

1999 DRAFTING REQUEST

Bill

Received: 10/5/98

Received By: **olsenje**

Wanted: As time permits

Identical to LRB:

For: **Alan Lasee (608) 266-3512**

By/Representing: **Shari Lord**

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 homicides

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>
/?	olsenje 10/7/98	gilfokm 10/13/98		_____			State
/1		gilfokm 11/25/98	ismith 10/14/98	_____	lrb_docadmin 02/15/99	lrb_docadmin 04/16/99	
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FE Sent For:

05-13-99

<END>

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1?	olsenje		IS 10/14	IS/KM 10/14			
			IS 2/15/99	IS/KM 2/15/99			

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B I L L
REQUEST FORM

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

0452

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: Senator Alan J. Lasee

Date: 9-25-98 Person submitting request (name, phone number): Shari Lord
6-3512

Persons to contact for questions about this draft (names, phone numbers): "

Describe the problem, including any helpful examples.

How do you want to solve the problem?

1997 SB 30

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not retyped) copy. _____

You may attach a marked-up (not retyped) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67): _____

Requests are confidential unless stated otherwise.

- May we tell others that we are working on this for you? Yes No
- If yes: Anyone who asks? Yes No Any legislator? Yes No Only the following persons: _____

Do you consider this request urgent? Yes No If yes, please indicate why: _____

Should we give this request priority over any other pending request of this legislator, agency or body? Yes No If yes, sign your name here:

Yes No

Senator Lasee/SL

1997 - 1998 LEGISLATURE

1997 SENATE BILL 30

January 28, 1997 - Introduced by Senators A. Lasee, Fitzgerald, Drzewiecki, Huelsman, Zien, Welch and Buettner, cosponsored by Representatives Kaufert, Ladwig, Brandemuehl, Musser, Foti, Handrick, Owens, Green, Dobyns, Kreibich, Hoven and Ott. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

Pg1Ln1 **An Act** to renumber 939.50 (1) (a), 939.50 (3) (a) and 973.015; to renumber and
Pg1Ln2 amend 940.01 (1); to amend 301.048 (2) (b), 302.11 (1m), 303.065 (1), 304.02
Pg1Ln3 (5), 304.06 (1) (b), 304.071 (2), 939.30 (2), 939.31, 939.32 (1) (a), 939.50 (2),
Pg1Ln4 939.60, 939.624 (2), 939.625 (1) (b) 2., 939.63 (1) (a) 2., 961.335 (1), 971.17 (1),
Pg1Ln5 972.03, 972.13 (6), 973.013 (1) (b), 973.0135 (3), 973.032 (2) (b), 973.09 (1) (c) and
Pg1Ln6 978.07 (1) (c) 1.; and to create 301.046 (3) (cm), 304.06 (1t), 939.22 (7), 939.50
Pg1Ln7 (1) (ag), 939.50 (3) (ag), 940.01 (1) (b), 940.01 (1) (c), 940.01 (1) (d), 961.335 (1m),
Pg1Ln8 967.02 (1m), 973.015, 973.016 and 973.017 of the statutes; relating to:
Pg1Ln9 providing a penalty of either death or life imprisonment for the first-degree
Pg1Ln10 intentional homicide of a child younger than 16 years old, affecting parole
Pg1Ln11 eligibility and granting rule-making authority.

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 without parole eligibility restrictions) for any first-degree intentional homicide committed by a person who is 16 years old or older against a child who is younger than 16 years old. Other first-degree homicides remain 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 conviction finding that a first-degree homicide of a child younger than 16 years old had occurred, 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.

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 must set forth its findings in writing. Any death sentence is subject to automatic appellate review by the supreme court.

The court that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner. Twelve 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).

Pg2Ln1 **Section 1.** 301.046 (3) (cm) of the statutes is created to read:

Pg2Ln2 301.046 (3) (cm) The prisoner is not awaiting imposition of a death sentence.

Pg2Ln3 **Section 2.** 301.048 (2) (b) of the statutes is amended to read:

Pg2Ln4 301.048 (2) (b) He or she is a prisoner serving a ~~felony~~ sentence for a felony not
Pg2Ln5 punishable by death or life imprisonment and the department directs him or her to
Pg2Ln6 participate in the program.

Pg2Ln7 **Section 3.** 302.11 (1m) of the statutes is amended to read:

Pg2Ln8 302.11 (1m) An inmate serving a life term is not entitled to mandatory release.
Pg2Ln9 Except as provided in ss. 304.06 (1t), 939.62 (2m) and 973.014, the parole commission
Pg3Ln1 may parole the inmate as specified in s. 304.06 (1). An inmate awaiting imposition
Pg3Ln2 of a death sentence is not eligible for parole.

Pg3Ln3 **Section 4.** 303.065 (1) of the statutes is amended to read:

Pg3Ln4 303.065 (1) The department may grant work release privileges to any person
Pg3Ln5 incarcerated within the state prisons, except that no person serving a life sentence
Pg3Ln6 may be considered for work release until he or she has reached parole eligibility
Pg3Ln7 under s. 304.06 (1) (b) or (1t) or 973.014 (1) (a) or (b), whichever is applicable, and no
Pg3Ln8 person serving a life sentence under s. 939.62 (2m) or 973.014 (1) (c) or awaiting
Pg3Ln9 imposition of a death sentence may be considered for work release.

Pg3Ln10 **Section 5.** 304.02 (5) of the statutes is amended to read:

Pg3Ln11 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
Pg3Ln12 sentence under s. 939.62 (2m) or 973.014 (1) (c) or awaiting imposition of a death
Pg3Ln13 sentence is not eligible for release to parole supervision under this section.

Pg3Ln14 **Section 6.** 304.06 (1) (b) of the statutes is amended to read:

Pg3Ln15 304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2) or
Pg3Ln16 973.0135, the parole commission may parole an inmate of the Wisconsin state
Pg3Ln17 prisons or any felon or any person serving at least one year or more in a county house
Pg3Ln18 of correction or a county reforestation camp organized under s. 303.07, when he or
Pg3Ln19 she has served 25% of the sentence imposed for the offense, or 6 months, whichever
Pg3Ln20 is greater. Except as provided in sub. (1t) or s. 939.62 (2m) or 973.014, the parole
Pg3Ln21 commission may parole an inmate serving a life term when he or she has served 20
Pg3Ln22 years, as modified by the formula under s. 302.11 (1) and subject to extension using
Pg3Ln23 the formulas under s. 302.11 (2). The person serving the life term shall be given
Pg3Ln24 credit for time served prior to sentencing under s. 973.155, including good time under
Pg3Ln25 s. 973.155 (4). The secretary may grant special action parole releases under s.
Pg4Ln1 304.02. The department or the parole commission shall not provide any convicted
Pg4Ln2 offender or other person sentenced to the department's custody any parole eligibility
Pg4Ln3 or evaluation until the person has been confined at least 60 days following
Pg4Ln4 sentencing. The parole commission may not parole an inmate who is awaiting
Pg4Ln5 imposition of a death sentence.

Pg4Ln6 **Section 7.** 304.06 (1t) of the statutes is created to read:

Pg4Ln7 304.06 (1t) If the prisoner is serving a life term imposed under s. 973.015, the
Pg4Ln8 prisoner is eligible for parole only when authorized by the sentencing court under s.
Pg4Ln9 973.015 (3) (c).

Pg4Ln10 **Section 8.** 304.071 (2) of the statutes is amended to read:

Pg4Ln11 304.071 (2) If a prisoner is not eligible for parole under s. 304.06 (1) (b) or (1t),
Pg4Ln12 939.62 (2m), 961.49 (2), 973.014 (1) (c) or 973.032 (5), he or she is not eligible for
Pg4Ln13 parole under this section.

Pg4Ln14 **Section 9.** 939.22 (7) of the statutes is created to read:

Pg4Ln15 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for
Pg4Ln16 which one or more of the possible penalties is death or life imprisonment.

Pg4Ln17 **Section 10.** 939.30 (2) of the statutes is amended to read:

Pg4Ln18 939.30 (2) For a solicitation to commit a crime ~~for which the penalty is~~
Pg4Ln19 punishable by death or life imprisonment, the actor is guilty of a Class C felony. For
Pg4Ln20 a solicitation to commit a Class F felony, the actor is guilty of a Class E felony.

Pg4Ln21 **Section 11.** 939.31 of the statutes is amended to read:

Pg4Ln22 939.31 Conspiracy. Except as provided in ss. 161.41 (1x), 940.43 (4) and
Pg4Ln23 940.45 (4), whoever, with intent that a crime be committed, agrees or combines with
Pg4Ln24 another for the purpose of committing that crime may, if one or more of the parties
Pg4Ln25 to the conspiracy does an act to effect its object, be fined or imprisoned or both not
Pg5Ln1 to exceed the maximum provided for the completed crime; except that for a
Pg5Ln2 conspiracy to commit a crime ~~for which the penalty is~~ punishable by death or life
Pg5Ln3 imprisonment, the actor is guilty of a Class B felony.

Pg5Ln4 **Section 12.** 939.32 (1) (a) of the statutes is amended to read:

Pg5Ln5 939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is~~
Pg5Ln6 punishable by death or life imprisonment is guilty of a Class B felony.

Pg5Ln7 **Section 13.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

Pg5Ln8 **Section 14.** 939.50 (1) (ag) of the statutes is created to read:

Pg5Ln9 939.50 (1) (ag) Class AA felony.

Pg5Ln10 **Section 15.** 939.50 (2) of the statutes is amended to read:

Pg5Ln11 939.50 (2) A felony is a Class AA, A, B, BC, C, D or E felony when it is so
Pg5Ln12 specified in chs. 939 to 951.

Pg5Ln13 **Section 16.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

Pg5Ln14 **Section 17.** 939.50 (3) (ag) of the statutes is created to read:

Pg5Ln15 939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined
Pg5Ln16 under s. 973.015.

Pg5Ln17 **Section 18.** 939.60 of the statutes is amended to read:

Pg5Ln18 939.60 Felony and misdemeanor defined. A crime punishable by death or
Pg5Ln19 imprisonment in the Wisconsin state prisons is a felony. Every other crime is a
Pg5Ln20 misdemeanor.

Pg5Ln21 **Section 19.** 939.624 (2) of the statutes is amended to read:

Pg5Ln22 939.624 (2) If a person has one or more prior convictions for a serious violent
Pg5Ln23 crime or a crime punishable by death or life imprisonment and subsequently
Pg5Ln24 commits a serious violent crime, the court shall sentence the person to not less than
Pg5Ln25 5 years' imprisonment, but otherwise the penalties for the crime apply, subject to any
Pg6Ln1 applicable penalty enhancement. The court shall not place the defendant on
Pg6Ln2 probation.

