par. (b) and sub.
16 (2), whoever causes the death of another human being with intent to kill that person
17 or another is guilty of a Class A felony.

18 **SECTION 23.** 940.01 ~~(1)(a)~~ of the statutes is created to read: (Im)

19 940.01 (1) ~~(a)~~ Penalty for repeat offenders. ~~(a)~~ In this ~~paragraph~~, "intentional
20 homicide" means any of the following: subsection

21 ① A violation of this #section.

22 ② A crime under federal law, the law of another state or, prior to January 1,
23 1989, a law of this state that is comparable to a crime specified in this @section.

24 (b) Except as provided in pars. (c) and (d) and sub. (2), whoever causes the death
25 of another human being with intent to kill that person or another is guilty of a Class

proof w/ stat
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6-13

BILL

1 AA felony if he or she has been convicted of intentional homicide on one or more
2 separate occasions at any time preceding the offense for which he or she presently
3 is being sentenced.

par. (b)

4 (4) To be considered as a previous conviction under ~~s. 939.05~~ the conviction must
5 remain of record and unreversed. It is immaterial that the sentence for the previous
6 conviction was stayed, withheld or suspended, or that he or she was pardoned, unless
7 the pardon was granted on the ground of innocence. If a previous conviction is
8 considered to be covered under ~~s. 939.05~~ ^{par. (a) 2.} as comparable to a violation of this
9 ~~section~~ section, the conviction may be counted as a prior conviction under ~~s. 939.05~~ only
10 if the court determines, beyond a reasonable doubt, that the violation relating to that
11 conviction would constitute a violation of this ~~section~~ section if committed by a person
12 over whom a court of criminal jurisdiction would have exercised original jurisdiction.

13 ~~SECTION 24. 940.01 (c) of the statutes is created to read~~

14 ~~940.01 (c) Inability of certain children~~ Notwithstanding s. 939.05, a person
15 is subject to par. (b) as a party to a crime only if that person had intended that a
16 person be killed.

17 ~~SECTION 25. 940.01 (1)(d) of the statutes is created to read~~

18 ~~940.01 (1)(d) Inability of certain children~~ A person is subject to par. (b) only
19 if the person is 16 years old or older when he or she commits the offense.

INS
7-19

20 ~~SECTION 26. 961.335 (1) of the statutes is amended to read:~~

21 961.335 (1) ~~Upon~~ Except as provided in sub. (1m), upon application the
22 controlled substances board may issue a permit authorizing a person to
23 manufacture, obtain, possess, use, administer or dispense a controlled substance for
24 purposes of scientific research, instructional activities, chemical analysis or other
25 special uses, without restriction because of enumeration. No person shall engage in

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1 any such activity without a permit issued under this section, except that an
 2 individual may be designated and authorized to receive the permit for a college or
 3 university department, research unit or similar administrative organizational unit
 4 and students, laboratory technicians, research specialists or chemical analysts
 5 under his or her supervision may be permitted possession and use of controlled
 6 substances for these purposes without obtaining an individual permit.

7 **SECTION 27.** 961.335 (1^m) of the statutes is created to read:

8 961.335 (1^m) Upon the application of the secretary of corrections for a permit
 9 to obtain a controlled substance for purposes of an execution under s. 973.017, the
 10 controlled substances board shall issue a permit under this section.

11 **SECTION 28.** 967.02 (1^m) of the statutes is created to read:

12 **967.02 (1^m)** "Crime punishable by death or life imprisonment" has the
 13 meaning given in s. 939.22 (7).

14 **SECTION 29.** 971.17 (1) of the statutes is amended to read:

15 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason
 16 of mental disease or mental defect, the court shall commit the person to the
 17 department of health and family services for a specified period not exceeding
 18 two-thirds of the maximum term of imprisonment that could be imposed under s.
 19 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
 20 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621,
 21 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b) and 940.25 (1b) and 961.48
 22 and other penalty enhancement statutes, as applicable, subject to the credit
 23 provisions of s. 973.155. If the maximum term of imprisonment is crime is
 24 punishable by death or life imprisonment, the commitment period specified by the
 25 court may be life, subject to termination under sub. (5).

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8-14

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1 **SECTION 30.** 972.03 of the statutes is amended to read:

2 **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory
3 challenges except as otherwise provided in this section. When the crime charged is
4 punishable by death or life imprisonment the state is entitled to 6 peremptory
5 challenges and the defendant is entitled to 6 peremptory challenges. If there is more
6 than one defendant, the court shall divide the challenges as equally as practicable
7 among them; and if their defenses are adverse and the court is satisfied that the
8 protection of their rights so requires, the court may allow the defendants additional
9 challenges. If the crime is punishable by death or life imprisonment, the total
10 peremptory challenges allowed the defense shall not exceed 12 if there are only 2
11 defendants and 18 if there are more than 2 defendants; in other felony cases 6
12 challenges if there are only 2 defendants and 9 challenges if there are more than 2.
13 In misdemeanor cases, the state is entitled to 3 peremptory challenges and the
14 defendant is entitled to 3 peremptory challenges, except that if there are 2
15 defendants, the court shall allow the defense 4 peremptory challenges, and if there
16 are more than 2 defendants, the court shall allow the defense 6 peremptory
17 challenges. Each side shall be allowed one additional peremptory challenge if
18 additional jurors are to be impaneled under s. 972.04 (1).

