

ASSEMBLY BILL 3

1 **SECTION 609.** 948.11 (2) (am) of the statutes is amended to read:

2 948.11 (2) (am) Any person who has attained the age of 17 and who, with
3 knowledge of the nature of the description or narrative account, verbally
4 communicates, by any means, a harmful description or narrative account to a child,
5 with or without monetary consideration, is guilty of a Class E I felony.

6 **SECTION 610.** 948.12 (intro.) of the statutes is amended to read:

7 **948.12 Possession of child pornography.** (intro.) Whoever possesses any
8 undeveloped film, photographic negative, photograph, motion picture, videotape or
9 other pictorial reproduction or audio recording of a child engaged in sexually explicit
10 conduct under all of the following circumstances is guilty of a Class E I felony:

11 **SECTION 611.** 948.13 (2) of the statutes is amended to read:

12 948.13 (2) Whoever has been convicted of a serious child sex offense and
13 subsequently engages in an occupation or participates in a volunteer position that
14 requires him or her to work or interact primarily and directly with children under
15 16 years of age is guilty of a Class C F felony. This subsection does not apply to a
16 person who is exempt under a court order issued under sub. (2m).

17 **SECTION 612.** 948.20 of the statutes is amended to read:

18 **948.20 Abandonment of a child.** Whoever, with intent to abandon the child,
19 leaves any child in a place where the child may suffer because of neglect is guilty of
20 a Class D G felony.

21 **SECTION 613.** 948.21 (1) of the statutes is amended to read:

22 948.21 (1) Any person who is responsible for a child's welfare who, through his
23 or her actions or failure to take action, intentionally contributes to the neglect of the
24 child is guilty of a Class A misdemeanor or, if death is a consequence, a Class C D
25 felony.

ASSEMBLY BILL 3**SECTION 614**

1 **SECTION 614.** 948.22 (2) of the statutes is amended to read:

2 948.22 (2) Any person who intentionally fails for 120 or more consecutive days
3 to provide spousal, grandchild or child support which the person knows or reasonably
4 should know the person is legally obligated to provide is guilty of a Class E I felony.
5 A prosecutor may charge a person with multiple counts for a violation under this
6 subsection if each count covers a period of at least 120 consecutive days and there is
7 no overlap between periods.

8 **SECTION 615.** 948.23 of the statutes is amended to read:

9 **948.23 Concealing death of child.** Any person who conceals the corpse of
10 any issue of a woman's body with intent to prevent a determination of whether it was
11 born dead or alive is guilty of a Class E I felony.

12 **SECTION 616.** 948.24 (1) (intro.) of the statutes is amended to read:

13 948.24 (1) (intro.) Whoever does any of the following is guilty of a Class D H
14 felony:

15 **SECTION 617.** 948.30 (1) (intro.) of the statutes is amended to read:

16 948.30 (1) (intro.) Any person who, for any unlawful purpose, does any of the
17 following is guilty of a Class C E felony:

18 **SECTION 618.** 948.30 (2) (intro.) of the statutes is amended to read:

19 948.30 (2) (intro.) Any person who, for any unlawful purpose, does any of the
20 following is guilty of a Class B C felony:

21 **SECTION 619.** 948.31 (1) (b) of the statutes is amended to read:

22 948.31 (1) (b) Except as provided under chs. 48 and 938, whoever intentionally
23 causes a child to leave, takes a child away or withholds a child for more than 12 hours
24 beyond the court-approved period of physical placement or visitation period from a
25 legal custodian with intent to deprive the custodian of his or her custody rights

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1 without the consent of the custodian is guilty of a Class C F felony. This paragraph
2 is not applicable if the court has entered an order authorizing the person to so take
3 or withhold the child. The fact that joint legal custody has been awarded to both
4 parents by a court does not preclude a court from finding that one parent has
5 committed a violation of this paragraph.

6 **SECTION 620.** 948.31 (2) of the statutes is amended to read:

7 948.31 (2) Whoever causes a child to leave, takes a child away or withholds a
8 child for more than 12 hours from the child's parents or, in the case of a nonmarital
9 child whose parents do not subsequently intermarry under s. 767.60, from the child's
10 mother or, if he has been granted legal custody, the child's father, without the consent
11 of the parents, the mother or the father with legal custody, is guilty of a Class E I
12 felony. This subsection is not applicable if legal custody has been granted by court
13 order to the person taking or withholding the child.

14 **SECTION 621.** 948.31 (3) (intro.) of the statutes is amended to read:

15 948.31 (3) (intro.) Any parent, or any person acting pursuant to directions from
16 the parent, who does any of the following is guilty of a Class C F felony:

17 **SECTION 622.** 948.35 of the statutes is repealed.

18 **SECTION 623.** 948.36 of the statutes is repealed.

19 **SECTION 624.** 948.40 (4) (a) of the statutes is amended to read:

20 948.40 (4) (a) If death is a consequence, the person is guilty of a Class C D
21 felony; or

22 **SECTION 625.** 948.40 (4) (b) of the statutes is amended to read:

23 948.40 (4) (b) If the child's act which is encouraged or contributed to is a
24 violation of a state or federal criminal law which is punishable as a felony, the person
25 is guilty of a Class D H felony.

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1 **SECTION 626.** 948.51 (3) (b) of the statutes is amended to read:

2 948.51 (3) (b) A Class ~~E~~ H felony if the act results in great bodily harm ~~or death~~
3 to another.

4 **SECTION 627.** 948.51 (3) (c) of the statutes is created to read:

5 948.51 (3) (c) A Class G felony if the act results in the death of another.