Pg6Ln3 **Section 20.** 939.625 (1) (b) 2. of the statutes is amended to read:

Pg6Ln4 939.625 (1) (b) 2. If the maximum term of imprisonment for a felony is more
Pg6Ln5 than 5 years or is a life term or the felony is punishable by death, the maximum term
Pg6Ln6 of imprisonment for the felony may be increased by not more than 5 years.

Pg6Ln7 **Section 21.** 939.63 (1) (a) 2. of the statutes is amended to read:

Pg6Ln8 939.63 (1) (a) 2. If the maximum term of imprisonment for a felony is more than
Pg6Ln9 5 years or is a life term or the felony is punishable by death, the maximum term of
Pg6Ln10 imprisonment for the felony may be increased by not more than 5 years.

Pg6Ln11 **Section 22.** 940.01 (1) of the statutes is renumbered 940.01 (1) (a) and
Pg6Ln12 amended to read:

Pg6Ln13 940.01 (1) (a) Except as provided in par. (b) and sub. (2), whoever causes the
Pg6Ln14 death of another human being with intent to kill that person or another is guilty of
Pg6Ln15 a Class A felony.

Pg6Ln16 **Section 23.** 940.01 (1) (b) of the statutes is created to read:

Pg6Ln17 940.01 (1) (b) Except as provided in pars. (c) and (d) and sub. (2), whoever
Pg6Ln18 causes the death of another human being with intent to kill that person or another
Pg6Ln19 is guilty of a Class AA felony if the victim has not attained the age of 16 years.

Pg6Ln20 **Section 24.** 940.01 (1) (c) of the statutes is created to read:

Pg6Ln21 940.01 (1) (c) Notwithstanding s. 939.05, a person is subject to par. (b) as a party
Pg6Ln22 to a crime only if that person had intended that a person be killed.

Pg6Ln23 **Section 25.** 940.01 (1) (d) of the statutes is created to read:

Pg6Ln24 940.01 (1) (d) A person is subject to par. (b) only if the person is 16 years old
Pg6Ln25 or older when he or she commits the offense.

Pg7Ln1 **Section 26.** 961.335 (1) of the statutes is amended to read:

Pg7Ln2 961.335 (1) ~~Upon~~ Except as provided in sub. (1m), upon application, the
Pg7Ln3 controlled substances board may issue a permit authorizing a person to
Pg7Ln4 manufacture, obtain, possess, use, administer or dispense a controlled substance for
Pg7Ln5 purposes of scientific research, instructional activities, chemical analysis or other
Pg7Ln6 special uses, without restriction because of enumeration. No person ~~shall~~ may
Pg7Ln7 engage in any such activity without a permit issued under this section, except that
Pg7Ln8 an individual may be designated and authorized to receive the permit for a college
Pg7Ln9 or university department, research unit or similar administrative organizational
Pg7Ln10 unit and students, laboratory technicians, research specialists or chemical analysts
Pg7Ln11 under his or her supervision may be permitted possession and use of controlled
Pg7Ln12 substances for these purposes without obtaining an individual permit.

Pg7Ln13

Section 27. 961.335 (1m) of the statutes is created to read:

Pg7Ln14

Pg7Ln15

Pg7Ln16

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

Pg7Ln17

Section 28. 967.02 (1m) of the statutes is created to read:

Pg7Ln18

Pg7Ln19

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

Pg7Ln20

Section 29. 971.17 (1) of the statutes is amended to read:

Pg7Ln21

Pg7Ln22

Pg7Ln23

Pg7Ln24

Pg7Ln25

Pg8Ln1

Pg8Ln2

Pg8Ln3

Pg8Ln4

Pg8Ln5

Pg8Ln6

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

Pg8Ln7

Section 30. 972.03 of the statutes is amended to read:

Pg8Ln8

Pg8Ln9

Pg8Ln10

Pg8Ln11

Pg8Ln12

Pg8Ln13

Pg8Ln14

Pg8Ln15

Pg8Ln16

Pg8Ln17

Pg8Ln18

Pg8Ln19

Pg8Ln20

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

Pg8Ln21 defendants, the court shall allow the defense 4 peremptory challenges, and if there
Pg8Ln22 are more than 2 defendants, the court shall allow the defense 6 peremptory
Pg8Ln23 challenges. Each side shall be allowed one additional peremptory challenge if
Pg8Ln24 additional jurors are to be impaneled under s. 972.04 (1).

Pg8Ln25 **Section 31.** 972.13 (6) of the statutes is amended to read:

Pg9Ln1 972.13 (6) The following forms may be used for judgments:

Pg9Ln2 STATE OF WISCONSIN

Pg9Ln3 County

Pg9Ln4 In Court
Pg9Ln5 The State of Wisconsin

Pg9Ln6 vs.

Pg9Ln7(Name of defendant)

Pg9Ln8 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

Pg9Ln9 IT IS ADJUDGED That the defendant has been convicted upon the defendant's
Pg9Ln10 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)
Pg9Ln11 (no contest) on the day of, 19.., of the crime of in violation of s.; and the
Pg9Ln12 court having asked the defendant whether the defendant has anything to state why
Pg9Ln13 sentence should not be pronounced, and no sufficient grounds to the contrary being
Pg9Ln14 shown or appearing to the court.

Pg9Ln15 *IT IS ADJUDGED That the defendant is guilty as convicted.

Pg9Ln16 *IT IS ADJUDGED That the defendant shall be executed by lethal injection.

Pg9Ln17 *IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin
Pg9Ln18 state prisons (county jail of county) for an indeterminate term of not more than.....

Pg9Ln19 *IT IS ADJUDGED That the defendant is placed in the intensive sanctions
Pg9Ln20 program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes
Pg9Ln21 and the following conditions:....

Pg9Ln22 *IT IS ADJUDGED That the defendant is hereby committed to detention in
Pg9Ln23 (the defendant's place of residence or place designated by judge) for a term of not
Pg9Ln24 more than....

Pg10Ln1 *IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the
Pg10Ln2 costs of this action).

Pg10Ln3 *IT IS ADJUDGED That the defendant pay restitution to....

Pg10Ln4 *IT IS ADJUDGED That the defendant is restricted in his or her use of
Pg10Ln5 computers as follows:....

Pg10Ln6 *The at is designated as the Reception Center to which the defendant
Pg10Ln7 shall be delivered by the sheriff.

Pg10Ln8 *IT IS ORDERED That the clerk deliver a duplicate original of this judgment
Pg10Ln9 to the sheriff who shall forthwith execute the same and deliver it to the warden.

Pg10Ln10 Dated this day of, 19...

Pg10Ln11 BY THE COURT

Pg10Ln12 Date of Offense,

Pg10Ln13 District Attorney,

Pg10Ln14 Defense Attorney

Pg10Ln15 *Strike inapplicable paragraphs.

Pg10Ln16 STATE OF WISCONSIN

Pg10Ln17 County

Pg10Ln18 In Court

Pg10Ln19 The State of Wisconsin

Pg10Ln20 vs.

Pg10Ln21(Name of defendant)

Pg10Ln22 On the day of, 19..., the district attorney appeared for the state and the
Pg10Ln23 defendant appeared in person and by the defendant's attorney.

Pg10Ln24 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

Pg11Ln1 IT IS ADJUDGED That the defendant has been found not guilty by the verdict
Pg11Ln2 of the jury (by the court) and is therefore ordered discharged forthwith.

Pg11Ln3 Dated this day of, 19...

Pg11Ln4 BY THE COURT

Pg11Ln5 **Section 32.** 973.013 (1) (b) of the statutes is amended to read:

Pg11Ln6 973.013 (1) (b) The sentence shall have the effect of a sentence at hard labor
Pg11Ln7 for the maximum term fixed by the court, subject to the power of actual release from
Pg11Ln8 confinement by parole by the department or by pardon as provided by law. If a person
Pg11Ln9 is sentenced for a definite time for an offense for which the person may be sentenced
Pg11Ln10 under this section, the person is in legal effect sentenced as required by this section,
Pg11Ln11 said definite time being the maximum period. ~~A- Except as provided in s. 973.015,~~
Pg11Ln12 a defendant convicted of a crime for which the minimum penalty is life shall be
Pg11Ln13 sentenced for life.

Pg11Ln14 **Section 33.** 973.0135 (3) of the statutes is amended to read:

Pg11Ln15 973.0135 (3) A person is not subject to this section if the current serious felony
Pg11Ln16 is punishable by death or life imprisonment.

Pg11Ln17 **Section 34.** 973.015 of the statutes is renumbered 973.019.

Pg11Ln18 **Section 35.** 973.015 of the statutes is created to read:

Pg11Ln19 973.015 Sentence of death or life imprisonment for Class AA felony. (1)
Pg11Ln20 (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct a
Pg11Ln21 separate sentencing proceeding to determine whether the defendant should be
Pg11Ln22 sentenced to death or life imprisonment. The trial judge shall conduct the proceeding
Pg11Ln23 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury
Pg11Ln24 is unable to reconvene for a hearing on the issue of the penalty, the trial judge may
Pg11Ln25 summon a new jury to determine the issue of the imposition of the penalty. If the trial
Pg12Ln1 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the
Pg12Ln2 sentencing proceeding before a jury summoned for that purpose unless the
Pg12Ln3 defendant waives a jury.

Pg12Ln4 (b) In the proceeding, the court shall admit any evidence that may be relevant
Pg12Ln5 to the sentence regarding any mitigating circumstance. The court shall admit any
Pg12Ln6 other evidence according to the rules of evidence applicable at a criminal trial. The
Pg12Ln7 court shall provide the defendant with a fair opportunity to rebut any hearsay
Pg12Ln8 statements. This paragraph does not authorize the introduction of any evidence
Pg12Ln9 secured in violation of the state or federal constitution. The state has the burden of
Pg12Ln10 proof, beyond a reasonable doubt, regarding the existence of aggravating
Pg12Ln11 circumstances. The defendant has the burden of proof, by a preponderance of the
Pg12Ln12 evidence, regarding mitigating circumstances. The court shall permit the state and
Pg12Ln13 the defendant or his or her counsel to present arguments for or against a sentence
Pg12Ln14 of death.

Pg12Ln15 (2) (a) Unless the defendant waives the right to a jury, the jury shall deliberate
Pg12Ln16 after hearing all of the evidence and, by a majority vote, shall render an advisory
Pg12Ln17 sentence to the court of life imprisonment or death, based upon the following
Pg12Ln18 matters:

Pg12Ln19 1. The existence of aggravating circumstances under sub. (5).