19 **SECTION 31.** 972.03 of the statutes, as affected by 1997 Wisconsin Act (this
20 act) and 1996 Supreme Court Order 96-08, is repealed and recreated to read:

21 **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory
22 challenges except as otherwise provided in this section. When the crime charged is
23 punishable by death or life imprisonment the state is entitled to 6 peremptory
24 challenges and the defendant is entitled to 6 peremptory challenges. If there is more
25 than one defendant, the court shall divide the challenges as equally as practicable

BILL

SECTION 31

1 among them; and if their defenses are adverse and the court is satisfied that the
 2 protection of their rights so requires, the court may allow the defendants additional
 3 challenges . If the crime is punishable by death or life imprisonment, the total
 4 peremptory challenges allowed the defense shall not exceed 12 if there are only 2
 5 defendants and 18 if there are more than 2 defendants; in other felony cases 6
 6 challenges if there are only 2 defendants and 9 challenges if there are more than 2.
 7 In misdemeanor cases, the state is entitled to 3 peremptory challenges and the
 8 defendant is entitled to 3 peremptory challenges, except that if there are 2
 9 defendants, the court shall allow the defense 4 peremptory challenges, and if there
 10 are more than 2 defendants, the court shall allow the defense 6 peremptory
 11 challenges. Each side shall be allowed one additional peremptory challenge if
 12 additional jurors are to be selected under s. 972.04 (1).

13 **SECTION 32.** 972.13 (6) of the statutes is amended to read:

14 972.13 (6) The following forms may be used for judgments:

15 STATE OF WISCONSIN

16 County

17 In.... Court

18 The State of Wisconsin

19 vs.

20(Name of defendant)

21 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

22 IT IS ADJUDGED That the defendant has been convicted upon the defendant's
 23 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)
 24 (no contest) on the day of 19.., of the crime of in violation of s. and the
 25 court having asked the defendant whether the defendant has anything to state why

BILL

1 sentence should not be pronounced, and no sufficient grounds to the contrary being
2 shown or appearing to the court.

3 *IT IS ADJUDGED That the defendant is guilty as convicted.

4 *IT IS ADJUDGED That the defendant shall be executed by lethal injection.

5 *IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin
6 state prisons (county jail of county) for an indeterminate term of not more than....

7 *IT IS ADJUDGED That the defendant is placed in the intensive sanctions
8 program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes
9 and the following conditions:....

10 *IT IS ADJUDGED That the defendant is hereby committed to detention in
11 (the defendant's place of residence or place designated by judge) for a term of not
12 more than....

13 *IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the
14 costs of this action).

15 *IT IS ADJUDGED That the defendant pay restitution to....

16 *IT IS ADJUDGED That the defendant is restricted in his or her use of
17 computers as follows:....

18 *The at is designated as the Reception Center to which the defendant
19 shall be delivered by the sheriff.

20 *IT IS ORDERED That the clerk deliver a duplicate original of this judgment
21 to the sheriff who shall forthwith execute the same and deliver it to the warden.

22 Dated this day of, 19...

23 BY THE COURT

24 Date of Offense,

25 District Attorney,

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-A-

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Defense Attorney

*Strike inapplicable paragraphs

STATE OF WISCONSIN

.... County

In.... Court

The State of Wisconsin

vs.

....(Name of defendant)

On the day of , 19.., the district attorney appeared for the state and the defendant appeared in person and by the defendant's attorney.

UPON ALL THE FILES, RECORDS AND PROCEEDINGS

IT IS ADJUDGED That the defendant has been found not guilty by the verdict of the jury (by the court) and is therefore ordered discharged forthwith.

Dated this day of, 19...

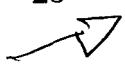
BY THE COURT

SECTION 33. 973.013 (1) (b) of the statutes is amended to read:

973.013 (1) (b) The sentence shall have the effect of a sentence at hard labor for the maximum term fixed by the court, subject to the power of actual release from confinement by parole by the department or by pardon as provided by law. If a person is sentenced for a definite time for an offense for which the person may be sentenced under this section, the person is in legal effect sentenced as required by this section, said definite time being the maximum period. ~~A- Except as provided in s. 973.015,~~ a defendant convicted of a crime for which the minimum penalty is life shall be sentenced for life.

25

SECTION 34 973.0135 (3) of the statutes is amended to read:



BILL

State of Iowa

1 973.0135 (3) A person is not subject to this section if the current serious felony
2 is punishable by death or life imprisonment.

3 ~~SECTION 35. 973.014 (1) (intro.) of the statutes is amended to read:
4 973.014 (1) (intro.) Except as provided in sub. (2) and s. 973.015, when a court
5 sentences a person to life imprisonment for a crime committed on or after July 1,
6 1988, the court shall make a parole eligibility determination regarding the person
7 and choose one of the following options:~~

8 SECTION 36. 973.015^x of the statutes is renumbered 973.019.^x

9 SECTION 37. 973.015^x of the statutes is created to read:

10 **973.015 Sentence of death or life imprisonment for Class AA felony. (1)**

11 (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct a
12 separate sentencing proceeding to determine whether the defendant should be
13 sentenced to death or life imprisonment. The trial judge shall conduct the proceeding
14 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury
15 is unable to reconvene for a hearing on the issue of the penalty, the trial judge may
16 summon a new jury to determine the issue of the imposition of the penalty. If the trial
17 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the
18 sentencing proceeding before a jury summoned for that purpose unless the
19 defendant waives a jury.

20 (b) In the proceeding, the court shall admit any evidence that may be relevant
21 to the sentence regarding any mitigating circumstance. The court shall admit any
22 other evidence according to the rules of evidence applicable at a criminal trial. The
23 court shall provide the defendant with a fair opportunity to rebut any hearsay
24 statements. This paragraph does not authorize the introduction of any evidence
25 secured in violation of the state or federal constitution. The state has the burden of

BILL

1 proof, beyond a reasonable doubt, regarding the existence of aggravating
2 circumstances. The defendant has the burden of proof, by a preponderance of the
3 evidence, regarding mitigating circumstances. The court shall permit the state and
4 the defendant or his or her counsel to present arguments for or against a sentence
5 of death.

