

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/11/99
BILL NO. AB 465
OR
SUBJECT Comms

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/11/99
BILL NO. AB 465
OR
SUBJECT _____

E. Michael McGinnis
(NAME)

881 W STATE
(Street Address or Route Number)

MILWA 53233
(City and Zip Code)

MILWA CO DA
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Thomas Barland
(NAME)

1417 Drummond St
(Street Address or Route Number)

Eau Claire WI
(City and Zip Code)

Criminal Justice Center
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/11/99

BILL NO. AB 465

OR

SUBJECT SB 237
truth in sent'g

(NAME) Ray Dall'osto

111 E. Killbourn

(Street Address or Route Number)

Milwaukee 53202

(City and Zip Code)

State Bar C'm Law

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/10/99

BILL NO. SB 237 / AB 465

OR

SUBJECT _____

(NAME) John Binksa

200 W. State Street

(Street Address or Route Number)

Whitefish Bay, WI 53217

(City and Zip Code) Wisconsin Assoc. of Criminal

(Representing) Defenders

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10.11.99

BILL NO. AB 465 / SB 237

OR

SUBJECT Truth in Sentencing /

Criminal Parallels Study

(NAME) Larry Mason, for Ray Dall'osto

5302 Eastpark Blvd. #

(Street Address or Route Number)

Madison, WI 53707

(City and Zip Code) State Bar of WI - Criminal Law

(Representing) Section

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10-11-99
BILL NO. AB 465 / SB 237
OR
SUBJECT _____

(NAME) Thomas Hammer
1103 W Wisconsin Ave
(Street Address or Route Number)

(City and Zip Code) Wauwatosa WI 53211
(Representing) CRIMINAL REVENUES STUDY COMMITTEE

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10.11
BILL NO. SB 237+
OR
SUBJECT AB 465

(NAME) Jeanne Jackson
(Street Address or Route Number)

(City and Zip Code) 11th Senate District
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11-1-99
BILL NO. AB 465 / SB 237
OR
SUBJECT _____

(NAME) Rep. Scott Walker
(Street Address or Route Number)

(City and Zip Code) 14th (re-author AB 465)
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 10/11/99

BILL NO. _____

OR

SUBJECT Truth In Sentencing

Karen Murphy-Smith

(NAME)

7165 North 42nd St.

(Street Address or Route Number)

Milwaukee WI 53209

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY**

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

Don -
Ray Ball'osh had to leave. He asked
that I read a statement on his behalf.
Thank you,
-Carol Wilson
Government Relations Center
State Bar of WI

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11-9-99

BILL NO. SB237/AB465

SUBJECT _____

(NAME) Cory Mason

(Street Address or Route Number) Po Box 7158

(City and Zip Code) Madison, WI 53707-7158

(Representing) State Bar of WI

Speaking in Favor:

Speaking Against:

Registering in Favor: *in favor*

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

I have to see the Mr. Flew (newly)
SENATE HEARING SLIP 9:45

(Please Print Plainly)

DATE: 11/29/99

BILL NO. AB 465 / SB 237

SUBJECT _____

(NAME) Rep. Scott Walker

(Street Address or Route Number) _____

(City and Zip Code) WKE AD

(Representing) _____

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11/5/99

BILL NO. 2374465

SUBJECT TRUTH IN

(NAME) GERALD HODGINS WITH

(Street Address or Route Number) 131 W WISCONSIN #1201

(City and Zip Code) MADISON, WI 53703

(Representing) STATE BAR OF WIS - CRIMINAL AND SECTION

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: TUE 11/9

BILL NO. AB 465 / SB 237

SUBJECT TOM HAMMER

(NAME) MIKE BRENNAN

(Street Address or Route Number) CRIMINAL OFFICIALS

(City and Zip Code) STUY COMMITEE

(Representing) _____

Speaking in Favor:

Speaking Against:

Registering in Favor:

Registering Against:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11-9-99

BILL NO. SB 237 / AB 465

SUBJECT _____

(NAME) THOMAS J. HAMMER

(Street Address or Route Number) CRIMINAL PENALTIES

(City and Zip Code) STUDY COMMITTEE

(Representing) _____

Speaking in Favor:

Speaking Against:

Registering in Favor:

Registering Against:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 11/8/99

BILL NO. SB 237 / AB 465

SUBJECT _____

(NAME) John Birdsall

(Street Address or Route Number) 225 E. Michigan #408 Milwaukee, WI 53202

(City and Zip Code) _____

(Representing) WISCONSIN ASSOCIATION OF CRIMINAL DEFENSE ATTORNEYS

Speaking in Favor:

Speaking Against:

Registering in Favor:

Registering Against:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

State of Wisconsin



GARY R. GEORGE
SENATOR

October 25, 1999

The Honorable Charles Chvala, Chairman
Committee on Senate Organization
Room 211 South, State Capitol
Madison, WI 53703

Dear Senator Chvala:

I am writing to request authorization to take the Senate Committee on Judiciary and Consumer Affairs to Green Bay for a public hearing on Monday, November 1, 1999. The hearing, which will begin at 2:00 P.M., will be held in Room 200 of the Northern Building (located directly across from the Brown County Courthouse). The Northern Building is located at 305 N. Walnut Street, Green Bay, Wisconsin. The main subjects of the hearing will be Senate Bill 237 and Assembly Bill 465, companion bills that reflect the recommendations of the Criminal Penalties Study Committee regarding implementation of the "Truth-In-Sentencing" law.

I request that all committee members be reimbursed for all actual and necessary expenses associated with their attendance at this meeting. I also request that the Committee Clerk and the committee's Legislative Council attorney be reimbursed for all actual and necessary expenses associated with their attendance at this meeting.