Pg12Ln20 2. The existence of mitigating circumstances under sub. (6).

Pg12Ln21 (b) If the jury recommends life imprisonment, it may further recommend
Pg12Ln22 restrictions on the defendant's eligibility for parole or recommend that the defendant
Pg12Ln23 not be eligible for parole.

Pg13Ln1 (c) Upon the request of the defendant or the state, the court shall explain to the
Pg13Ln2 jury the court's options under sub. (3) (c) to sentence the defendant to life without the
Pg13Ln3 possibility of parole or with delayed parole eligibility.

Pg13Ln4 (3) (a) Notwithstanding the recommendation of a majority of the jury, the court,
Pg13Ln5 after weighing the aggravating and mitigating circumstances, shall enter a sentence
Pg13Ln6 of life imprisonment or death, but if the court imposes a sentence of death, it shall
Pg13Ln7 set forth in writing its findings upon which the sentence of death is based as to the
Pg13Ln8 facts:

Pg13Ln9 1. That sufficient aggravating circumstances exist under sub. (5); and

Pg13Ln10 2. That there are insufficient mitigating circumstances under sub. (6) to
Pg13Ln11 outweigh the aggravating circumstances.

Pg13Ln12 (b) In each case in which the court imposes the death sentence, the court must
Pg13Ln13 support its determination by specific written findings of fact based upon the
Pg13Ln14 circumstances in subs. (5) and (6) and upon the records of the trial and the sentencing
Pg13Ln15 proceedings.

Pg13Ln16 (c) If the court does not make the findings requiring the death sentence, the
Pg13Ln17 court shall impose a sentence of life imprisonment and shall make a parole eligibility
Pg13Ln18 determination regarding the person by choosing an option under s. 973.014 (1).

Pg13Ln19 (4) If a death sentence is imposed, the judgment of conviction and sentence of
Pg13Ln20 death is subject to automatic review by the supreme court within 60 days after
Pg13Ln21 certification by the sentencing court of the entire record, unless the supreme court,
Pg13Ln22 for good cause shown, extends the time for an additional period not to exceed 30 days.
Pg13Ln23 The review by the supreme court has priority over all other cases and shall be heard
Pg13Ln24 in accordance with rules promulgated by the supreme court.

Pg14Ln1 (5) The court and jury shall consider one or more of the following as
Pg14Ln2 aggravating circumstances:

-
- Pg14Ln3 (a) The Class AA felony was committed by a person under a sentence of
Pg14Ln4 imprisonment.
- Pg14Ln5 (b) The defendant knowingly created a great risk of death to many persons.
- Pg14Ln6 (c) The Class AA felony was committed for the purpose of avoiding or
Pg14Ln7 preventing a lawful arrest or effecting an escape from custody.
- Pg14Ln8 (d) The Class AA felony was committed to disrupt or hinder the lawful exercise
Pg14Ln9 of any governmental function or the enforcement of laws.
- Pg14Ln10 (e) The defendant intentionally caused bodily harm or mental anguish to the
Pg14Ln11 victim or another before the victim died.
- Pg14Ln12 (f) During the commission of the offense, the defendant enjoyed or was utterly
Pg14Ln13 indifferent to the suffering of another.
- Pg14Ln14 (6) The court and jury shall consider as a mitigating factor any aspect of the
Pg14Ln15 defendant's character, background or record or any of the circumstances of the
Pg14Ln16 offense that the defendant offers as a basis for a sentence other than death.
Pg14Ln17 Mitigating circumstances may include, but are not limited to, any of the following:
- Pg14Ln18 (a) The defendant has no significant history of prior criminal activity.
- Pg14Ln19 (b) The Class AA felony was committed while the defendant was under the
Pg14Ln20 influence of extreme mental or emotional disturbance.
- Pg14Ln21 (c) The victim was a participant in the defendant's conduct or consented to the
Pg14Ln22 act.
- Pg14Ln23 (d) The defendant was an accomplice in the Class AA felony committed by
Pg14Ln24 another person and the defendant's participation was relatively minor.
- Pg15Ln1 (e) The defendant acted under extreme duress or under the substantial
Pg15Ln2 domination of another person.

Pg15Ln3 (f) The capacity of the defendant to appreciate the criminality of his or her
Pg15Ln4 conduct or to conform his or her conduct to the requirements of law was substantially
Pg15Ln5 impaired.

Pg15Ln6 (g) The age of the defendant at the time of the crime.

Pg15Ln7 (7) The court that imposes a sentence of death shall set the date for execution.
Pg15Ln8 The defendant shall be committed to the Wisconsin state prisons pending the
Pg15Ln9 execution of the death sentence.

Pg15Ln10 (8) The execution of a death sentence shall be by lethal injection.

Pg15Ln11 **Section 36.** 973.016 of the statutes is created to read:

Pg15Ln12 973.016 Stay of execution of death sentence. The execution of a death
Pg15Ln13 sentence may be stayed only by the governor or incident to an appeal.

Pg15Ln14 **Section 37.** 973.017 of the statutes is created to read:

Pg15Ln15 973.017 Execution of death sentence. The secretary of corrections shall
Pg15Ln16 designate the executioner who shall provide a person subject to a death sentence with
Pg15Ln17 an intravenous injection of one or more substances in a lethal quantity. A person is
Pg15Ln18 immune from civil or criminal liability for his or her acts or omissions, in good faith,
Pg15Ln19 in regard to a lawful execution under this section. The secretary shall designate 12
Pg15Ln20 citizens to witness the execution. The secretary may not direct a physician to be
Pg15Ln21 present or require a physician to announce when death has occurred. A physician
Pg15Ln22 may certify the death after a person, other than a physician, has determined or
Pg15Ln23 pronounced death. The convicted person may request that certain additional people
Pg15Ln24 be allowed to witness the execution. The secretary shall grant any such reasonable
Pg15Ln25 request. The secretary may allow representatives of the news media to witness the
Pg16Ln1 execution under rules of the department. No other persons may be allowed to witness
Pg16Ln2 the execution.

Pg16Ln3 **Section 38.** 973.032 (2) (b) of the statutes is amended to read:

Pg16Ln4 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person
Pg16Ln5 under sub. (1) if he or she is convicted of a felony punishable by death or life

Pg16Ln6 imprisonment.

Pg16Ln7 **Section 39.** 973.09 (1) (c) of the statutes is amended to read:

Pg16Ln8 973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable
Pg16Ln9 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

Pg16Ln10 **Section 40.** 978.07 (1) (c) 1. of the statutes is amended to read:

Pg16Ln11 978.07 (1) (c) 1. Any case record of a felony punishable by death or life
Pg16Ln12 imprisonment or a related case, after the defendant's parole eligibility date under s.
Pg16Ln13 304.06 (1) or 973.014 or 50 years after the commencement of the action, whichever
Pg16Ln14 occurs later. If there is no parole eligibility date, the district attorney may destroy
Pg16Ln15 the case record after the defendant's death.

Pg16Ln16 **Section 41.** Initial applicability.

Pg16Ln17 (1) This act first applies to offenses committed on the effective date of this
Pg16Ln18 subsection.

~~939.63(1)(a)2.~~

2. If the maximum term of **imprisonment** for a felony is more than 5 years or is a **life** term, the maximum term of **imprisonment** for the felony may be increased by not more than 5 years.

~~971.17(1)~~

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

~~972.03~~

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

~~973.014~~ Sentence of **life imprisonment**; parole eligibility determination; extended supervision eligibility determination.

~~973.01(3)~~

(3) Not applicable to life sentences. If a person is being sentenced for a felony that is punishable by **life imprisonment**, he or she is not subject to this section but shall be sentenced under s. 973.014 (1g).

~~973.013(2)~~

(2) Upon the recommendation of the department, the governor may, without the procedure required by ch. 304, discharge absolutely, or upon such conditions and restrictions and under such limitation as the governor thinks proper, any inmate committed to the Wisconsin state prisons after he or she has served the minimum term of punishment prescribed by law for the

offense for which he or she was sentenced, except that if the term was **life imprisonment**, 5 years must elapse after release on parole or extended supervision before such a recommendation can be made to the governor. The discharge has the effect of an absolute or conditional pardon, respectively.

973.013 - ANNOT.

*Under s. 973.013, 1991 stats., [now sub. (1)], **life imprisonment** without parole is not an option. State v. Setagord, 187 W (2d) 339, 523 NW (2d) 124 (Ct. App. 1994).*

973.0135(3)

(3) A person is not subject to this section if the current serious felony is punishable by **life imprisonment**.

973.014

973.014 Sentence of life imprisonment; parole eligibility determination; extended supervision eligibility determination.

973.014(1)

(1) (intro.) Except as provided in sub. (2), when a court sentences a person to **life imprisonment** for a crime committed on or after July 1, 1988, but before December 31, 1999, the court shall make a parole eligibility determination regarding the person and choose one of the following options:

973.014(1g)(a)

(a) (intro.) Except as provided in sub. (2), when a court sentences a person to **life imprisonment** for a crime committed on or after December 31, 1999, the court shall make an extended supervision eligibility date determination regarding the person and choose one of the following options:

973.014(1g)(b)

(b) When sentencing a person to **life imprisonment** under par. (a), the court shall inform the person of the provisions of s. 302.114 (3) and the procedure for petitioning under s. 302.114 (5) for release to extended supervision.

973.014(1g)(c)

(c) A person sentenced to **life imprisonment** under par. (a) is not eligible for release on parole.

973.014(2)

(2) When a court sentences a person to **life imprisonment** under s. 939.62 (2m) (c), the court shall provide that the sentence is without the possibility of parole or extended supervision.

973.032(2)(b)

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

301.048(2)(b)

(b) He or she is a prisoner serving a felony sentence not punishable by **life imprisonment** and the department directs him or her to participate in the program. This paragraph does not apply to a prisoner serving a bifurcated sentence imposed under s. 973.01.

302.12 - ANNOT.

*Denying industrial good time to inmates sentenced to **life imprisonment** does not violate equal protection clause. Parker v. Percy, 105 W (2d) 486, 314 NW (2d) 166 (Ct. App. 1981).*

939.30(2)

(2) For a solicitation to commit a crime for which the penalty is **life imprisonment**, the actor is guilty of a Class C felony. For a solicitation to commit a Class E felony, the actor is guilty of a Class E felony.