6 (2) (a) Unless the defendant waives the right to a jury, the jury shall deliberate
7 after hearing all of the evidence and, by a majority vote, shall render an advisory
8 sentence to the court of life imprisonment or death, based upon the following
9 matters:

- 10 1. The existence of aggravating circumstances under sub. (5).[✓]
- 11 2. The existence of mitigating circumstances under sub. (6).[✓]

12 (b) If the jury recommends life imprisonment, it may further recommend
13 restrictions on the defendant's eligibility for parole or recommend that the defendant
14 not be eligible for parole. or extended supervision

15 (c) Upon the request of the defendant or the state, the court shall explain to the
16 jury the court's options under sub. (3) (c) to sentence the defendant to life without the
17 possibility of parole or with delayed parole eligibility. or extended supervision

18 (3) (a) Notwithstanding the recommendation of a majority of the jury, the court,
19 after weighing the aggravating and mitigating circumstances, shall enter a sentence
20 of life imprisonment or death, but if the court imposes a sentence of death, it shall
21 set forth in writing its findings upon which the sentence of death is based as to the
22 facts:

- 23 1. That sufficient aggravating circumstances exist under sub. (5)[✓]; and
- 24 2. That there are insufficient mitigating circumstances under sub. (6)[✓] to
25 outweigh the aggravating circumstances.

BILL

1 (b) In each case in which the court imposes the death sentence, the court must
2 support its determination by specific written findings of fact based upon the
3 circumstances in subs. (5) and (6) and upon the records of the trial and the sentencing
4 proceedings.

5 (c) If the court does not make the findings requiring the death sentence, the
6 court shall impose a sentence of life imprisonment and shall make a parole eligibility
7 determination regarding the person by choosing an option as provided under s. 973.014 (1) or (1g), whichever is applicable

8 (4) If a death sentence is imposed, the judgment of conviction and sentence of
9 death is subject to automatic review by the supreme court within 60 days after
10 certification by the sentencing court of the entire record, unless the supreme court,
11 for good cause [✓]shown, extends the time for an additional period not to exceed 30 days.
12 The review by the supreme court has priority over all other cases and shall be heard
13 in accordance with rules promulgated by the supreme court.

14 (5) The court and jury shall consider one or more of the following as
15 aggravating circumstances:

16 (a) The Class AA felony was committed by a person under a sentence of
17 imprisonment.

18 (b) The defendant knowingly created a great risk of death to many persons.

19 (c) The Class AA felony was committed for the purpose of avoiding or
20 preventing a lawful arrest or effecting an escape from custody.

21 (d) The Class AA felony was committed to disrupt or hinder the lawful exercise
22 of any governmental function or the enforcement of laws.

23 (e) The defendant intentionally caused bodily harm or mental anguish to the
24 victim or another before the victim died.

BILL

7
,

1 (f) During the commission of the offense, the defendant enjoyed or was utterly
2 indifferent to the suffering of another.

3 (6) The court and jury shall consider as a mitigating factor any aspect of the
4 defendant's character, background or record or any of the circumstances of the
5 offense that the defendant offers as a basis for a sentence other than death.
6 Mitigating circumstances may include, but are not limited to, any of the following:

7 (a) The defendant has no significant history of prior criminal activity.

8 (b) The Class AA felony was committed while the defendant was under the
9 influence of extreme mental or emotional disturbance.

10 (c) The victim was a participant in the defendant's conduct or consented to the
11 act.

12 (d) The defendant was an accomplice in the Class AA felony committed by
13 another person and the defendant's participation was relatively minor.

14 (e) The defendant acted under extreme duress or under the substantial
15 domination of another person.

16 (f) The capacity of the defendant to appreciate the criminality of his or her
17 conduct or to conform his or her conduct to the requirements of law was substantially
18 impaired.

19 (g) The age of the defendant at the time of the crime.

20 (7) The court that imposes a sentence of death shall set the date for execution.

21 The defendant shall be committed to the Wisconsin state[✓] prisons pending the
22 execution of the death sentence.

23 (8) The execution of a death sentence shall be by lethal injection.

24 SECTION 38. 973.016[✓] of the statutes is created to read:

BILL .

1 **973.016[✓] Stay of execution of death sentence.** The execution of a death
2 sentence may be stayed only by the governor or incident to an appeal.

3 **SECTION 39.** 973.017^x of the statutes is created to read:

4 **973.017 Execution of death sentence.** The secretary of corrections shall
5 designate the executioner who shall provide a person subject to a death sentence with
6 an intravenous injection of one or more substances in a lethal quantity. The
7 executioner must be a physician or acting under the direction of a physician. A
8 person is immune from civil or criminal liability for his or her acts or omissions, in
9 good faith, in regard to a lawful execution under this [✓]section. The secretary shall
10 designate 12 citizens to witness the execution. The secretary shall direct a physician
11 to be present and to announce when death has occurred. The convicted person may
12 request that certain additional people be allowed to witness the execution. The
13 secretary shall grant any such reasonable request. The secretary may allow
14 representatives of the news media to witness the execution under rules of the
15 department. No other persons may be allowed to witness the execution.

16 **SECTION 40.** 973.032^x (2) (b) of the statutes is amended to read:

17 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person
18 under sub. (1) if he or she is convicted of a felony punishable by death or life
19 imprisonment.