I further request that two members of the Senate Sergeant At Arms staff be provided as well a vehicle for their transportation. It is my understanding that there is no charge for the use of the facility where the hearing will be held. Should this not be the case, I would request permission to amend this request to authorize payment of any charges for facility use.

Thank you in advance for your prompt consideration of this request. If you have any questions or need additional information, please contact my Chief of Staff, Dan Rossmiller, who serves as the Committee Clerk.

Most sincerely,

A handwritten signature in cursive script that reads "Gary R. George".

GARY R. GEORGE
State Senator
Sixth Senate District

Brown Co.
Facilities Dept.

(920) 448-4057
(Rosie)

(920) 448-4053
Dean Gaza



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: September 16, 1999

TO: REPRESENTATIVE SHIRLEY KRUG

FROM: Anne Sappenfield, Staff Attorney

SUBJECT: Felony Penalties Under Current Law and 1999 Assembly Bill 465

This memorandum, prepared at your request, describes the penalties for the various classes of felonies under current law, as affected by 1997 Wisconsin Act 283, and the penalties for felonies contained in 1999 Assembly Bill 465, relating to classification and elements of felony offenses and certain misdemeanor offenses; modification of a bifurcated sentence in certain cases; revocation of extended supervision; and the creation of a sentencing commission and temporary sentencing guidelines. Assembly Bill 465 was introduced on September 14, 1999 by Representative Goetsch, cosponsored by Senator George. The bill was referred to the Assembly Committee on Criminal Justice which held a public hearing on September 15, 1999 and plans to take executive action on the bill on September 21, 1999. The provisions of the bill were recommended by the Criminal Penalties Study Committee (CPSC) in its final report, dated August 31, 1999.

A. MAXIMUM SENTENCES

Under 1997 Wisconsin Act 283 (Act 283), the penalties for all felonies are increased by 50% or one year, whichever is greater, for offenses committed on or after December 31, 1999.

Under current law, felonies are generally classified as a Class A, B, BC, C, D or E felony. Assembly Bill 465 provides that felonies be classified in Classes A through I. The bill classifies most current felonies as follows:

1. Class A felonies become Class A or Class B felonies.
2. Class B felonies become Class C felonies.
3. Class BC felonies become Class D or Class E felonies.
4. Class C felonies become Class F or Class G felonies.

5. Class D felonies become Class H felonies.
6. Class E felonies become Class I felonies.

Under this conversion, for example, carjacking and armed robbery, which are currently Class B felonies, become Class C felonies. However, several offenses are placed in a higher or lower class than the general formula would provide. For example, because first-degree sexual assault is a Class B felony under current law, it would become a Class C felony under the general conversion. However, under Assembly Bill 465, first-degree sexual assault remains a Class B felony. Conversely, under Assembly Bill 465, for example, aggravated kidnapping, which is currently a Class A felony, is classified as a Class B felony. These provisions apply to offenses committed on or after December 31, 1999 under the bill.

Table 1 sets forth the maximum possible sentences under current law before December 31, 1999, on and after December 31, 1999 (as provided under Act 283) and as provided in Assembly Bill 465. The maximum sentence represents the maximum amount of time an individual convicted of a felony could be confined in prison plus the time the individual would serve on parole or extended supervision (hereinafter, "ES").

TABLE 1: MAXIMUM SENTENCE (CONFINEMENT IN PRISON PLUS PAROLE OR ES)

| <i>Current Law, as Affected by 1997 Wisconsin Act 283</i> | | | <i>1999 Assembly Bill 465</i> | |
|---|-----------------|------------------|-------------------------------|------------|
| | Before 12/31/99 | 12/31/99 & After | | |
| Class A | Life | Life | Class A | Life |
| | | | Class B | 60 years |
| Class B | 40 years | 60 years | Class C | 40 years |
| Class BC | 20 years | 30 years | Class D | 25 years |
| | | | Class E | 15 years |
| Class C | 10 years | 15 years | Class F | 12.5 years |
| | | | Class G | 10 years |
| Class D | 5 years | 10 years | Class H | 6 years |
| Class E | 2 years | 5 years | Class I | 3.5 years |

B. PERIODS OF IMPRISONMENT AND PAROLE OR ES

This Section describes how the periods of confinement in prison and the periods served on parole or ES are calculated.

1. Current Law

Wisconsin currently operates under an indeterminate sentencing system which provides that a court may sentence a person convicted of a felony to any amount of time of confinement

in prison up to the maximum amount allowed by the statute (see Table 1). The offender is then placed in prison until paroled and serves the rest of his or her sentence on parole. A person serving a sentence of imprisonment to a state prison generally has three possible ways of being released on parole:

a. Discretionary parole on parole eligibility date: an offender is generally eligible for parole after serving 25% of the court-imposed sentence or six months, whichever is greater. The determination as to whether the offender is released on discretionary parole is made by the Parole Commission.

b. Mandatory release: the offender, disregarding any additional time of confinement in prison for misconduct, is required to be released after serving 2/3 of the sentence.

c. Special action release: the offender may be released by the Secretary of Corrections on a special action release, which is a program designed to relieve prison overcrowding.

There are several exceptions to the above provisions that relate to serious offenders. Generally, these provisions are not affected by Act 283 or Assembly Bill 465. Provisions relating to offenders sentenced to life are affected, though.