939.31

939.31 Conspiracy. Except as provided in ss. 940.43 (4), 940.45 (4) and 961.41 (1x), whoever, with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, be fined or imprisoned or both not to exceed the maximum provided for the completed crime; except that for a conspiracy to commit a crime for which the penalty is **life imprisonment**, the actor is guilty of a Class B felony.

939.32(1)(a)

(a) Whoever attempts to commit a crime for which the penalty is **life imprisonment** is guilty of a Class B felony.

939.50(3)(a)

(a) For a Class A felony, **life imprisonment**.

939.62(2m)(c)

(c) If the actor is a persistent repeater, the term of **imprisonment** for the felony for which the persistent repeater presently is being sentenced under ch. 973 is **life imprisonment** without the possibility of parole or extended supervision.

939.624(2)

(2) If a person has one or more prior convictions for a serious violent crime or a crime punishable by **life imprisonment** and subsequently commits a serious violent crime, the court shall sentence the person to not less than 5 years' **imprisonment**, but otherwise the penalties for the crime apply, subject to any applicable penalty enhancement. The court shall not place the defendant on probation.

939.625(1)(b)2.

2. If the maximum term of **imprisonment** for a felony is more than 5 years or is a **life** term, the maximum term of **imprisonment** for the felony may be increased by not more than 5 years.

✓ 973.09(1)(c)

(c) When a person is convicted of any crime which is punishable by life imprisonment, the court shall not place the person on probation.

976.03(16)

~~(16) Bail; in what cases; conditions of bond.~~ Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as the judge deems proper, conditioned for the prisoner's appearance before the judge at a time specified in such bond, and for the prisoner's surrender, to be arrested upon the warrant of the governor of this state.

✓ 978.07(1)(c)1.

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

990.001 - ANNOT.

The general rule is that a specific penalty prescribed by a special statute for a particular offense takes precedence over a general provision in a penal code; hence 161.30 (12), Stats. 1969, prescribing a penalty for violation of 161.30, ranging from one year to life imprisonment is a specific penalty provision and takes precedence over 161.20, a general penalty provision permitting maximum punishment of not more than 3 years for offenses defined in ch. 161. State ex rel. Gutbrod v. Wolke, 49 W (2d) 736, 183 NW (2d) 161.

Section #. 940.01 of the statutes is amended to read:

940.01 First-degree intentional homicide. (1) OFFENSES. (a) Except as provided in sub. (2), whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.

(b) Except as provided in sub. (2), whoever causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another is guilty of a Class A felony.

(2) MITIGATING CIRCUMSTANCES. The following are affirmative defenses to prosecution under this section which mitigate the offense to 2nd-degree intentional homicide under s. 940.05:

(a) *Adequate provocation.* Death was caused under the influence of adequate provocation as defined in s. 939.44.

(b) *Unnecessary defensive force.* Death was caused because the actor believed he or she or another was in imminent danger of death or great bodily harm and that the force used was necessary to defend the endangered person, if either belief was unreasonable.

(c) *Prevention of felony.* Death was caused because the actor believed that the force used was necessary in the exercise of the privilege to prevent or terminate the commission of a felony, if that belief was *unreasonable*.

(d) *Coercion; necessity.* Death was caused in the exercise of a privilege under s. 939.45 (1).

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

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

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1999-2000
1997-1998 LEGISLATURE

Note

LRB-10771
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1997 SENATE BILL 30

8452/11

January 28, 1997 - Introduced by Senators A. LASEE, FITZGERALD, DRZEWIECKI, HUELSMAN, ZIEN, WELCH and BUETTNER, cosponsored by Representatives KAUREHT, LADWIG, BRANDEMUEHL, MUSSER, FOIT, HANBRICK, OWENS, GREEN, DOBYNS, KREIBICH, HOVEN and OTT. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

regenerate
cut down

and extended supervision

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), 973.032 (2) (b), 973.09 (1) (c) and
6 978.07 (1) (c) 1.; and to create 301.046 (3) (cm), 304.06 (1t), 939.22 (7), 939.50
7 (1) (ag), 939.50 (3) (ag), 940.01 (1) (b), 940.01 (1) (c), 940.01 (1) (d), 961.335 (1m),
8 967.02 (1m), 973.015, 973.016 and 973.017 of the statutes; relating to:
9 providing a penalty of either death or life imprisonment for the first-degree
10 intentional homicide of a child younger than 16 years old, affecting parole
11 eligibility and granting rule-making 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 without parole eligibility restrictions) for any first-degree intentional homicide committed by a person who is 16 years old or older against a child who is younger

SENATE BILL 30

than 16 years old. Other first-degree homicides remain 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 conviction finding that a first-degree homicide of a child younger than 16 years old had occurred, 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.

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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 must set forth its findings in writing. Any death sentence is subject to automatic appellate review by the supreme court.

The court that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner. Twelve 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.

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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:

8 302.11 (1m) An inmate serving a life term is not entitled to mandatory release.

9 Except as provided in ss. 304.06 (1t), 939.62 (2m) and 973.014, the parole commission

SENATE BILL 30

1 may parole the inmate as specified in s. 304.06 (1). An inmate awaiting imposition
2 of a death sentence is not eligible for parole.

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

4 303.065 (1) The department may grant work release privileges to any person
5 incarcerated within the state prisons, except that no person serving a life sentence
6 may be considered for work release until he or she has reached parole eligibility
7 under s. 304.06 (1) (b) or (1t) or 973.014 (1) (a) or (b), whichever is applicable, and no
8 person serving a life sentence under s. 939.62 (2m) or 973.014 (1) (c) or awaiting
9 imposition of a death sentence may be considered for work release.

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

11 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
12 sentence under s. 939.62 (2m) or 973.014 (1) (c) or awaiting imposition of a death
13 sentence is not eligible for release to parole supervision under this section.

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

15 304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2) or
16 973.0135, the parole commission may parole an inmate of the Wisconsin state
17 prisons or any felon or any person serving at least one year or more in a county house
18 of correction or a county reforestation camp organized under s. 303.07, when he or
19 she has served 25% of the sentence imposed for the offense, or 6 months, whichever
20 is greater. Except as provided in sub. (1t) or s. 939.62 (2m) or 973.014, the parole
21 commission may parole an inmate serving a life term when he or she has served 20
22 years, as modified by the formula under s. 302.11 (1) and subject to extension using
23 the formulas under s. 302.11 (2). The person serving the life term shall be given
24 credit for time served prior to sentencing under s. 973.155, including good time under
25 s. 973.155 (4). The secretary may grant special action parole releases under s.

SENATE BILL 30

SECTION 6

1 ~~304.02. The department or the parole commission shall not provide any convicted~~
 2 ~~offender or other person sentenced to the department's custody any parole eligibility~~
 3 ~~or evaluation until the person has been confined at least 60 days following~~
 4 ~~sentencing. The parole commission may not parole an inmate who is awaiting~~
 5 ~~imposition of a death sentence.~~

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

7 304.06 (1t) If the prisoner is serving a life term imposed under s. 973.015, the
 8 prisoner is eligible for parole only when authorized by the sentencing court under s.
 9 973.015 (3) (c).

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

11 304.071 (2) If a prisoner is not eligible for parole under s. ~~304.06 (1) (b) or (1t),~~
 12 939.62 (2m), 961.49 (2), 973.014 (1) (c) or 973.032 (5), he or she is not eligible for
 13 parole under this section.

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

15 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for
 16 which one or more of the possible penalties is death or life imprisonment.

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

18 939.30 (2) For a solicitation to commit a crime for which the penalty is
 19 punishable by death or life imprisonment, the actor is guilty of a Class C felony. For
 20 a solicitation to commit a Class E felony, the actor is guilty of a Class E felony.

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

22 939.31 Conspiracy. Except as provided in ss. ~~61.41 (1x), 940.43 (4), and~~
 23 and 940.45 (4), whoever, with intent that a crime be committed, agrees or combines with
 24 another for the purpose of committing that crime may, if one or more of the parties
 25 to the conspiracy does an act to effect its object, be fined or imprisoned or both not

SENATE BILL 30

1 to exceed the maximum provided for the completed crime; except that for a
2 conspiracy to commit a crime ~~for which the penalty is punishable by death~~ or life
3 imprisonment, the actor is guilty of a Class B felony.

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

5 939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is~~
6 punishable by death or life imprisonment is guilty of a Class B felony.

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

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

9 939.50 (1) (ag) Class AA felony.

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

11 939.50 (2) A felony is a Class AA, A, B, BC, C, D or E felony when it is so
12 specified in chs. 939 to 951.

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

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

15 939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined
16 under s. 973.015.

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

18 **939.60 Felony and misdemeanor defined.** A crime punishable by death or
19 imprisonment in the Wisconsin state prisons is a felony. Every other crime is a
20 misdemeanor.

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

22 939.624 (2) If a person has one or more prior convictions for a serious violent
23 crime or a crime punishable by death or life imprisonment and subsequently
24 commits a serious violent crime, the court shall sentence the person to not less than
25 5 years' imprisonment, but otherwise the penalties for the crime apply, subject to any

SENATE BILL 30

1 applicable penalty enhancement. The court shall not place the defendant on
2 probation.

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

4 939.625 (1) (b) 2. If the maximum term of imprisonment for a felony is more
5 than 5 years or is a life term or the felony is punishable by death,[✓] the maximum term
6 of imprisonment for the felony may be increased by not more than 5 years.

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

8 939.63 (1) (a) 2. If the maximum term of imprisonment for a felony is more than
9 5 years or is a life term or the felony is punishable by death,[✓] the maximum term of
10 imprisonment for the felony may be increased by not more than 5 years.

INS
6-11

11 SECTION 22. 940.01 (1) of the statutes is renumbered 940.01 (1) (a) and
12 amended to read:

13 940.01 (1) (a) Except as provided in par. (b) and sub. (2), whoever causes the
14 death of another human being with intent to kill that person or another is guilty of
15 a Class A felony.

16 SECTION 23. 940.01 (1) (b) of the statutes is created to read:

17 940.01 (1) (b) Except as provided in pars. (c) and (d) and sub. (2), whoever
18 causes the death of another human being with intent to kill that person or another
19 is guilty of a Class AA felony if the victim has not attained the age of 16 years.

20 SECTION 24. 940.01 (1) (c) of the statutes is created to read:

21 940.01 (1) (c) Notwithstanding s. 939.05, a person is subject to par. (b) as a party
22 to a crime only if that person had intended that a person be killed.

23 SECTION 25. 940.01 (1) (d) of the statutes is created to read:

24 940.01 (1) (d) A person is subject to par. (b) only if the person is 16 years old
25 or older when he or she commits the offense.