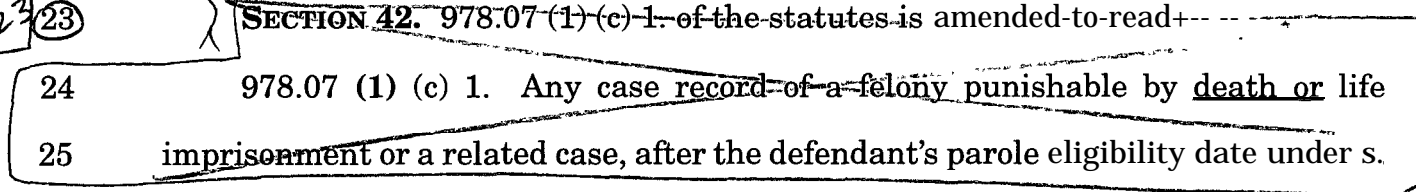
20 **SECTION 41.** 973.09^x (1) (c) of the statutes is amended to read:

21 973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable
22 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

23 **SECTION 42.** 978.07 (1) (c) 1. ~~of the statutes is amended to read:~~

24 978.07 (1) (c) 1. Any case record ~~of a felony punishable by death or life~~
25 imprisonment or a related case, after the defendant's parole eligibility date under s.

proof w/ state
INS
17-23



BILL

1 ~~304.06 (1) or 973.014 or 50 years after the commencement of the action, whichever~~
 2 occurs later. If there is no parole eligibility date, the district attorney may destroy
 3 the case record after the defendant's death.

SECTION 43. Initial applicability

✓ (1m)

4
 5 (1) The treatment of section 940.01 ~~(1) of~~ of the statutes first applies to offenses
 6 committed on the effective date of this subsection, but does not preclude the counting
 7 of other intentional homicide convictions as prior convictions for sentencing a person
 8 under section 940.01 ~~(1) of~~ ^(1m) of the statutes, as created by this act.

9 ~~**SECTION 44. Effective dates.** This act takes effect on the day after~~
 10 ~~publication, except as follows:~~

11 ~~(1) The repeal and recreation of section 972.03 of the statutes takes effect on~~
 12 ~~July 1, 1997.~~

✓
(END)

1 **INSERT 2-3:**

2 **SECTION 1.** 301.048 (2) (b) of the statutes is amended to read:

3 301.048 (2) (b) He or she is a prisoner serving a ~~felony~~ sentence for a felony not
4 punishable by death or life imprisonment and the department directs him or her to
5 participate in the program. This paragraph does not apply to a prisoner serving a
6 bifurcated sentence imposed under s. 973.01.

7 **SECTION 2.** 302.11 (1~~m~~) of the statutes is amended to read:

8 302.11 (1~~m~~) An inmate serving a life term is not entitled to mandatory release.
9 Except as provided in ss. 939.62 (2m) (c) and 973.014, the parole commission may
10 parole the inmate as specified in s. 304.06 (1). An inmate awaiting imposition of a
11 death sentence is not eligible for parole.

History: 1977 c. 266.353; 1979 c. 221; 1981 c. 266; 1983 a. 66.528; 1985 a. 27; 1985 a. 332 s. 251 (1); 1987 a. 27.412; 1989 a. 31 ss. 1629.1630; Stats. s. 302.11; 1989 a. 107; 1991 a. 39, 1993 a. 79, 97, 194, 289, 483; 1995 a. 77, 448; 1997 a. 133, 275, 283, 284, 295, 326.

History: 1991 a. 39; 1993 a. 79, 97, 227, 437, 479; 1995 a. 27; 1997 a. 27, 133, 181, 283.

12 **SECTION 3.** 302.114 (1) of the statutes is amended to read:

13 302.114 (1) An inmate is subject to this section if he or she is serving a life
14 sentence imposed under s. 973.014 (lg) (a) 1. or 2. An inmate serving a life sentence
15 under s. 939.62 (2m) (c) or 973.014 (lg) (a) 3. or awaiting imposition of a death
16 sentence is not eligible for release to extended supervision under this section.

History: 1997 a. 283.

17 **SECTION 4.** 303.065 (1) (b) 2. of the statutes is amended to read:

18 303.065 (1) (b) 2. A person serving a life sentence under s. 939.62 (2m) (c) or
19 973.014 (1) (c) or (lg) (a) 3. or awaiting imposition of a death sentence may not be
20 considered for work release.

NOTE: NOTE: Subd. 2. is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). **NOTE:**

History: 1981 c. 266 s. 5; 1983 a. 27; 1985 a. 332 s. 251 (3); 1987 a. 238; 1987 a. 244 s. 7; 1987 a. 412; 1989 a. 31 ss. 1686c, 1686m; Stats. 1989 s. 303.065; 1991 a. 39, 316; 1993 a. 16, 289; 1995 a. 27.48; 1997 a. 283, 326; s. 13.93 (2) (c).

21 **SECTION 5.** 304.02 (5) of the statutes is amended to read:

1 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
2 sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) or (lg) or awaiting imposition of
3 a death sentence is not eligible for release to parole supervision under this section.

NOTE: NOTE: Sub. (5) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:

History: 1989 a. 31,336; 1991 a. 39; 1993 a. 16, 79, 97, 283; 1995 a. 48; 1997 a. 275,283, 326; s. 13.93 (2) (c).