Under current law, a person serving a life sentence is not entitled to mandatory release. Instead, such a person usually must serve 20 years minus time calculated under the mandatory release formula in prison before he or she is eligible for release on parole. If the person does not receive extensions due to violation of prison rules, he or she reaches discretionary parole eligibility after serving 13 years and 4 months. However, a judge may set a parole eligibility date for a person serving a life sentence that is later than the usual parole eligibility date or the court may provide that the person is not eligible for parole.

2. Act 283 and Assembly Bill 465

Under Act 283, if a court chooses to sentence a felony offender to a term of imprisonment in a state prison for a felony committed on or after December 31, 1999, the court must do so by providing a bifurcated sentence that includes a term of confinement in prison followed by a term of ES in the community. A person given a bifurcated sentence is not eligible for parole. Under this system, the court must set the term of confinement in prison to be at least one year but not more than 40 years for a Class B felony, 20 years for a Class BC felony, 10 years for a Class C felony, 5 years for a Class D felony or 2 years for a Class E felony. The person must serve 100% of the term of confinement before serving the term of community supervision portion of the sentence. The subsequent term of ES must be equal to at least 25% of the length of the term of confinement in prison.

Act 283 provides that a person sentenced to life imprisonment for a crime committed on or after December 31, 1999 is not eligible for parole. Instead, Act 283 requires the court to make an ES eligibility date determination regarding the person and choose one of the following options:

a. The person is eligible for release to ES after serving 20 years.

- b. The person is eligible for release to ES by a date set by the court that is later than 20 years.
- c. The person is not eligible for release to ES.

Assembly Bill 465 modifies the provisions of Act 283 relating to bifurcated sentences only to provide that statutory caps be placed on the maximum amount of ES time the judge may impose at sentencing. These caps are as follows:

- a. Class A: life.
- b. Class B: 20 years.
- c. Class C: 15 years.
- d. Class D: 10 years.
- e. Classes E, F and G: 5 years.
- f. Class H: 3 years.
- g. Class I: 2 years.

Table 2 sets forth the maximum time a person may be confined in prison for the various classes of felonies. For offenses committed before December 31, 1999, the table sets forth the period of time a person sentenced to a maximum sentence must serve before becoming eligible for parole and the period of time the person may serve before reaching the mandatory release date. The table also sets forth the maximum amount of time a person may be imprisoned for an offense committed on December 31, 1999 or after. Finally, the table sets forth the maximum amount of time in confinement for felonies as provided in 1999 Assembly Bill 465. Any additional time that may be imposed for misconduct is not included in this table.

TABLE 2: TIME CONFINED IN PRISON FOR A MAXIMUM SENTENCE

| <i>Current Law, as Affected by 1997 Wisconsin Act 283</i> | | | | <i>1999 Assembly Bill 465</i> | |
|---|-------------------------|-------------------|-------------------------|-------------------------------|-------------------------|
| | Before 12/31/99 | | 12/31/99 & After | | |
| | Eligible for Parole | Mandatory Release | Release to ES | | |
| Class A | Set by Sentencing Court | N/A | Set by Sentencing Court | Class A | Set by Sentencing Court |
| | | | | Class B | 40 years |
| Class B | 10 years | 26.6 years | 40 years | Class C | 25 years |

| | | | | | |
|----------|------------|------------|----------|---------|-----------|
| Class BC | 5 years | 13.3 years | 20 years | Class D | 15 years |
| | | | | Class E | 10 years |
| Class C | 2.5 years | 6.6 years | 10 years | Class F | 7.5 years |
| | | | | Class G | 5 years |
| Class D | 1.25 years | 3.3 years | 5 years | Class H | 3 years |
| Class E | .5 years | 1.3 years | 2 years | Class I | 1.5 years |

C. FINES

Under current law, an offender who is convicted of a Class BC, C, D or E felony may be fined up to a maximum amount or imprisoned up to a maximum amount, or both. Fines may not be imposed for Class A or B felonies. Assembly Bill 465 provides fines for offenders convicted of a Class C through Class I felony. Table 4 sets forth the maximum fines under current law and under Assembly Bill 465.

TABLE 4: MAXIMUM FINES

| <i>Current Law</i> | | <i>1999 Assembly Bill 465</i> | |
|--------------------|----------|-------------------------------|-----------|
| Class A | N/A | Class A | N/A |
| | | Class B | N/A |
| Class B | N/A | Class C | \$100,000 |
| Class BC | \$10,000 | Class D | \$100,000 |
| | | Class E | \$50,000 |
| Class C | \$10,000 | Class F | \$25,000 |
| | | Class G | \$25,000 |
| Class D | \$10,000 | Class H | \$10,000 |
| Class E | \$10,000 | Class I | \$10,000 |

If you have any questions or would like further information on this topic, please feel free to contact me at the Legislative Council Staff offices.

AS:rv:tlu:ksm;rv;jal



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: September 30, 1999 (Revised October 5, 1999)
TO: REPRESENTATIVE JON RICHARDS
FROM: Anne Sappenfield, Staff Attorney
SUBJECT: Provisions Relating to Misdemeanors in 1999 Assembly Bill 465, Relating to Criminal Penalties

This memorandum, prepared at your request, describes the provisions of Engrossed 1999 Assembly Bill 465, relating to criminal penalties, that concern misdemeanor offenses. Assembly Bill 465 implements the "truth-in-sentencing" act (1997 Wisconsin Act 283) and was introduced by Representative Goetsch, cosponsored by Senator George, on September 14, 1999. The Assembly voted to pass the bill on September 23, 1999.