SENATE BILL 30

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

2 961.335 (1) Upon Except as provided in sub. (1m), upon application, the
3 controlled substances board may issue a permit authorizing a person to
4 manufacture, obtain, possess, use, administer or dispense a controlled substance for
5 purposes of scientific research, instructional activities, chemical analysis or other
6 special uses, without restriction because of enumeration. No person shall may
7 engage in any such activity without a permit issued under this section, except that
8 an individual may be designated and authorized to receive the permit for a college
9 or university department, research unit or similar administrative organizational
10 unit and students, laboratory technicians, research specialists or chemical analysts
11 under his or her supervision may be permitted possession and use of controlled
12 substances for these purposes without obtaining an individual permit.

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

14 961.335 (1m) Upon application of the secretary of corrections for a permit to
15 obtain a controlled substance for purposes of an execution under s. 973.017, the
16 controlled substances board shall issue a permit under this section.

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

18 967.02 (1m) "Crime punishable by death or life imprisonment" has the
19 meaning given in s. 939.22 (7).

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

21 ~~971.17 (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
24 two-thirds of the maximum term of imprisonment that could be imposed under s.
25 973.15 (2) (a) against an offender convicted of the same crime or crimes, including~~

INS
7-20 (20)

SENATE BILL 30**SECTION 29**

1 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621,
2 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b) and 940.25 (1b) and 961.48
3 and other penalty enhancement statutes, as applicable, subject to the credit
4 provisions of s. 973.155. If the ~~maximum term of imprisonment is~~ crime is
5 punishable by death or life imprisonment, the commitment period specified by the
6 court may be life, subject to termination under sub. (5).

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

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

25 **SECTION 31.** 972.13 (6) of the statutes is amended to read:

SENATE BILL 30

972.13 (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 ..., 19.., 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 shall be executed by lethal injection.

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

*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.....

SENATE BILL 30

SECTION 31

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

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

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

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

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

10 Dated this day of, 19...

11 BY THE COURT

12 Date of Offense,

13 District Attorney,

14 Defense Attorney

15 *Strike inapplicable paragraphs.

16 STATE OF WISCONSIN

17 County

18 In Court

19 The State of Wisconsin

20 vs.

21(Name of defendant)

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

24 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

SENATE BILL 30

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

3 Dated this day of, 19...

4 BY THE COURT

5 **SECTION 32.** 973.013 (1) (b) of the statutes is amended to read:

6 973.013 (1) (b) The sentence shall have the effect of a sentence at hard labor
7 for the maximum term fixed by the court, subject to the power of actual release from
8 confinement by parole by the department or by pardon as provided by law. If a person
9 is sentenced for a definite time for an offense for which the person may be sentenced
10 under this section, the person is in legal effect sentenced as required by this section,
11 said definite time being the maximum period. ~~A- Except as provided in s. 973.015,~~
12 ~~a~~ defendant convicted of a crime for which the minimum penalty is life shall be
13 sentenced for life.

14 **SECTION 33** 973.0135 (3) of the statutes is amended to read:

15 973.0135 (3) A person is not subject to this section if the current serious felony
16 is punishable by death or life imprisonment.

17 **SECTION 34.** 973.015[✓] of the statutes is renumbered 973.019[✓].

18 **SECTION 35.** 973.015 of the statutes is created to read:

19 **973.015 Sentence of death or life imprisonment for Class AA felony. (1)**

20 (a) Upon conviction of a defendant of a Class AA[✓] felony, the court shall conduct a
21 separate sentencing proceeding to determine whether the defendant should be
22 sentenced to death or life imprisonment. The trial judge shall conduct the proceeding
23 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury
24 is unable to reconvene for a hearing on the issue of the penalty, the trial judge may
25 summon a new jury to determine the issue of the imposition of the penalty. If the trial

SENATE BILL 30

1 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the
2 sentencing proceeding before a jury summoned for that purpose unless the
3 defendant waives a jury.

a sentencing *under par. (a)* ✓

4 (b) In ~~the~~ proceeding, the court shall admit any evidence that may be relevant
5 to the sentence regarding any mitigating circumstance. The court shall admit any
6 other evidence according to the rules of evidence applicable at a criminal trial. The
7 court shall provide the defendant with a fair opportunity to rebut any hearsay
8 statements. This paragraph does not authorize the introduction of any evidence
9 secured in violation of the state or federal constitution. The state has the burden of
10 proof, beyond a reasonable doubt, regarding the existence of aggravating
11 circumstances. The defendant has the burden of proof, by a preponderance of the
12 evidence, regarding mitigating circumstances. The court shall permit the state and
13 the defendant or his or her counsel to present arguments for or against a sentence
14 of death.

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

- 19 1. The existence of aggravating circumstances under sub. (5). ✓
- 20 2. The existence of mitigating circumstances under sub. (6). ✓

21 (b) If the jury recommends life imprisonment, it may further recommend
22 restrictions on the defendant's eligibility for parole or recommend that the defendant
23 not be eligible for parole *or extended supervision* ✓

SENATE BILL 30

1 (c) Upon the request of the defendant or the state, the court shall explain to the
 2 jury the court's options under sub. (3) (c) to sentence the defendant to life without the
 3 possibility of parole ^{or extended supervision} or with delayed parole eligibility. ^{for parole or extended supervision}

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

- 9 1. That sufficient aggravating circumstances exist under sub. (5); and
- 10 2. That there are insufficient mitigating circumstances under sub. (6) to
 11 outweigh the aggravating circumstances.

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

INS
13-16

16 (c) ~~If the court does not make the findings requiring the death sentence, the
 17 court shall impose a sentence of life imprisonment and shall make a parole eligibility
 18 determination regarding the person by choosing an option under s. 973.014 (1).~~

19 (4) If a death sentence is imposed, the judgment of conviction and sentence of
 20 death is subject to automatic review by the supreme court within 60 days after
 21 certification by the sentencing court of the entire record, unless the supreme court,
 22 for good cause shown, extends the time for an additional period not to exceed 30 days.
 23 The review by the supreme court has priority over all other cases and shall be heard
 24 in accordance with rules promulgated by the supreme court.

SENATE BILL 30

1 **(5)** The court and jury shall consider one or more of the following as
2 aggravating circumstances:

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

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

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

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

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

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

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

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

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

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

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

SENATE BILL 30

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

3 (f) The capacity of the defendant to appreciate the criminality of his or her
4 conduct or to conform his or her conduct to the requirements of law was substantially
5 impaired.

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

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

8 The defendant shall be committed to the Wisconsin state prisons pending the
9 execution of the death sentence.

INS
15-9

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

11 **SECTION 36.** 973.016 of the statutes is created to read:

12 **973.016** [✓] **Stay of execution of death sentence.** The execution of a death
13 sentence may be stayed only by the governor or incident to an appeal.

14 **SECTION 37.** 973.017 of the statutes is created to read:

15 **973.017 Execution of death sentence.** The secretary of corrections shall
16 designate the executioner who shall provide a person subject to a death sentence with
17 an intravenous injection of one or more substances in a lethal quantity. A person is
18 immune from civil or criminal liability for his or her acts or omissions, in good faith,
19 in regard to a lawful execution under this section. The secretary shall designate 12
20 citizens to witness the execution. The secretary may not direct a physician to be
21 present or require a physician to announce when death has occurred. A physician
22 may certify the death after a person, other than a physician, has determined or
23 pronounced death. The convicted person may request that certain additional people
24 be allowed to witness the execution. The secretary shall grant any such reasonable
25 request. The secretary may allow representatives of the news media to witness the

SENATE BILL 30

SECTION 37

1 execution under rules of the department. No other persons may be allowed to witness
2 the execution.

3 **SECTION 38.** 973.032 (2) (b) of the statutes is amended to read:

4 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person
5 under sub. (1) if he or she is convicted of a felony punishable by death or life
6 imprisonment.

7 **SECTION 39.** 973.09 (1) (c) of the statutes is amended to read:

8 973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable
9 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

INS
16-10
10

SECTION 40. 978.07 (1) (c) 1. of the statutes is amended to read:

11 978.07 (1) (c) 1. Any case record of a felony punishable by death or life
12 imprisonment or a related case, after the defendant's parole eligibility date under s.
13 304.06 (1) or 973.014 or 50 years after the commencement of the action, whichever
14 occurs later. If there is no parole eligibility date, the district attorney may destroy
15 the case record after the defendant's death.

16 **SECTION 41. Initial applicability.**

17 (1) This act first applies to offenses committed on the effective date of this
18 subsection.

19 (END)

D-NOTE
↓

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0452/lins
JEO:.....

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

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

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

12 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.

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

14 302.114 (1) An inmate is subject to this section if he or she is serving a life
15 sentence imposed under s. 973.014 (1g) (a) 1. or 2. or if he or she is serving a life
sentence imposed under s. 973.015 and the sentencing court has authorized release
16 to extended supervision under s. 973.015 (3) (c). An inmate serving a life sentence
17 under s. 939.62 (2m) or 973.014 (1g) (a) 3. is not eligible for release to extended
18 supervision under this section.

19 History: 1997 a. 283.

20 **SECTION 4.** 302.114 (2) of the statutes is amended to read:

21 302.114 (2) Except as provided in subs. (3) and (9), an inmate subject to this
22 section may petition the sentencing court for release to extended supervision after
he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a)

1 1., or after he or she has reached the extended supervision eligibility date set by the
2 court, if the inmate was sentenced under s. 973.014 (1g) (a) 2. or 973.015 (3) (c).

3 History: 1997 a. 283.

SECTION 5. 302.114 (3) (a) (intro.)^X of the statutes is amended to read:

4 302.114 (3) (a) (intro.) The warden or superintendent shall keep a record of the
5 conduct of each inmate subject to this section, specifying each infraction of the rules.
6 If any inmate subject to this section violates any regulation of the prison or refuses
7 or neglects to perform required or assigned duties, the department may extend the
8 extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2. or 973.015
9 (3) (c), whichever is applicable, as follows:

10 History: 1997 a. 283.

SECTION 6. 302.114 (3) (b)^X of the statutes is amended to read:

11 302.114 (3) (b) In addition to the sanctions under par. (a), if an inmate subject
12 to this section is placed in adjustment, program or controlled segregation status, the
13 department may extend the extended supervision eligibility date set under s.
14 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c),[✓] whichever is applicable, by a number of days
15 equal to 50% of the number of days spent in segregation status. In administering this
16 paragraph, the department shall use the definition of adjustment, program or
17 controlled segregation status under departmental rules in effect at the time an
18 inmate is placed in that status.