4 **SECTION 6. 304.06 (1) (b)** of the statutes is amended to read:

5 304.06 (1) (b) Except as provided in sub. (lm) or (1t) or s. 302.045 (3), 961.49
6 (2), 973.01 (6) or 973.0135, the parole commission may parole an inmate of the
7 Wisconsin state prisons or any felon or any person serving at least one year or more
8 in a county house of correction or a county reforestation camp organized under s.
9 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6
10 months, whichever is greater. Except as provided in s. 939.62 (2m) (c) or 973.014 (1)
11 (b) or (c), (lg) or (2), the parole commission may parole an inmate serving a life term
12 when he or she has served 20 years, as modified by the formula under s. 302.11 (1)
13 and subject to extension under s. 302.11 (lq) and (2), if applicable. The person
14 serving the life term shall be given credit for time served prior to sentencing under
15 s. 973.155, including good time under s. 973.155 (4). The secretary may grant special
16 action parole releases under s. 304.02. The department or the parole commission
17 shall not provide any convicted offender or other person sentenced to the
18 department's custody any parole eligibility or evaluation until the person has been
19 confined at least 60 days following sentencing.

NOTE: NOTE: Par. (b) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:

History: 1971 c. 125,219; 1973 c. 90, 198, 333; 1975 c. 156, 199, 1977 c. 29, 353, 418, 449; 1979 c. 356; 1981 c. 266; 1983 a. 27, 64, 197, 528, 538; 1985 a. 262 s. 8, 1987
a. 244 ss. 1 to 3.7; 1987 a. 412; 1989 a. 31 ss. 1699 to 1700; Stats. 1989 s. 304.06; 1989 a. 107, 122; 1991 a. 39; 1993 a. 79, 89, 97, 178, 194, 227, 289, 377, 479, 491; 1995
a. 27, 77, 352, 387, 444, 448; 1997 a. 133, 181, 237, 275, 283, 284, 326; s. 13.93 (2) (c).

20 **SECTION 7. 304.06 (1t)** of the statutes is created to read:

21 304.06 (1t) The parole commission may not parole an inmate who is awaiting
22 imposition of a death sentence.

23 **SECTION 8. 304.071 (2)** of the statutes is amended to read:

1 304.071 (2) If a prisoner is not eligible for parole under s. 304.06 (It), 939.62
2 (2m) (c), 961.49 (2), 973.01 (6), 973.014 (1) (c) or (lg) or 973.032 (5), he or she is not
3 eligible for parole under this section.

NOTE: NOTE: Sub. (2) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:

History: 1989 a. 31 ss. 1702, 1703; Stats. 1989 s. 304.071; 1991 a. 39; 1993 a. 289; 1995 a. 48, 448; 1997 a. 283, 326; s. 13.93 (2) (c).

INSERT 6-13:

4
5 SECTION 9. 940.01 (1) (a) of the statutes is amended to read:

6 940.01 (1) (a) Except as provided in ~~sub.~~ subs. (1m) and (2), whoever causes the
7 death of another human being with intent to kill that person or another is guilty of
8 a Class A felony.

History: 1987 a. 399; 1997 a. 295.

9 SECTION 10. 940.01 (1) (b) of the statutes is amended to read:

10 940.01 (1) (b) Except as provided in ~~sub.~~ subs. (1m) and (2), whoever causes the
11 death of an unborn child with intent to kill that unborn child, kill the woman who
12 is pregnant with that unborn child or kill another is guilty of a Class A felony.

History: 1987 a. 399; 1997 a. 295.

INSERT 7-19:

14 SECTION 11. 940.01 (3) of the statutes is amended to read:

15 940.01 (3) **BURDEN OF PROOF.** When the existence of an affirmative defense
16 under sub. (2) has been placed in issue by the trial evidence, the state must prove
17 beyond a reasonable doubt that the facts constituting the defense did not exist in
18 order to sustain a finding of guilt under sub. (1) or (1m).

History: 1987 a. 399; 1997 a. 295.

INSERT 8-14:

20 SECTION 12. 971.17 (1) of the statutes is amended to read:

21 97 1.17 (1) **COMMITMENT PERIOD.** When a defendant is found not guilty by reason
22 of mental disease or mental defect, the court shall commit the person to the
23 department of health and family services for a specified period not exceeding

1 two-thirds of the maximum term of imprisonment that could be imposed under s.
 2 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
 3 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621,
 4 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (lb), 940.25 (lb) and 961.48 and
 5 other penalty enhancement statutes, as applicable, subject to the credit provisions
 6 of s. 973.155. If the ~~maximum term of imprisonment is~~ crime is punishable by death
 7 or life imprisonment, the commitment period specified by the court may be life,
 8 subject to termination under sub. (5).

History: 1975 c. 430; 1977 c. 353; 1977 ~~428~~ ~~415~~ ~~59~~ Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334,359; Sup. Ct. Order, 158 W (2d) xvii (1990); 1991 a. 39, 189,269; 1993 ~~f. 16, 98,~~ ~~cal~~ ~~99~~ s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275.

SECTION 13. 972.03 of the statutes is amended to read:

972.03 Peremptory challenges.

Each side is entitled to only 4 peremptory challenges except as otherwise provided in this section. When the crime charged is punishable by death or life imprisonment, the state is entitled to 6 peremptory challenges and the defendant is entitled to 6 peremptory challenges. If there is more than one defendant, the court shall divide the challenges as equally as practicable among them; and if their defenses are adverse and the court is satisfied that the protection of their rights so requires, the court may allow the defendants additional challenges. If the crime is punishable by death or life imprisonment, the total peremptory challenges allowed the defense shall not exceed 12 if there are only 2 defendants and 18 if there are more than 2 defendants; in other felony cases 6 challenges if there are only 2 defendants and 9 challenges if there are more than 2. In misdemeanor cases, the state is entitled to 3 peremptory challenges and the defendant is entitled to 3 peremptory challenges, except that if there are 2 defendants, the court shall allow the defense 4 peremptory challenges, and if there are more than 2 defendants, the court shall allow the defense 6 peremptory

1 challenges. Each side shall be allowed one additional peremptory challenge if
2 additional jurors are to be selected under s. 972.04 (1).