Under current law, a crime punishable by imprisonment in the Wisconsin state prisons is a felony. Every other crime is a misdemeanor. [s. 939.60, Stats.] Because a sentence of more than one year must be to the Wisconsin state prisons, misdemeanors include offenses for which the penalty is imprisonment for a term of less than one year. [See s. 973.02, Stats.] Under the current Criminal Code [chs. 939 to 951, Stats.], a misdemeanor may be a Class A, B or C misdemeanor. The penalties are as follows:

1. For a Class A misdemeanor, a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both.
2. For a Class B misdemeanor, a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both.
3. For a Class C misdemeanor, a fine not to exceed \$500 or imprisonment not to exceed 30 days, or both. [s. 939.51, Stats.]

The remainder of the memorandum describes the provisions relating to misdemeanors in Assembly Bill 465. The SECTIONS referenced are the SECTIONS of the bill.

A. OFFENSES FOR WHICH A FELONY PENALTY WAS DECREASED TO A MISDEMEANOR PENALTY

Under 1997 Wisconsin Act 283, the penalties for all felonies that are not in the Criminal Code are increased, effective December 31, 1999. Specifically, Act 283 increases the maximum term of imprisonment for these felonies by 50% or one year, whichever is greater. Under the act, a maximum penalty of one year of imprisonment under current law is increased to two years of imprisonment.

Under Assembly Bill 465, for the following offenses for which the maximum term of imprisonment is one year under current law (i.e., two years under Act 283), the maximum term of imprisonment is decreased to nine months. The following offenses are, therefore, misdemeanors under the bill:

1. Second or subsequent offense relating to illegal shooting, shooting at, killing, taking, catching or possessing a bear under s. 29.971 (1m) (a), Stats. [SECTION 21.]
2. Entering the den of a hibernating black bear and harming the bear under s. 29.971 (11p) (a), Stats. [SECTION 22.]
3. Failure to render aid in a boating accident that involves injury to a person but not great bodily harm under s. 30.80 (2g) (b), Stats. [SECTION 23.]
4. Illegal use of the term "blind-made" under s. 47.03 (3) (d), Stats. [SECTION 28.]
5. Making false representations in order to obtain Wisconsin Works benefits or payments under s. 49.141 (7) (b), Stats. [SECTION 40.]
6. Violations of dairy license requirements, Department of Agriculture, Trade and Consumer Protection orders or regulations and false advertising under s. 100.26 (5), Stats. [SECTION 65.]
7. Fraudulent drug advertising under s. 100.26 (7), Stats. [SECTION 66.]
8. Intentional violations of manufactured and mobile home laws that threaten health or safety under s. 101.94 (8) (b), Stats. [SECTION 68.]
9. Discharge or discrimination by an employer against an employee who has been the subject of a worker's compensation levy under s. 102.835 (18), Stats. [SECTION 70.]
10. Discharge or discrimination by an employer against an employee who has been the subject of an unemployment compensation levy under s. 108.225 (18), Stats. [SECTION 73.]
11. Bribery of an agent, employee or servant in order to influence the agent's, employee's or servant's principal under s. 134.05 (4), Stats. [SECTION 88.]
12. False or fraudulent report or attempts to evade the cigarette tax under s. 139.44 (2), Stats. [SECTION 95.]

13. Second violation of failing to comply with notice of release of genetically engineered organisms into the environment requirements under s. 146.60 (9) (am), Stats. [SECTION 101.]

14. Violation of amusement place licensure requirements under s. 175.20 (3), Stats. [SECTION 107.]

15. Forged proof of security for past accidents under s. 344.48 (2), Stats. [SECTION 169.]

16. Striking a person or an attended or occupied vehicle and not remaining at the scene if the accident involves injury to a person but the person does not suffer great bodily harm under s. 346.74 (5) (b), Stats. [SECTION 186.]

17. Violations of the Chiropractic Examining Board statutes under s. 446.07, Stats. [SECTION 192.]

18. Possession of a forged or altered lottery ticket under s. 565.50 (3), Stats. [SECTION 204.]

19. Marriage outside the state to circumvent state law under s. 765.30 (1) (intro.), Stats. [SECTION 209.]

20. False marriage license statement; unlawful issuance of a marriage license; or false solemnization of marriage under s. 765.30 (2) (intro.), Stats. [SECTION 210.]

21. Violation of actions relating to marriage which have been abolished by the statute under s. 768.07, Stats. [SECTION 211.]

22. Illegal use of a pen register or a trap and trace device under s. 968.34 (3), Stats. [SECTION 729.]

In addition, Assembly Bill 465 decreases the maximum term of imprisonment for violations, relating to labeling of bedding under s. 100.2095 (6) (d), Stats., from one year to nine months. [SECTION 63.]

Assembly Bill 465 also changes the following offenses that are currently Class E felonies to Class A misdemeanors:

1. Theft of telecommunications service under s. 943.45 (3) (c), Stats. [SECTION 456.]

2. Theft of cellular telephone service under s. 943.455 (4) (c), Stats. [SECTION 458.]

3. Theft of cable television service under s. 943.46 (4) (c), Stats. [SECTION 460.]

4. Theft of satellite cable programming under s. 943.47 (3) (c), Stats. [SECTION 462.]

5. Receiving stolen property from a child if the value of the property does not exceed \$500 under s. 948.62 (1) (a), Stats. [SECTION 600.]

B. NEWLY CREATED MISDEMEANOR OFFENSES

Assembly Bill 465 creates two new misdemeanor offenses.

1. Operating Vehicle Without Owner's Consent

Under current law, whoever intentionally takes and drives any vehicle without the consent of the owner is guilty of a Class D felony. Also, whoever intentionally drives or operates any vehicles without the consent of the owner is guilty of a Class E felony. [s. 943.23, Stats.] Under Act 465, these offenses are Class D and Class I felonies respectively. [SECTIONS 422 and 423.]