19 History: 1997 a. 283.

SECTION 7. 302.114 (3) (c)^X of the statutes is amended to read:

20 302.114 (3) (c) An inmate subject to this section who files an action or special
21 proceeding, including a petition for a common law writ of certiorari, to which s.
22 807.15 applies shall have his or her extended supervision eligibility date set under
23 s. 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c),[✓] whichever is applicable, extended by the
24 number of days specified in the court order prepared under s. 807.15 (3). Upon

1 receiving a court order issued under s. 807.15, the department shall recalculate the
2 date on which the inmate to whom the order applies will be entitled to petition for
3 release to extended supervision and shall inform the inmate of that date.

History: 1997 a. 283.

4 **SECTION 8.** 303.065 (1) (b) of the statutes is amended to read:

5 303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence
6 specified in subd. 2., may be considered for work release only after he or she has
7 reached parole eligibility under s. 304.06 (1) (b) or (1t) or 973.014 (1) (a) or (b),
8 whichever is applicable, or he or she has reached his or her extended supervision
9 eligibility date under s. 302.114 (9) (b) ~~or~~, 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c),
10 whichever is applicable.

11 2. A person serving a life sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) or
12 (1g) (a) 3. may not be considered for work release. A person serving a life sentence
13 imposed under s. 973.015 may not be considered for work release if the sentencing
14 court has determined under s. 973.015 (3) (c) that the person is not eligible for release
15 to extended supervision.

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. 3; 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).

16 **SECTION 9.** 303.065 (1) (b) 3. of the statutes is created to read:

17 303.065 (1) (b) 3. A person awaiting imposition of a death sentence may not be
18 considered for work release.

19 **SECTION 10.** 304.02 (5) of the statutes is amended to read:

20 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
21 sentence under s. 939.62 (2m) (c) ~~or~~, 973.014 (1) (c) or (1g) or 973.015 or who is
22 awaiting imposition of a death sentence is not eligible for release to parole
23 supervision under this section.

NOTE: 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, 236; 1991 a. 39; 1993 a. 16, 79, 97, 289; 1995 a. 48; 1997 a. 275, 283, 326; s. 13.93 (2) (c).

SECTION 11. 304.06 (1) (b) of the statutes is amended to read:

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

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, 210; 1973 c. 90, 198, 333; 1975 c. 156, 199; 1977 c. 29, 353, 418, 440; 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 1700p; 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, 273, 283, 284, 326; s. 13.93 (2) (c).

INSERT 4-10:

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

304.071 (2) If a prisoner is not eligible for parole under s. 304.06 (1) (b) or (1t), 939.62 (2m) (c), 961.49 (2), 973.01 (6), 973.014 (1) (c) or (1g) or 973.032 (5), he or she is not 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, 148; 1997 a. 283, 326; s. 13.93 (2) (c).

INSERT 6-11:

1

2

SECTION 13. 940.01 (1) (a) ^x of the statutes is renumbered 940.01 (1) (a) 1. [✓] and amended to read:

3

4

940.01 (1) (a) 1. Except as provided in subd. 2[✓] and sub. (2), whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.

6

7

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

SECTION 14. 940.01 (1) (a) 2., 3. and 4. ^x of the statutes are created to read:

8

940.01 (1) (a) 2. Except as provided in subds. 3. and 4. [✓] and sub. (2), whoever causes the death of another human being with intent to kill that person or another is guilty of a Class AA felony if the victim has not attained the age of 16 [✓] years.

10

11

3. Notwithstanding s. [✓] 939.05, a person is subject to subd. 2. as a party to a crime only if that person had intended that a person be killed.

12

13

4. A person is subject to subd. 2. [✓] only if the person is 16 years old or older when he or she commits the offense.

14

15

SECTION 15. 940.01 (1) (b) ^x of the statutes is renumbered 940.01 (1) (b) 1. and amended to read:

16

17

940.01 (1) (b) 1. Except as provided in subds. 2. and 3. [✓] and sub. (2), whoever causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another is guilty of a Class

19

20

~~A~~ [✓] AA felony.

21

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

SECTION 16. 940.01 (1) (b) 2. and 3. ^x of the statutes are created to read:

22

940.01 (1) (b) 2. Notwithstanding s. 939.05, a person charged under subd. [✓] 1.

23

as a party to a crime is guilty of a Class AA felony only if that person had intended

24

that a person or an unborn child be killed. If a person charged as a party to a crime

1 under subd. 1. [✓] did not intend that a person or an unborn child be killed, he or she is
2 guilty of a Class A felony.

3 3. A person charged under subd. 1. is guilty of a Class AA felony only if the
4 person is 16 years old or older when he or she commits the offense. If a person
5 charged under subd. 1. [✓] is not 16 years old or older when he or she commits the offense,
6 he or she is guilty of a Class A felony.

7 **INSERT 7-20:**

8 **SECTION 17.** 971.17 (1) ^X of the statutes is amended to read:

9 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason
10 of mental disease or mental defect, the court shall commit the person to the
11 department of health and family services for a specified period not exceeding
12 two-thirds of the maximum term of imprisonment that could be imposed under s.
13 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
14 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621,
15 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b) and 961.48 and
16 other penalty enhancement statutes, as applicable, subject to the credit provisions
17 of s. 973.155. If the maximum term of imprisonment is [✓] crime is punishable by death
18 or life imprisonment, the commitment period specified by the court may be life,
19 subject to termination under sub. (5).

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1988 a. 359; 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 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275.

20 **SECTION 18.** 972.03 of the statutes is amended 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

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

History: 1983 a. 226; 1995 a. 427; Sup. Ct. Order No. 96-08, 20[✓]W (2d) xv (1997)

14 **SECTION 19. 972.13 (6)** of the statutes is amended to read:

15 972.13 (6) The following forms may be used for judgments:

16 STATE OF WISCONSIN
 17 County
 18 In.... Court
 19 The State of Wisconsin
 20 vs.

Left Justify }

21(Name of defendant)

Left Justify {

22 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

23 IT IS ADJUDGED That the defendant has been convicted upon the defendant's
 24 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)

1 (no contest) on the.... day of...., (year), of the crime of.... in violation of s.....; and
2 the court having asked the defendant whether the defendant has anything to state
3 why sentence should not be pronounced, and no sufficient grounds to the contrary
4 being shown or appearing to the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 BY THE COURT....

7 Date of Offense....,

8 District Attorney....,

9 Defense Attorney....

10 *Strike inapplicable paragraphs.

11 STATE OF WISCONSIN

12 County

13 In.... Court

14 The State of Wisconsin

15 vs.

16 Left justify Σ.....(Name of defendant)

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

19 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

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

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

23 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, 1997 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).

24 SECTION 20. 973.01 (3d) of the statutes is created to read:

1 973.01 (3d) [✓] NOT APPLICABLE TO DEATH SENTENCES. If a person is being sentenced
2 for a felony that is punishable by death, he or she is not subject to this section but
3 shall be sentenced under s. [✓]973.015.

4 **SECTION 21.** 973.013 (1) (b) [✓] of the statutes is amended to read:

5 973.013 (1) (b) Except as provided in s. 973.01, the sentence shall have the
6 effect of a sentence at hard labor for the maximum term fixed by the court, subject
7 to the power of actual release from confinement by parole by the department or by
8 pardon as provided by law. If a person is sentenced for a definite time for an offense
9 for which the person may be sentenced under this section, the person is in legal effect
10 sentenced as required by this section, said definite time being the maximum period.

11 ~~A~~ [✓] Except as provided in s. 973.015, a defendant convicted of a crime for which the
12 minimum penalty is life shall be sentenced for life.

History: 1973 c. 90; 1975 c. 189 s. 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.

INSERT 13-16:

13
14 (c) If the court does not make the findings requiring the death sentence, the
15 court shall impose a sentence of life imprisonment and shall make a parole eligibility
16 determination regarding the person if he or she is being sentenced for a crime
17 committed before December 31, 1999, or an extended supervision eligibility
18 determination regarding the person if he or she is being sentenced for a crime
19 committed on or after December 31, 1999. The court shall make a parole eligibility
20 determination under this paragraph [✓] by choosing one of the options specified in s.
21 973.014 (1) [✓]. The court shall make an extended supervision eligibility determination
22 under this paragraph by choosing one of the options specified in s. [✓]973.014 (1g) (a).

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INSERT 15-9:

(7m) A person sentenced to death under this section for a crime committed on or after December 31, 1999, is not eligible for release to extended supervision under s. 302.113 or 302.114.

INSERT 16-10:

SECTION 22. 978.07 (1) (c) 1. of the statutes is amended to read:

978.07 (1) (c) 1. Any case record of a felony punishable by death or life imprisonment or a related case, after the defendant's parole eligibility date under s. 304.06 (1) ~~or~~ ^{Score only} 973.014 (1) or 973.015 (3) (c) or date of eligibility for release to extended supervision under s. 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c), whichever is applicable, or 50 years after the commencement of the action, whichever occurs later. If there is no parole eligibility date or no date for release to extended supervision, the district attorney may destroy 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.

LRB-0452/1 da

JEO: jlg

D-Note

¶ This is a redraft of 1997 Senate
Bill 30. I had to make numerous changes
in the draft to reflect the changes
made in the statutes by 1997 Wisconsin
Act ^{plain} 283 ("truth-in-sentencing") and 295
(harm or death to an unborn child).

(JEO)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0452/1

JEO:...:ijs

OLD

0452/1

1999 BILL

Type and
return to
editing.

Proof all appended
STATS. w/STATS.

1 **AN ACT to renumber** 939.50 (1) (a), 939.50 (3) (a) and 973.015; **to renumber and**
2 **amend** 940.01 (1) (a) and 940.01 (1) (b); **to amend** 301.048 (2) (b), 302.11 (1m),
3 302.114 (1), 302.114 (2), 302.114 (3) (a) (intro.), 302.114 (3) (b), 302.114 (3) (c),
4 303.065 (1) (b), 304.02 (5), 304.06 (1) (b), 304.071 (2), 939.30 (2), 939.31, 939.32
5 (1) (a), 939.50 (2), 939.60, 939.624 (2), 939.625 (1) (b) 2., 939.63 (1) (a) 2., 961.335
6 (1), 971.17 (1), 972.03, 972.13 (6), 973.013 (1) (b), 973.0135 (3), 973.032 (2) (b),
7 973.09 (1) (c) and 978.07 (1) (c) 1.; and **to create** 301.046 (3) (cm), 303.065 (1)
8 (b) 3., 304.06 (1t), 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1) (a) 2., 3.
9 and 4., 940.01 (1) (b) 2. and 3., 961.335 (1m), 967.02 (1m), 973.01 (3d), 973.015,
10 973.016 and 973.017 of the statutes; **relating to:** providing a penalty of either
11 death or life imprisonment for the first-degree intentional homicide of a child

BILL

- 1 younger than 16 years old, affecting parole and extended supervision eligibility
 2 and granting rule-making 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 without parole eligibility restrictions) for any first-degree intentional homicide committed by a person who is 16 years old or older against a child who is younger than 16 years old. Other first-degree homicides remain 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 conviction finding that a first-degree homicide of a child younger than 16 years old had occurred, 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.