History: 1983 a. 226; 1995 a. 427; Sup. Ct. Order No. ~~96~~08,207 W (2d) xv (1997).

3 **SECTION 14. 972.13 (6)** of the statutes is amended to read:

4 972.13 (6) The following forms may be used for judgments:

5 STATE OF WISCONSIN

6 County

7 In.... Court

8 The State of Wisconsin

9 vs.

10(Name of defendant)

11 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

12 IT IS ADJUDGED That the defendant has been convicted upon the defendant's
13 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)
14 (no contest) on the day of (year), of the crime of in violation of s and
15 the court having asked the defendant whether the defendant has anything to state
16 why sentence should not be pronounced, and no sufficient grounds to the contrary
17 being shown or appearing to the court.

18 *IT IS ADJUDGED That the defendant is guilty as convicted.

19 *IT IS ADJUDGED That the defendant shall be executed by lethal injection.

20 *IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin
21 state prisons (countyjail of.... county) for an indeterminate term of not more than. . . .

22 *IT IS ADJUDGED That the defendant is ordered to serve a bifurcated
23 sentence consisting of year(s) of confinement in prison and months/years of
24 extended supervision.

W.P.O. -
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form
to
match
attached

W.P.O.
use
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*w.p.
use
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format*

1 *IT IS ADJUDGED That the defendant is placed in the intensive sanctions
2 program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes
3 and the following conditions:. . . .

4 *IT IS ADJUDGED That the defendant is hereby committed to detention in
5 (the defendant's place of residence or place designated by judge) for a term of not
6 more than....

7 *IT IS ADJUDGED That the defendant is placed on lifetime supervision by the
8 department of corrections under section 939.615 of the Wisconsin Statutes.

9 *IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the
10 costs of this action).

11 *IT IS ADJUDGED That the defendant pay restitution to....

12 *IT IS ADJUDGED That the defendant is restricted in his or her use of
13 computers as follows:. . . .

14 *The.... at.... is designated as the Reception Center to which the defendant
15 shall be delivered by the sheriff.

16 *IT IS ORDERED That the clerk deliver a duplicate original of this judgment
17 to the sheriff who shall forthwith execute the same and deliver it to the warden.

18 Dated this day of (year)

19 BY THE COURT....

20 Date of Offense....,

21 District Attorney.. . . ,

22 Defense Attorney.. . .

23 *Strike inapplicable paragraphs.

24 STATE OF WISCONSIN

25 County

*w/o
use
attached
for not*

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In... court

The State of Wisconsin

vs.

....(Name of defendant)

On the day of (year), the district attorney appeared for the state and the defendant appeared in person and by... the defendant's attorney.

UPON ALL THE FILES, RECORDS AND PROCEEDINGS

IT IS ADJUDGED That the defendant has been found not guilty by the verdict of the jury (by the court) and is therefore ordered discharged forthwith.

Dated this day of (year)

BY THE COURT....

NOTE: NOTE: Sub. (6) is shown as affected by three acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:

History: 1975 c. 39,199; 1977 c. 353,418; 1979 c. 89; 1983 a. 261, 438, 538; 1987 a. 27; 1989 a. 31; 1991 a. 39, 1997 a. 250, 275, 283; s. 13.93 (2) (c).

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SECTION 15. 973.01 (3) of the statutes is amended to read:

973.01 (3) NOT APPLICABLE TO LIFE [✓]OR DEATH SENTENCES. If a person is being sentenced for a felony that is punishable by death or life imprisonment, he or she is not subject to this section but shall be sentenced under s. 973.014 (lg) or 973.015, whichever is applicable.

History: 1997 a. 283.

[✓]**SECTION 16. 973.013 (1) (b) of the statutes is amended to read:**

973.013 (1) (b) Except as provided in s. 973.01, the sentence shall have the effect of a sentence at hard labor for the maximum term fixed by the court, subject to the power of actual release from confinement by parole by the department or by pardon as provided by law. If a person is sentenced for a definite time for an offense for which the person may be sentenced under this section, the person is in legal effect sentenced as required by this section, said definite time being the maximum period.

1 ~~A~~ Except as provided in s. 973.015, a defendant convicted of a crime for which the
2 minimum penalty is life shall be sentenced for life.

History: 1973 c. 90; 1975 c. 189 c. 99 (1); 1975 c. 224 s. 146m; 1983 a. 102, 1983 a. 371 s. 13; Stats. 1983 s. 973.013; 1987 a. 27, 1989 a. 31, 107; 1993 a. 486; 1995 a. 27; 1997 a. 283.

3 **INSERT 17-23:**

X

4 SECTION 17. 978.07 (1) (c) 1. of the statutes is amended to read:

5 978.07 (1) (c) 1. Any case record of a felony punishable by death or life
6 imprisonment or a related case, after the defendant's parole eligibility date under s.
7 304.06 (1) or 973.014 (1) or date of eligibility for release to extended supervision
8 under s. 973.014 (1g) (a) 1. or 2., whichever is applicable, or 50 years after the
9 commencement of the action, whichever occurs later. If there is no parole eligibility
10 date or no date for release to extended supervision, the district attorney may destroy
11 the case record after the defendant's death.