Assembly Bill 465 creates a misdemeanor offense relating to operating a vehicle without the owner's consent. Specifically, under the bill, it is an affirmative defense to a prosecution for a violation described above if the defendant abandoned the vehicle without damage within 24 hours after the vehicle was taken from the possession of the owner. Such an affirmative defense mitigates the offense to a Class A misdemeanor. Under the bill, a defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence. [SECTION 424.]

2. Fleeing an Officer

Under current law, no operator of a vehicle, after having received a visual or audible signal from a traffic officer, or marked police vehicle, may knowingly flee or attempt to elude any traffic officer by wilful or wanton disregard of such signal so as to interfere with or endanger the operation of the police vehicle, or the traffic officer or other vehicles or pedestrians, nor shall the operator increase the speed of the operator's vehicle or extinguish the lights of the vehicle in an attempt to elude or flee. [s. 346.04 (3), Stats.] Under current law, any person violating this section must be fined not less than \$600 nor more than \$10,000 and may be imprisoned for not more than two years. [s. 346.17 (3) (a), Stats.] Under current law, as affected by Act 283, a person who violates this section may be imprisoned for not more than three years. Under Assembly Bill 465, this offense is classified as a Class I felony. [SECTION 173.]

Assembly Bill 465 also creates a misdemeanor offense of fleeing an officer. Specifically, under the bill, no operator of a vehicle, after having received a visible or audible signal to stop his or her vehicle from a traffic officer or marked police vehicle, may knowingly resist a traffic officer by failing to stop his or her vehicle as promptly, as safety reasonably permits. Any person violating this provision may be fined not more than \$10,000 or imprisoned for not more than nine months, or both. [SECTIONS 170 and 172.]

C. RECLASSIFICATION OF CLASS B MISDEMEANOR AS CLASS A MISDEMEANOR

Under current law, the offense of carrying a firearm in a public building under s. 941.235 (1), Stats., is classified as a Class B misdemeanor. Assembly Bill 465 classifies this offense as a Class A misdemeanor. [SECTION 355.]

D. MISDEMEANORS RECLASSIFIED AS FELONIES

Assembly Bill 465 reclassifies several current misdemeanors as felonies.

1. Stalking

Under current law, whoever meets all of the following criteria is guilty of a Class A misdemeanor:

a. The actor intentionally engages in a course of conduct directed at a specific person that will cause a reasonable person to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family.

b. The actor has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to himself or herself or a member of his or her immediate family or will be placed in reasonable fear of the death of himself or herself or a member of his or her immediate family.

c. The actor's acts induce fear in the specific person of bodily injury to himself or herself or a member of his or her immediate family or induce fear in the specific person of the death of himself or herself or a member of his or her immediate family. [s. 940.32 (2), Stats.]

Under Assembly Bill 465, this offense is classified as a Class I felony. [SECTION 344.]

2. Criminal Damage to Railroads

Under current law, whoever intentionally causes damage or who causes some other person to damage, tamper, change or destroy any railroad track, switch, bridge, tressel, tunnel or signal or any railroad property used in providing rail services, which could cause an injury, accident or derailment is guilty of a Class A misdemeanor. [s. 943.07 (1), Stats.] Under Assembly Bill 465, this offense is reclassified as a Class I felony. [SECTION 401.]

Also, under current law, whoever intentionally shoots a firearm at any portion of a railroad train, car, caboose or engine is guilty of a Class A misdemeanor. [s. 943.07 (2), Stats.] Under Assembly Bill 465, this offense is reclassified as a Class I felony. [SECTION 402.]

3. Possession of Firearm in a School Zone

Under current law, any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone is guilty of a Class I misdemeanor. [s. 948.605 (2) (a), Stats.] Under Assembly Bill 465, this offense is reclassified as a Class I felony. [SECTION 596.]

E. PROPERTY OFFENSES FOR WHICH THE VALUE OF THE PROPERTY INVOLVED RELATES TO THE CLASSIFICATION AS A MISDEMEANOR OR FELONY

Assembly Bill 465, *as introduced*, affected several misdemeanor property crimes, as described below. However, these provisions were deleted from the bill by *Assembly Amendment 17*.

Under current law, several crimes against property are Class A misdemeanors unless the value of the property misappropriated or damaged exceeds \$1,000. If the value of the property exceeds \$1,000, the offense is a felony. Assembly Bill 465, as introduced, provided that the following offenses are misdemeanors if the value of the property misappropriated or damaged exceeds \$2,000 instead of \$1,000:

1. Criminal damage to property under s. 943.01 (2) (d), Stats. [SECTION 387.]
2. Graffiti under s. 943.017 (2) (d), Stats. [SECTION 395.]
3. Theft under s. 943.20 (3) (a), Stats. [SECTION 406.]
4. Fraud on a hotel or restaurant keeper or taxi cab operator under s. 943.21 (3) (a), Stats. [SECTION 417.]
5. Issuing worthless checks under s. 943.21 (1), Stats. [SECTION 427.]
6. Receiving stolen property under s. 943.34 (1) (a), Stats. [SECTION 444.]
7. Fraudulent insurance in employe benefit program claims under s. 943.395 (2) (a), Stats. [SECTION 451.]
8. Financial transaction card crimes under s. 943.41 (8) (c), Stats. [SECTION 455.]
9. Retail theft under s. 943.50 (4) (a), Stats. [SECTION 464.]

If you have any questions or would like further information on this topic, please call me at 267-9485.