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 or extended supervision 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 or extended supervision eligibility. If the court chooses the death sentence it must set forth its findings in writing. Any death sentence is subject to automatic appellate review by the supreme court.

The court that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner. Twelve 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:

- 3 **SECTION 1.** 301.046 (3) (cm) of the statutes is created to read:
 4 301.046 (3) (cm) The prisoner is not awaiting imposition of a death sentence.
 5 **SECTION 2.** 301.048 (2) (b) of the statutes is amended to read:

BILL

1 301.048 (2) (b) He or she is a prisoner serving a felony sentence for a felony not
2 punishable by death or life imprisonment and the department directs him or her to
3 participate in the program. This paragraph does not apply to a prisoner serving a
4 bifurcated sentence imposed under s. 973.01.

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

6 302.11 (1m) An inmate serving a life term is not entitled to mandatory release.
7 Except as provided in ss. 304.06 (1t), 939.62 (2m) (c) and 973.014, the parole
8 commission may parole the inmate as specified in s. 304.06 (1). An inmate awaiting
9 imposition of a death sentence is not eligible for parole.

10 **SECTION 4.** 302.114 (1) of the statutes is amended to read:

11 302.114 (1) An inmate is subject to this section if he or she is serving a life
12 sentence imposed under s. 973.014 (1g) (a) 1. or 2. or if he or she is serving a life
13 sentence imposed under s. 973.015 and the sentencing court has authorized release
14 to extended supervision under s. 973.015 (3) (c). An inmate serving a life sentence
15 under s. 939.62 (2m) or 973.014 (1g) (a) 3. is not eligible for release to extended
16 supervision under this section.

17 **SECTION 5.** 302.114 (2) of the statutes is amended to read:

18 302.114 (2) Except as provided in subs. (3) and (9), an inmate subject to this
19 section may petition the sentencing court for release to extended supervision after
20 he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a)
21 1., or after he or she has reached the extended supervision eligibility date set by the
22 court, if the inmate was sentenced under s. 973.014 (1g) (a) 2. or 973.015 (3) (c).

23 **SECTION 6.** 302.114 (3) (a) (intro.) of the statutes is amended to read:

24 302.114 (3) (a) (intro.) The warden or superintendent shall keep a record of the
25 conduct of each inmate subject to this section, specifying each infraction of the rules.

BILL

1 If any inmate subject to this section violates any regulation of the prison or refuses
2 or neglects to perform required or assigned duties, the department may extend the
3 extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2. or 973.015
4 (3) (c), whichever is applicable, as follows:

5 **SECTION 7.** 302.114 (3) (b) of the statutes is amended to read:

6 302.114 (3) (b) In addition to the sanctions under par. (a), if an inmate subject
7 to this section is placed in adjustment, program or controlled segregation status, the
8 department may extend the extended supervision eligibility date set under s.
9 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c), whichever is applicable, by a number of days
10 equal to 50% of the number of days spent in segregation status. In administering this
11 paragraph, the department shall use the definition of adjustment, program or
12 controlled segregation status under departmental rules in effect at the time an
13 inmate is placed in that status.

14 **SECTION 8.** 302.114 (3) (c) of the statutes is amended to read:

15 302.114 (3) (c) An inmate subject to this section who files an action or special
16 proceeding, including a petition for a common law writ of certiorari, to which s.
17 807.15 applies shall have his or her extended supervision eligibility date set under
18 s. 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c), whichever is applicable, extended by the
19 number of days specified in the court order prepared under s. 807.15 (3). Upon
20 receiving a court order issued under s. 807.15, the department shall recalculate the
21 date on which the inmate to whom the order applies will be entitled to petition for
22 release to extended supervision and shall inform the inmate of that date.

23 **SECTION 9.** 303.065 (1) (b) of the statutes is amended to read:

24 303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence
25 specified in subd. 2., may be considered for work release only after he or she has

BILL

1 reached parole eligibility under s. 304.06 (1) (b) or (1t) or 973.014 (1) (a) or (b),
2 whichever is applicable, or he or she has reached his or her extended supervision
3 eligibility date under s. 302.114 (9) (b) ~~or~~, 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c),
4 whichever is applicable.

5 2. A person serving a life sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) or
6 (1g) (a) 3. may not be considered for work release. A person serving a life sentence
7 imposed under s. 973.015 may not be considered for work release if the sentencing
8 court has determined under s. 973.015 (3) (c) that the person is not eligible for release
9 to extended supervision.

10 **SECTION 10.** 303.065 (1) (b) 3. of the statutes is created to read:

11 303.065 (1) (b) 3. A person awaiting imposition of a death sentence may not be
12 considered for work release.

13 **SECTION 11.** 304.02 (5) of the statutes is amended to read:

14 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
15 sentence under s. 939.62 (2m) (c) ~~or~~, 973.014 (1) (c) or (1g) or 973.015 or who is
16 awaiting imposition of a death sentence is not eligible for release to parole
17 supervision under this section.

18 **SECTION 12.** 304.06 (1) (b) of the statutes is amended to read:

19 304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2),
20 973.01 (6) or 973.0135, the parole commission may parole an inmate of the Wisconsin
21 state prisons or any felon or any person serving at least one year or more in a county
22 house of correction or a county reforestation camp organized under s. 303.07, when
23 he or she has served 25% of the sentence imposed for the offense, or 6 months,
24 whichever is greater. Except as provided in sub. (1t) or s. 939.62 (2m) (c) or 973.014
25 (1) (b) or (c), (1g) or (2), the parole commission may parole an inmate serving a life

BILL

1 term when he or she has served 20 years, as modified by the formula under s. 302.11
2 (1) and subject to extension under s. 302.11 (1q) and (2), if applicable. The person
3 serving the life term shall be given credit for time served prior to sentencing under
4 s. 973.155, including good time under s. 973.155 (4). The secretary may grant special
5 action parole releases under s. 304.02. The department or the parole commission
6 shall not provide any convicted offender or other person sentenced to the
7 department's custody any parole eligibility or evaluation until the person has been
8 confined at least 60 days following sentencing. The parole commission may not
9 parole an inmate who is awaiting imposition of a death sentence.

10 **SECTION 13.** 304.06 (1t) of the statutes is created to read:

11 304.06 (1t) If the prisoner is serving a life term imposed under s. 973.015, the
12 prisoner is eligible for parole only when authorized by the sentencing court under s.
13 973.015 (3) (c).

14 **SECTION 14.** 304.071 (2) of the statutes is amended to read:

15 304.071 (2) If a prisoner is not eligible for parole under s. 304.06 (1) (b) or (1t),
16 939.62 (2m) (c), 961.49 (2), 973.01 (6), 973.014 (1) (c) or (1g) or 973.032 (5), he or she
17 is not eligible for parole under this section.

18 **SECTION 15.** 939.22 (7) of the statutes is created to read:

19 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for
20 which one or more of the possible penalties is death or life imprisonment.

21 **SECTION 16.** 939.30 (2) of the statutes is amended to read:

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

25 **SECTION 17.** 939.31 of the statutes is amended to read:

BILL

1 **939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4) and 961.41
2 (1x), whoever, with intent that a crime be committed, agrees or combines with
3 another for the purpose of committing that crime may, if one or more of the parties
4 to the conspiracy does an act to effect its object, be fined or imprisoned or both not
5 to exceed the maximum provided for the completed crime; *except that for a*
6 *conspiracy to commit a crime for which the penalty is punishable by death or life*
7 *imprisonment, the actor is guilty of a Class B felony.*

8 **SECTION 18.** 939.32 (1) (a) of the statutes is amended to read:

9 939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is~~
10 punishable by death or life imprisonment is guilty of a Class B felony.

11 **SECTION 19.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

12 **SECTION 20.** 939.50 (1) (ag) of the statutes is created to read:

13 939.50 (1) (ag) Class AA felony.

14 **SECTION 21.** 939.50 (2) of the statutes is amended to read:

15 939.50 (2) A felony is a Class AA, A, B, BC, C, D or E felony when it is so
16 specified in chs. 939 to 951.

17 **SECTION 22.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

18 **SECTION 23.** 939.50 (3) (ag) of the statutes is created to read:

19 939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined
20 under s. 973.015.

21 **SECTION 24.** 939.60 of the statutes is amended to read:

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

25 **SECTION 25.** 939.624 (2) of the statutes is amended to read:

BILL

1 939.624 (2) If a person has one or more prior convictions for a serious violent
2 crime or a crime punishable by death or life imprisonment and subsequently
3 commits a serious violent crime, the court shall sentence the person to not less than
4 5 years' imprisonment, but otherwise the penalties for the crime apply, subject to any
5 applicable penalty enhancement. The court shall not place the defendant on
6 probation.

7 **SECTION 26.** 939.625 (1) (b) 2. of the statutes is amended to read:

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

11 **SECTION 27.** 939.63 (1) (a) 2. of the statutes is amended to read:

12 939.63 (1) (a) 2. If the maximum term of imprisonment for a felony is more than
13 5 years or is a life term or the felony is punishable by death, the maximum term of
14 imprisonment for the felony may be increased by not more than 5 years.

15 **SECTION 28.** 940.01 (1) (a) of the statutes is renumbered 940.01 (1) (a) 1. and
16 amended to read:

17 940.01 (1) (a) 1. Except as provided in subd. 2. and sub. (2), whoever causes the
18 death of another human being with intent to kill that person or another is guilty of
19 a Class A felony.

20 **SECTION 29.** 940.01 (1) (a) 2., 3. and 4. of the statutes are created to read:

21 940.01 (1) (a) 2. Except as provided in subds. 3. and 4. and sub. (2), whoever
22 causes the death of another human being with intent to kill that person or another
23 is guilty of a Class AA felony if the victim has not attained the age of 16 years.

24 3. Notwithstanding s. 939.05, a person is subject to subd. 2. as a party to a crime
25 only if that person had intended that a person be killed.