History: 1991 a. 39 ss. 1618 to 1621, 3678 to 3682; 1993 a. 172, 194, 289; 1995 a. 27; 1997 a. 283

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1671/ldm

JEO:knig&jlg:jf

emj

Tuesday, February 12, 1997

(07311 da)

1997 LRB-1671, which was in turn based on

This is a redraft of 1995 Assembly Bill 352, ~~except that instead of providing a penalty of death for first-degree intentional homicide of children under 16, peace officers or correctional officers, this~~ draft provides a penalty of death ~~only~~ if the defendant has a prior conviction for an intentional homicide. (lm) that may be imposed

Please review proposed s. 940.01 ~~(1)(b)~~ very carefully to make sure that it does what you want it to do. When reviewing that provision, note the following:

1. The draft counts all of the following as prior convictions: prior convictions under s. 940.01 (l), stats.; convictions under Wisconsin law prior to 1/1/89 (the effective date of the revised homicide code) if the crime was comparable to s. 940.61 (1), stats.; convictions under federal law or the law of another state if the crime was comparable to s. 940.01 (1), stats. To count a conviction under any law other than s. 940.01 (l), stats., as a prior conviction, the judge must be satisfied beyond a reasonable doubt that the other law is comparable. (Compare s. 939.62 (2m) (b), stats., on which the language of proposed s. 940.01 ~~(1)(b)~~ is based.) (lm) (bm)

Is it your intent to count convictions under laws other than s. 940.01 (l), stats.? If not, let me know so that the draft can be changed to do what you want it to do.

2. Proposed s. 940.01 ~~(1)(b)~~ ^{(lm) (bm)} counts convictions of persons under 17 if the criminal court had ~~exclusive original~~ jurisdiction over the case. ~~This is to reflect the fact that Wisconsin criminal courts have original jurisdiction over juveniles 10 and over who are alleged to have violated s. 940.01, stats. Secs. 938.183, stats.~~ If only adult convictions were counted, a juvenile who was convicted of violating s. 940.01 (1), stats., before he or she turned 17 would have a clean slate for purposes of proposed s. 940.01 ~~(1)(b)~~. If you want to take that approach to the treatment of juvenile offenses, please let me know so that the draft can be changed to do so.

Jefren E. Olsen
Legislative Attorney
26643906

(lm)

WFO'S
FORMAT FOR
FORM ON PAGE 5 of inserts
8-14

anted under s. 973.155. If the defendant is acquitted, judgment shall be entered accordingly.

(4) Judgments shall be in writing and signed by the judge or clerk.

(5) A copy of the judgment shall constitute authority for the sheriff to execute the sentence.

(6) The following forms may be used for judgments:

STATE OF WISCONSIN

County

In... Court

The State of Wisconsin

vs.

(Name of defendant)

UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

IT IS ADJUDGED That the defendant has been convicted upon the defendant's plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty) (no contest) on the... day of..., ... (year), of the crime of... in violation of s....; and the Court having asked the defendant whether the defendant has anything to state why sentence should not be pronounced, and no sufficient grounds to the contrary being shown or appearing to the court.

*IT IS ADJUDGED That the defendant is guilty as convicted.

*IT IS ADJUDGED That the defendant is hereby committed to (he Wisconsin state prisons (county jail of... county) for an indeterminate term of not more than....

*IT IS ADJUDGED That the defendant is ordered to serve a bifurcated sentence consisting of year(s) of confinement in prison and months/years of extended supervision.

*IT IS ADJUDGED That the defendant is placed in the intensive sanctions program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes and the following conditions:....

*IT IS ADJUDGED That the defendant is hereby committed to detention in (the defendant's place of residence or place designated by judge) for a term of not more than....

*IT IS ADJUDGED That the defendant is placed on lifetime supervision by the department of corrections under section 939.615 of the Wisconsin Statutes.

*IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the costs of this action).

*IT IS ADJUDGED That the defendant pay restitution to....

*IT IS ADJUDGED That the defendant is restricted in his or her use of computers as follows:....

*The... at... is designated as the Reception Center to which the defendant shall be delivered by the sheriff.

*IT IS ORDERED That the clerk deliver a duplicate original of this judgment to the sheriff who shall forthwith execute the same and deliver it to the warden.

Dated this... day of..., ... (year)

BY THE COURT....

Date of Offense....,

District Attorney....,

Defense Attorney....

*Strike inapplicable paragraphs.

STATE OF WISCONSIN

County

In... Court

The State of Wisconsin

vs.

(Name of defendant)

On the... day of... (year), the district attorney appeared for the state and the defendant appeared in person and by... the defendant's attorney.

UPON ALL THE FILES, RECORDS AND PROCEEDINGS

IT IS ADJUDGED That the defendant has been found not guilty by the verdict of the jury (by the court) and is therefore ordered discharged forthwith.

Dated this... day of..., ... (year)

BY THE COURT....

NOTE: Sub. (6) is shown as affected by three acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).

(7) The department shall prescribe and furnish forms to the clerk of each county for use as judgments in cases where a defendant is placed on probation or committed to the custody of the department pursuant to chs. 967 to 979.

History: 1975 c. 39.199; 1977 c. 353, 418, 1979 c. 89; 1983 a. 261, 438, 538; 1987 a. 27, 1989 a. 31, 1991 a. 39. 1997 a. 250, 275, 283; s. 13.93(2)(c).

The trial court can on motion or on its own motion modify a criminal sentence if the motion is made within 90 days after sentencing. Prior cases overruled. The first judgment should not be vacated; it should be amended. Hayes v. State, 46 W (2d) 93, 175 NW (2d) 625.

A trial court must inform the defendant of his right to appeal. If it does not, the defendant may pursue a late appeal. Peterson v State, 54 W (2d) 370, 195 NW (2d) 837

The court did not abuse its discretion in revoking probation, reinstating the prior sentences and sentencing on 5 subsequent offenses a total cumulative sentence of 16 years, where the defendant had a long record and interposed a frivolous defense in the later trials. Lange v. State, 54 W (2d) 569, 196 NW (2d) 680.