AS:rv:ksm;tlu



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: October 5, 1999

TO: SENATOR GARY R. GEORGE

FROM: Ronald Sklansky, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 465 and 1999 Senate Bill 237, Generally Relating to Criminal Penalties

1999 Assembly Bill 465, generally relating to criminal penalties, was introduced on September 14, 1999. The bill, as amended by Assembly Amendments 3, 4, 6, 13 and 17, passed the Assembly on September 23, 1999 by a vote of Ayes, 83; Noes, 13; and Paired, 2. On September 28, 1999, Assembly Bill 465 was referred to the Senate Committee on Judiciary and Consumer Affairs. A companion bill, 1999 Senate Bill 237, was introduced on September 21, 1999 and also referred to the Senate Committee on Judiciary and Consumer Affairs.

This memorandum, prepared at your request, primarily discusses the contents of the Assembly amendments to Assembly Bill 465. The memorandum also provides a brief discussion of current law and a brief discussion of the major policy initiatives of Assembly Bill 465 and Senate Bill 237.

A. CURRENT LAW

1. Criminal Sentencing Prior to December 31, 1999

A felony is a crime punishable by imprisonment for one year or more in a Wisconsin state prison. Prior to December 31, 1999, a felony created in the Criminal Code is placed in one of six classes, Class A, B, BC, C, D or E, and each class has a specific maximum term of imprisonment and, in most classes, a maximum fine. There are a number of felonies in the statutes outside of the Criminal Code and outside of the classification system in the code. Penalties for these felonies vary but all include at least possible imprisonment in a Wisconsin state prison.

Under Wisconsin's indeterminate sentencing system, prior to December 31, 1999, a court may sentence a person convicted of a felony offense to a term of imprisonment up to the

maximum amount allowed under the classification system. After sentencing, a person serving a sentence of imprisonment to a state prison usually has the following three possible ways of being released on parole:

a. **Discretionary parole on parole eligibility date.** The offender is generally eligible for parole after serving 25% of the court-imposed sentence or six months, whichever is greater. The determination as to whether the offender is released on discretionary parole is made by the Parole Commission.

b. **Mandatory release.** The offender, barring any additional time for misconduct, is required to be released after serving 2/3 of the sentence. This is termed the offender's mandatory release date.

c. **Special action release.** The offender may be released by the Secretary of the Department of Corrections (DOC) on a special action release, which is a program designed to relieve prison crowding.

Special parole provisions exist, prior to December 31, 1999, for persons convicted of various serious offenses and for those persons receiving a life sentence.

2. Criminal Sentencing on or After December 31, 1999

On or after December 31, 1999, a person convicted of a felony will be sentenced according to the provisions of 1997 Wisconsin Act 283. In general, this act created a new bifurcated sentencing structure for felony offenses in the statutes under which the offender will serve 100% of the term of imprisonment stated in the prison portion of the sentence and serve a term of extended supervision, under the jurisdiction of DOC, equal to at least 25% of the length of the term of confinement in prison. The parole system and the Parole Commission are abolished with respect to this class of offenders. Also, the act increased penalties for all felonies in the statutes by increasing the maximum imprisonment time that may be imposed, in general, by 50% or one year, whichever is greater. Special provisions exist for the application of extended supervision to a person who is convicted of a serious crime or who receives a life sentence.

Act 283 also created the Criminal Penalties Study Committee to study, and make recommendations concerning, the classification of criminal offenses in the Criminal Code, the penalties for all felonies and Class A misdemeanors and the creation of a sentencing commission to promulgate advisory sentencing guidelines for use by judges. Specifically, the committee was directed to make recommendations concerning all of the following matters:

a. Creating a uniform classification system for all felonies, including felonies outside of the Criminal Code.

b. Classifying each felony and Class A misdemeanor in a manner that places crimes of similar severity into the same classification.

c. Consolidating all felonies into a single criminal code.

d. The creation of a sentencing commission to promulgate advisory sentencing guidelines for use by judges when imposing sentence under the new sentencing structure.

e. Temporary advisory sentencing guidelines for use by judges when imposing sentencing during the period before the promulgation of advisory sentencing guidelines by the sentencing commission.

f. Changing the administrative rules of DOC to ensure that a person who violates a condition of extended supervision is returned to prison promptly and for an appropriate period of time.

The Criminal Penalties Study Committee presented its final report on August 31, 1999.

B. ASSEMBLY BILL 465 AND SENATE BILL 237

Assembly Bill 465 and Senate Bill 237 constitute the proposed codification of the recommendations of the Criminal Penalties Study Committee. The recommendations are explained in detail in the final report of the study committee and summarized in the Legislative Reference Bureau analysis to the bills. In general, the bills reorganize the classification system of felonies by increasing the number of felony classes from six to nine and creating new maximum terms of imprisonment and new maximum fines. Many felonies outside of the Criminal Code are placed into the classification system. The bills also set maximum terms of extended supervision for the felonies, unlike current law which usually provides that the period of extended supervision must be at least 25% of the term of confinement.

The bills treat a number of other topics, including the following:

1. The bills create a sentencing commission attached to the Department of Administration. The sentencing commission consists of 17 voting members and three nonvoting members. The duties of the sentencing commission include monitoring and compiling data regarding sentencing practices, adoption of advisory sentencing guidelines and studying whether race is a basis for imposing sentences in criminal cases. The sentencing commission expires on December 31, 2004.