BILL

1 4. A person is subject to subd. 2. only if the person is 16 years old or older when
2 he or she commits the offense.

3 **SECTION 30.** 940.01 (1) (b) of the statutes is renumbered 940.01 (1) (b) 1. and
4 amended to read:

5 940.01 (1) (b) 1. Except as provided in subds. 2. and 3. and sub. (2), whoever
6 causes the death of an unborn child with intent to kill that unborn child, kill the
7 woman who is pregnant with that unborn child or kill another is guilty of a Class
8 ~~A~~ AA felony.

9 **SECTION 31.** 940.01 (1) (b) 2. and 3. of the statutes are created to read:

10 940.01 (1) (b) 2. Notwithstanding s. 939.05, a person charged under subd. 1.
11 as a party to a crime is guilty of a Class AA felony only if that person had intended
12 that a person or an unborn child be killed. If a person charged as a party to a crime
13 under subd. 1. did not intend that a person or an unborn child be killed, he or she is
14 guilty of a Class A felony.

15 3. A person charged under subd. 1. is guilty of a Class AA felony only if the
16 person is 16 years old or older when he or she commits the offense. If a person
17 charged under subd. 1. is not 16 years old or older when he or she commits the offense,
18 he or she is guilty of a Class A felony.

19 **SECTION 32.** 961.335 (1) of the statutes is amended to read:

20 961.335 (1) ~~Upon~~ Except as provided in sub. (1m), upon application, the
21 controlled substances board may issue a permit authorizing a person to
22 manufacture, obtain, possess, use, administer or dispense a controlled substance for
23 purposes of scientific research, instructional activities, chemical analysis or other
24 special uses, without restriction because of enumeration. No person ~~shall~~ may
25 engage in any such activity without a permit issued under this section, except that

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

6 **SECTION 33.** 961.335 (1m) of the statutes is created to read:

7 961.335 (1m) Upon application of the secretary of corrections for a permit to
8 obtain a controlled substance for purposes of an execution under s. 973.017, the
9 controlled substances board shall issue a permit under this section.

10 **SECTION 34.** 967.02 (1m) of the statutes is created to read:

11 967.02 (1m) "Crime punishable by death or life imprisonment" has the
12 meaning given in s. 939.22 (7).

13 **SECTION 35.** 971.17 (1) of the statutes is amended to read:

14 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason
15 of mental disease or mental defect, the court shall commit the person to the
16 department of health and family services for a specified period not exceeding
17 two-thirds of the maximum term of imprisonment that could be imposed under s.
18 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
19 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621,
20 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b) and 961.48 and
21 other penalty enhancement statutes, as applicable, subject to the credit provisions
22 of s. 973.155. If the ~~maximum term of imprisonment is~~ crime is punishable by death
23 or life imprisonment, the commitment period specified by the court may be life,
24 subject to termination under sub. (5).

25 **SECTION 36.** 972.03 of the statutes is amended to read:

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

18 **SECTION 37.** 972.13 (6) of the statutes is amended to read:

19 972.13 (6) The following forms may be used for judgments:

20 STATE OF WISCONSIN

21 County

22 In.... Court

23 The State of Wisconsin

24 vs.

25 (Name of defendant)

BILL

1 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 BY THE COURT....

9 Date of Offense....,

10 District Attorney....,

11 Defense Attorney....

12 *Strike inapplicable paragraphs.

13 STATE OF WISCONSIN

14 County

15 In.... Court

16 The State of Wisconsin

17 vs.

18 (Name of defendant)

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

21 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

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

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

25 BY THE COURT....

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1 **SECTION 38.** 973.01 (3d) of the statutes is created to read:

2 973.01 (3d) NOT APPLICABLE TO DEATH SENTENCES. If a person is being sentenced
3 for a felony that is punishable by death, he or she is not subject to this section but
4 shall be sentenced under s. 973.015.

5 **SECTION 39.** 973.013 (1) (b) of the statutes is amended to read:

6 973.013 (1) (b) Except as provided in s. 973.01, the sentence shall have the
7 effect of a sentence at hard labor for the maximum term fixed by the court, subject
8 to the power of actual release from confinement by parole by the department or by
9 pardon as provided by law. If a person is sentenced for a definite time for an offense
10 for which the person may be sentenced under this section, the person is in legal effect
11 sentenced as required by this section, said definite time being the maximum period.
12 ~~A- Except as provided in s. 973.015, a defendant convicted of a crime for which the~~
13 ~~minimum penalty is life shall be sentenced for life.~~

14 **SECTION 40** 973.0135 (3) of the statutes is amended to read:

15 973.0135 (3) A person is not subject to this section if the current serious felony
16 is punishable by death or life imprisonment.

17 **SECTION 41.** 973.015 of the statutes is renumbered 973.019.

18 **SECTION 42.** 973.015 of the statutes is created to read:

19 **973.015 Sentence of death or life imprisonment for Class AA felony. (1)**

20 (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct a
21 separate sentencing proceeding to determine whether the defendant should be
22 sentenced to death or life imprisonment. The trial judge shall conduct the proceeding
23 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury
24 is unable to reconvene for a hearing on the issue of the penalty, the trial judge may
25 summon a new jury to determine the issue of the imposition of the penalty. If the trial

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1 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the
2 sentencing proceeding before a jury summoned for that purpose unless the
3 defendant waives a jury.

4 (b) In a sentencing proceeding under par. (a), the court shall admit any evidence
5 that may be relevant to the sentence regarding any *mitigating circumstance*. The
6 court shall admit any other evidence according to the rules of evidence applicable at
7 a criminal trial. The court shall provide the defendant with a fair opportunity to
8 rebut any hearsay statements. This paragraph does not authorize the introduction
9 of any evidence secured in violation of the state or federal constitution. The state has
10 the burden of proof, beyond a reasonable doubt, regarding the existence of
11 aggravating circumstances. The defendant has the burden of proof, by a
12 preponderance of the evidence, regarding mitigating circumstances. The court shall
13 permit the state and the defendant or his or her counsel to present arguments for or
14 against a sentence of death.

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

- 19 1. The existence of aggravating circumstances under sub. (5).
- 20 2. The existence of mitigating circumstances under sub. (6).

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

24 (c) Upon the request of the defendant or the state, the court shall explain to the
25 jury the court's options under sub. (3) (c) to sentence the defendant to life without the

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1 possibility of parole or extended supervision or with delayed eligibility for parole or
2 extended supervision.

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

8 1. That sufficient aggravating circumstances exist under sub. (5); and

9 2. That there are insufficient mitigating circumstances under sub. (6) to
10 outweigh the aggravating circumstances.

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

15 (c) If the court does not make the findings requiring the death sentence, the
16 court shall impose a sentence of life imprisonment and shall make a parole eligibility
17 determination regarding the person if he or she is being sentenced for a crime
18 committed before December 31, 1999, or an extended supervision eligibility
19 determination regarding the person if he or she is being sentenced for a crime
20 committed on or after December 31, 1999. The court shall make a parole eligibility
21 determination under this paragraph by choosing one of the options specified in s.
22 973.014 (1). The court shall make an extended supervision eligibility determination
23 under this paragraph by choosing one of the options specified in s. 973.014 (1g) (a).

24 **(4)** If a death sentence is imposed, the judgment of conviction and sentence of
25 death is subject to automatic review by the supreme court within 60 days after

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1 certification by the sentencing court of the entire record, unless the supreme court,
2 for good cause shown, extends the time for an additional period not to exceed 30 days.
3 The review by the supreme court has priority over all other cases and shall be heard
4 in accordance with rules promulgated by the supreme court.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (f) The capacity of the defendant to appreciate the criminality of his or her
8 conduct or to conform his or her conduct to the requirements of law was substantially
9 impaired.

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

11 (7) The court that imposes a sentence of death shall set the date for execution.
12 The defendant shall be committed to the Wisconsin state prisons pending the
13 execution of the death sentence.

14 (7m) A person sentenced to death under this section for a crime committed on
15 or after December 31, 1999, is not eligible for release to extended supervision under
16 s. 302.113 or 302.114.

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

18 **SECTION 43.** 973.016 of the statutes is created to read:

19 **973.016 Stay of execution of death sentence.** The execution of a death
20 sentence may be stayed only by the governor or incident to an appeal.

21 **SECTION 44.** 973.017 of the statutes is created to read:

22 **973.017 Execution of death sentence.** The secretary of corrections shall
23 designate the executioner who shall provide a person subject to a death sentence with
24 an intravenous injection of one or more substances in a lethal quantity. A person is
25 immune from civil or criminal liability for his or her acts or omissions, in good faith,

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1 in regard to a lawful execution under this section. The secretary shall designate 12
2 citizens to witness the execution. The secretary may not direct a physician to be
3 present or require a physician to announce when death has occurred. A physician
4 may certify the death after a person, other than a physician, has determined or
5 pronounced death. The convicted person may request that certain additional people
6 be allowed to witness the execution. The secretary shall grant any such reasonable
7 request. The secretary may allow representatives of the news media to witness the
8 execution under rules of the department. No other persons may be allowed to witness
9 the execution.

10 **SECTION 45.** 973.032 (2) (b) of the statutes is amended to read:

11 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person
12 under sub. (1) if he or she is convicted of a felony punishable by death or life
13 imprisonment.

14 **SECTION 46.** 973.09 (1) (c) of the statutes is amended to read:

15 973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable
16 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

17 **SECTION 47.** 978.07 (1) (c) 1. of the statutes is amended to read:

18 978.07 (1) (c) 1. Any case record of a felony punishable by death or life
19 imprisonment or a related case, after the defendant's parole eligibility date under s.
20 304.06 (1) ~~or~~ 973.014 (1) or 973.015 (3) (c) or date of eligibility for release to extended
21 supervision under s. 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c), whichever is
22 applicable, or 50 years after the commencement of the action, whichever occurs later.
23 If there is no parole eligibility date or no date for release to extended supervision, the
24 district attorney may destroy the case record after the defendant's death.

25 **SECTION 48. Initial applicability.**

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

LRB-0452/1dn
JEO;jlg:ijs

February 15, 1999

This is a redraft of 1997 Senate Bill 30. I had to make numerous changes in the draft to reflect the changes made in the statutes by 1997 Wisconsin Acts 283 ("truth-in-sentencing") and 295 (harm or death to an unborn child).

Jefren E. Olsen
Legislative Attorney
266-8906

**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: 2/15/99

To: Senator A. Lasee

Relating to LRB drafting number: LRB-0452

Topic

Death penalty for certain homicides

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