Hayes v State was not intended to impose a jurisdictional limit on the power of a court to review a sentence. State ex rel Warren v County Court, 54 W (2d) 613, 197 NW (2d) 1

The requirement that a court inform the defendant of his right to appeal applies only to convictions after April 1, 1972. In re Applications of Maroney and Kunz, 54 W (2d) 638, 196 NW (2d) 712

Following sentencing the trial court must not only advise defendant of his right to appeal but also advise defendant and his attorney of the obligation of trial counsel to continue representation pending a decision as to appeal and until other counsel is appointed. Whitmore v State, 56 W (2d) 706, 203 NW (2d) 56.

Factors relevant to the appropriateness of the sentence discussed Tucker v. State, 56 W (2d) 728, 202 NW (2d) 897

A trial judge has no power to validly sentence with a mental reservation that he might modify the sentence within 90 days if defendant has profited from imprisonment, and he cannot change an imposed sentence unless new factors are present. State v Foellmi, 57 W (2d) 572, 205 NW (2d) 144.

Claim that the trial court lacked jurisdiction to impose sentence because it failed to enter judgment of conviction on the jury's verdict is not reviewable because it involves no jurisdictional question, and the construction of the statute was not raised by defendant in his motion for postconviction relief nor did defendant go back to the trial court for relief as a basis for an appeal. Sars v State, 63 W (2d) 92, 216 NW (2d) 22

Where Whitmore (56 W (2d) 706) instructions are given, defendant must show that failure to move for new trial constituted an unintentional waiver of rights. Thiessen v. State, X6 W (2d) 562, 273 NW (2d) 314 (1979)

See note to 971.31, citing State v. Smith, 113 W (2d) 497, 335 NW (2d) 376 (1983). Judgment entered by state court during pendency of removal proceedings in federal court was void. State v. Cegielski, 124 W (2d) 13, 368 NW (2d) 628 (1985)

Court's refusal to poll jurors individually was reversible error. Stare v. Woitalewicz, 127 W (2d) 344, 379 NW (2d) 338 (Ct. App 1985)

Written judgment of conviction is not prerequisite to sentencing. State v. Pham, 137 W (2d) 31, 403 NW (2d) 35 (1987).

Where judge allowed voir dire after polling jury on guilty verdict and where one juror's response seriously undermined previous vote of guilty, jury's verdict was no longer unanimous, requiring new trial. State v. Cartagena, 140 W (2d) 59, 409 NW (2d) 386 (Ct. App 1987).

There is no error in noting dismissed charges on a judgment of conviction. State v Theriault, 187 W (2d) 125, 522 NW (2d) 254 (Ct App 1994).

There was no impropriety in a trial court's inclusion of its parole recommendation in a judgment of conviction. State v Whiteside, 205 W (2d) 677, 556 NW (2d) 443 (Ct. App. 1996)

As to traffic cases. see note to 345.34, citing 63 Atty. Gen 328

972.14 Statements before sentencing. (1) In this section:

(a) "Crime considered at sentencing" means any crime for which the defendant was convicted and any read-in crime, as defined in s. 973.20 (1 g) (b).

(b) "Victim" has the meaning specified in s. 950.02 (4).

(2) Before pronouncing sentence, the court shall ask the defendant why sentence should not be pronounced upon him or her and allow the district attorney, defense counsel and defendant an opportunity to make a statement with respect to any matter relevant to the sentence. In addition, if the defendant is under 21 years of age and if the court has not ordered a presentence investigation under s. 972.15, the court shall ask the defendant if he or she has been adjudged delinquent under ch. 48, 1993 stats., or ch. 938 or has had a similar adjudication in any other state in the 4 years immediately preceding the date the criminal complaint relating to the present offense was issued.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1073/1dn
JEO:cmh&ksh:ijs

February 10, 1999

This is a redraft of 1997 LRB-1671, which was in turn based on 1995 Assembly Bill 352. The draft provides that a penalty of death may be imposed if the defendant has a prior conviction for an intentional homicide.

Please review proposed s. 940.01 (1m) *very carefully* to make sure that it does what you want it to do. When reviewing that provision, note the following:

1. The draft counts all of the following as prior convictions: prior convictions under s. 940.01 (1), stats.; convictions under Wisconsin law prior to 1/1/89 (the effective date of the revised homicide code) if the crime was comparable to s. 940.01 (1), stats.; convictions under federal law or the law of another state if the crime was comparable to s. 940.01 (1), stats. To count a conviction under any law other than s. 940.01 (1), stats., as a prior conviction, the judge must be satisfied beyond a reasonable doubt that the other law is comparable. (Compares. 939.62 (2m) (b), stats., on which the language of proposed s. 940.01 (1m) (bm) is based.)

Is it your intent to count convictions under laws other than s. 940.01 (1), stats.? If not, let me know so that the draft can be changed to do what you want it to do.

2. Proposed s. 940.01 (1m) (bm) counts convictions of persons under 17 if the criminal court had jurisdiction over the case. If only adult convictions were counted, a juvenile who was convicted of violating s. 940.01 (1), stats., before he or she turned 17 would have a clean slate for purposes of proposed s. 940.01 (1m). If you want to take that approach to the treatment of juvenile offenses, please let me know so that the draft can be changed to do so.

Jefren E. Olsen
Legislative Attorney
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E-mail: Jefren.Olsen@legis.state.wi.us

**SUBMITTAL
FORM**

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 2/10/99

To: Representative F. Lasee

Relating to LRB drafting number: LRB- 1073

Topic

Death penalty for certain homicide cases

Subject(s)

Criminal Law - homicide, Criminal Law - sentencing

1. **JACKET** the draft for introduction _____

in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.,

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Legislative Attorney
Telephone: (608) 266-8906