2. The bills provide that when a court makes a sentencing decision on or after December 31, 1999, the court must consider, if the offense is a felony, the sentencing guidelines adopted by the sentencing commission, or if the sentencing commission has not adopted a guideline for the offense, any applicable temporary sentencing guideline adopted by the Criminal Penalties Study Committee. The court also must consider any applicable mitigating factors and any applicable aggravating factors. The aggravating factors include the substantive provisions of specific current sections of the statutes that are repealed in the bills such as crimes committed while concealed, crimes involving criminal gangs, sex crimes committed while infected with certain diseases, violence against the elderly, sexual assault and sexual abuse and controlled substances offenses. The advisory sentencing guidelines used by a court are not subject to the procedure for administrative rule-making or legislative review of administrative rules.

3. The bills provide procedures for sentence modification and revocation of extended supervision.

(For more detailed information relating to the penalties provided for felonies and misdemeanors in Assembly Bill 465 and Senate Bill 237, see the following attached documents:

1. Attachment 1, memorandum to Representative Shirley Krug, from Anne Sappenfield, Staff Attorney, *Felony Penalties Under Current Law and 1999 Assembly Bill 465*, (September 16, 1999).

2. Attachment 2, memorandum to Representative Jon Richards, from Anne Sappenfield, Staff Attorney, *Provisions Relating to Misdemeanors in 1999 Assembly Bill 465, Relating to Criminal Penalties* (September 30, 1999; Revised October 5, 1999).

C. AMENDMENTS TO 1999 ASSEMBLY BILL 465

1. Assembly Amendment 3

Assembly Amendment 3 creates the Joint Review Committee on Criminal Penalties. The committee is to be composed of 11 members, including four legislators, two reserve judges, two public members and the Attorney General, the Secretary of Corrections and the State Public Defender or their designees.

The amendment provides that if any bill is introduced in the Legislature that proposes to create a new crime or revise a penalty for an existing crime and the bill is referred to a standing committee of the house in which it is introduced, the chairperson of that committee may request the Joint Review Committee to prepare a report on the bill. If the bill is not referred to a standing committee, the presiding officer of the house may request the Joint Review Committee report. If the Joint Review Committee receives a request for a report, the committee must report on all of the following matters:

a. The costs that are likely to be incurred or saved by DOC, the Department of Justice, the State Public Defender, the courts, district attorneys and other state and local government agencies if the bill is enacted.

b. The consistency of penalties proposed in the bill with existing criminal penalties.

c. Alternative language needed, if any, to conform penalties proposed in the bill to penalties in existing criminal statutes.

d. Whether acts prohibited under the bill are prohibited under existing criminal statutes.

Finally, the amendment provides that a standing committee may not vote on whether to recommend a bill for passage, and a bill may not be passed by the house in which it is introduced, before the Joint Review Committee submits a report or before the 30th day after a report is requested, whichever is earlier.

2. Assembly Amendment 4

Current s. 940.195 (6), Stats., provides that whoever intentionally causes bodily harm to an unborn child by conduct that creates a substantial risk of great bodily harm is guilty of a Class D felony. Assembly Bill 465 repeals this provision. Assembly Amendment 4 restores the provision and states that whoever intentionally causes bodily harm to an unborn child by conduct that creates a substantial risk of great bodily harm is guilty of a Class H felony.

3. Assembly Amendment 6

Current law generally provides that when a court makes a dispositional order regarding a juvenile who is found to be delinquent or a juvenile found to be in need of protection and services, the order must terminate at the end of one year unless the court specifies a shorter period of time. However, a judge is required to make the order apply for five years, if the juvenile is placed in the serious juvenile offender program and if the juvenile is adjudicated delinquent for committing an act that would be punishable as a Class B felony if committed by an adult. [See s. 938.355 (4), Stats.] Assembly Bill 465 extends the applicability of a five-year order to a juvenile who is placed in the serious juvenile offender program and who has committed an act that would be punishable as a Class C felony if committed by an adult. Assembly Amendment 6 extends the five-year order to a juvenile, placed in the serious juvenile offender program, who has committed a burglary under any of the following circumstances:

- a. While armed with certain dangerous weapons, devices or containers.
- b. While unarmed, but later armed with certain dangerous weapons, devices or containers while still in the burglarized enclosure.
- c. While in the burglarized enclosure, opens, or attempts to open, any depository by use of an explosive.
- d. While in the burglarized enclosure, commits a battery upon a person lawfully in the enclosure.

Under the provisions of Assembly Bill 465, whoever commits the crime described in Assembly Amendment 6 is guilty of a Class E felony.

4. Assembly Amendment 13

Current s. 939.623, Stats., provides that if a person has one or more prior convictions for first- or second-degree sexual assault and subsequently commits another first- or second-degree sexual assault, a court must sentence the person to not less than five years imprisonment, along with other penalties applicable to the crime, subject to any applicable penalty enhancement. The same penalty provision applies to a person who has one or more prior convictions for felony murder, second-degree intentional homicide or a crime punishable by life imprisonment and subsequently commits another felony murder, second-degree intentional homicide or crime punishable by life imprisonment. [See s. 939.624, Stats.]

Assembly Bill 465 repeals these provisions of the statutes. Assembly Amendment 13 restores the statutory provisions and amends them to provide that a court, in these instances, must impose a bifurcated sentence under which the term of confinement in prison may not be less than three years and six months, along with any other applicable penalties for the crime and subject to any applicable penalty enhancement.

5. Assembly Amendment 17

Current law often distinguishes between a misdemeanor and a felony, or a lesser felony and a higher felony, based on the monetary value of property stolen, damaged or otherwise involved in a crime. For example, a person who intentionally causes damage to any physical property of another without the person's consent, when the property is valued at \$500 or less, is guilty of a Class A misdemeanor. If the property is valued at \$500 but not more than \$1,000, the person is guilty of a Class E felony. If the property involved is valued at more than \$1,000, the person is guilty of a Class D felony. Assembly Bill 465 generally doubles these property value thresholds. Assembly Amendment 17 restores current law.

RS:rv:jal;tlu

Attachments



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: November 5, 1999
TO: INTERESTED LEGISLATORS
FROM: Ronald Sklansky, Senior Staff Attorney
SUBJECT: 1999 Assembly Bill 465 and 1999 Senate Bill 237, Generally Relating to Criminal Penalties

This memorandum describes the Senate's position on 1999 Assembly Bill 465 and 1999 Senate Bill 237, the so-called "Truth-in-Sentencing Bills." The Senate's position is reflected in Senate Substitute Amendment 1 to Assembly Bill 465 and Senate Substitute Amendment 1 to Senate Bill 237. (Attached to this memorandum is a memorandum to Senator Gary R. George, dated October 5, 1999, which provides a broad overview of the contents of 1999 Assembly Bill 465 and 1999 Senate Bill 237.)

A. SENATE SUBSTITUTE AMENDMENT 1 TO ASSEMBLY BILL 465

In general, Substitute Amendment 1 to Assembly Bill 465 contains provisions that relate only to the Sentencing Commission that is created in the original proposals. The major provisions of the substitute amendment are described below:

1. The original proposals create a sentencing commission consisting in part of seven gubernatorial appointees and three members of the Legislature. The substitute amendment provides that the Governor must appoint *six* members to the Sentencing Commission and that *four* members of the Legislature, one from each party in each house, will be appointed to the Sentencing Commission.
2. The substitute amendment contains all of the appropriations and position authorizations for the Sentencing Commission and for the Criminal Penalties Study Committee. (No appropriations remain in Senate Substitute Amendment 1 to Senate Bill 237.)
3. The substitute amendment provides that the Sentencing Commission must establish a procedure by which a court may modify a sentence previously imposed by that court in order to reduce the term of confinement in prison while retaining the total length of the bifurcated

sentence imposed in the truth-in-sentencing system. The procedures developed by the Sentencing Commission must specify factors that a court may consider when deciding whether to modify a bifurcated sentence.

4. The original proposals provide that the sentencing commission is not subject to the rule-making requirements of ch. 227, Stats. The substitute amendment does not retain that exemption from the rule-making process. Consequently, guidelines or standards proposed by the sentencing commission must be promulgated as administrative rules, subject to legislative review of those proposed administrative rules.

B. SENATE SUBSTITUTE AMENDMENT 1 TO SENATE BILL 237

Senate Substitute Amendment 1 to Senate Bill 237 contains the bulk of the truth-in-sentencing proposals. The major differences between the original proposals (Assembly Bill 465 and Senate Bill 237) and the substitute amendment are described below:

1. The Assembly adopted five amendments to Assembly Bill 465. The amendments: (a) create the joint review committee on criminal penalties; (b) restore a criminal provision that was repealed in Assembly Bill 465, relating to intentional bodily harm to an unborn child; (c) expand the length of a juvenile dispositional order when the juvenile has committed an egregious burglary; (d) restore various penalty enhancements and mandatory minimum sentences that were repealed by Assembly Bill 465; and (e) restore the monetary thresholds distinguishing misdemeanors and felonies that were amended in Assembly Bill 465. Of the Assembly amendments, the substitute amendment retains only the provisions relating to the joint review committee on criminal penalties and the extended juvenile dispositional order. (In other words, the substitute amendment retains Assembly Amendments 3 and 6 and rejects Assembly Amendments 4, 13 and 17. For a full discussion of the Assembly amendments, see the attached memorandum to Senator George at pages 4-6.)

2. The substitute amendment creates s. 301.03 (3a), Stats., to provide that the Department of Corrections must take steps to promote the increased effectiveness of probation, extended supervision and parole in Brown, Dane, Kenosha, Milwaukee, Racine and Rock Counties. In each of these counties, the department must, beginning on January 1, 2001, develop a partnership with the community, have strategies for local crime prevention, supervise offenders actively, commit additional resources to enhance supervision and purchase services for offenders, establish day reporting centers and ensure that probation, extended supervision and parole agents, on average, supervise no more than 20 persons on probation, extended supervision or parole. In a nonstatutory provision, the substitute amendment provides that the department must develop a plan to implement the new statute, which it must submit to the Joint Committee on Finance no later than May 1, 2000. Reduction of case loads must begin no later than July 1, 2000.

3. The substitute amendment creates s. 973.031, Stats., to provide that whenever a court imposes a sentence or places a person on probation for any offense created on or after July 1, 2000, the court may order the person to participate in a drug treatment program as a condition of probation, or in the case of a person sentenced, while the person is in prison or as a condition of extended supervision, or both. The court may order the Department of Corrections to pay for

the cost of drug treatment from its appropriations for persons in jail or prison or for persons on probation or extended supervision.

4. The substitute amendment creates s. 973.017 (10), Stats., to require a sentencing court to make explicit findings of fact on the record to support each element of its sentencing decision. These elements include a decision to impose a bifurcated sentence or probation and the length of each component of a bifurcated sentence, the amount of a fine and the length of a term of probation.

5. The substitute amendment creates s. 973.017 (11), Stats., to provide that in an appeal from a court's sentencing decision, the appellate court must reverse a sentencing decision if the appellate court determines that there is not substantial evidence in the record to support the sentencing decision. (This is contrast to the current standard used by an appellate court in review of a lower court sentencing decision. The current standard asks whether the sentencing court abused its discretion.)

6. The substitute amendment delays the beginning of truth-in-sentencing from December 31, 1999 to July 1, 2000.

RS:ksm:jal;tlu

Attachment