6 **SECTION 628.** 948.60 (2) (b) of the statutes is amended to read:

7 948.60 (2) (b) Except as provided in par. (c), any person who intentionally sells,
8 loans or gives a dangerous weapon to a person under 18 years of age is guilty of a
9 Class ~~E~~ I felony.

10 **SECTION 629.** 948.60 (2) (c) of the statutes is amended to read:

11 948.60 (2) (c) Whoever violates par. (b) is guilty of a Class ~~D~~ H felony if the
12 person under 18 years of age under par. (b) discharges the firearm and the discharge
13 causes death to himself, herself or another.

14 **SECTION 630.** 948.605 (2) (a) of the statutes is amended to read:

15 948.605 (2) (a) Any individual who knowingly possesses a firearm at a place
16 that the individual knows, or has reasonable cause to believe, is a school zone is
17 guilty of a Class ~~A misdemeanor~~ I felony.

18 **SECTION 631.** 948.605 (3) (a) of the statutes is amended to read:

19 948.605 (3) (a) Any individual who knowingly, or with reckless disregard for
20 the safety of another, discharges or attempts to discharge a firearm at a place the
21 individual knows is a school zone is guilty of a Class ~~D~~ G felony.

22 **SECTION 632.** 948.605 (4) of the statutes is repealed.

23 **SECTION 633.** 948.61 (2) (b) of the statutes is amended to read:

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1 948.61 (2) (b) A Class E I felony, if the violation is the person's 2nd or
2 subsequent violation of this section within a 5-year period, as measured from the
3 dates the violations occurred.

4 SECTION 634. 948.62 (1) (a) of the statutes is amended to read:

5 948.62 (1) (a) A Class E felony A misdemeanor, if the value of the property does
6 not exceed \$500.

7 SECTION 635. 948.62 (1) (b) of the statutes is amended to read:

8 948.62 (1) (b) A Class D I felony, if the value of the property exceeds \$500 but
9 does not exceed ~~\$2,500~~ \$2,000.

10 SECTION 636. 948.62 (1) (bm) of the statutes is created to read:

11 948.62 (1) (bm) A Class H felony, if the value of the property exceeds ~~\$2,500~~ \$2,000 but
12 does not exceed \$5,000.

13 SECTION 637. 948.62 (1) (c) of the statutes is amended to read:

14 948.62 (1) (c) A Class C G felony, if the value of the property exceeds ~~\$2,500~~
15 \$5,000.

16 SECTION 638. 949.03 (1) (b) of the statutes is amended to read:

17 949.03 (1) (b) The commission or the attempt to commit any crime specified in
18 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
19 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24,
20 940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02, 943.03,
21 943.04, 943.10, 943.20, 943.23 (1g), ~~(1m) or (1r)~~, 943.32, 948.02, 948.025, 948.03,
22 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

23 SECTION 639. 950.04 (1v) (g) of the statutes is amended to read:

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1 950.04 (1v) (g) To have reasonable attempts made to notify the victim of
2 hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6),
3 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

4 **SECTION 640.** 950.04 (1v) (nt) of the statutes is created to read:

5 950.04 (1v) (nt) To attend a hearing on a petition for modification of a
6 bifurcated sentence and provide a statement concerning modification of the
7 bifurcated sentence, as provided under s. 302.113 (9g) (d).

8 **SECTION 641.** 951.18 (1) of the statutes is amended to read:

9 951.18 (1) Any person violating s. 951.02, 951.025, 951.03, 951.04, 951.05,
10 951.06, 951.07, 951.09, 951.10, 951.11, 951.13, 951.14 or 951.15 is subject to a
11 Class C forfeiture. Any person who violates any of these provisions within 3 years
12 after a humane officer issues an abatement order under s. 173.11 prohibiting the
13 violation of that provision is subject to a Class A forfeiture. Any person who
14 intentionally or negligently violates any of those sections is guilty of a Class A
15 misdemeanor. Any person who intentionally violates s. 951.02, resulting in the
16 mutilation, disfigurement or death of an animal, is guilty of a Class E I felony. Any
17 person who intentionally violates s. 951.02 or 951.06, knowing that the animal that
18 is the victim is used by a law enforcement agency to perform agency functions or
19 duties and causing injury to the animal, is guilty of a Class E I felony.

20 **SECTION 642.** 951.18 (2) of the statutes is amended to read:

21 951.18 (2) Any person who violates s. 951.08 (2m) or (3) is guilty of a Class A
22 misdemeanor. Any person who violates s. 951.08 (1) or (2) is guilty of a Class E I
23 felony for the first violation and is guilty of a Class D H felony for the 2nd or
24 subsequent violation.

25 **SECTION 643.** 951.18 (2m) of the statutes is amended to read:

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1 951.18 (2m) Any person who violates s. 951.095 is subject to a Class B
2 forfeiture. Any person who intentionally or negligently violates s. 951.095, knowing
3 that the animal that is the victim is used by a law enforcement agency or fire
4 department to perform agency or department functions or duties, is guilty of a Class
5 A misdemeanor. Any person who intentionally violates s. 951.095, knowing that the
6 animal that is the victim is used by a law enforcement agency or fire department to
7 perform agency or department functions or duties and causing injury to the animal,
8 is guilty of a Class ~~E~~ I felony. Any person who intentionally violates s. 951.095,
9 knowing that the animal that is the victim is used by a law enforcement agency or
10 fire department to perform agency or department functions or duties and causing
11 death to the animal, is guilty of a Class ~~D~~ H felony.

12 SECTION 644. 961.41 (1) (intro.) of the statutes is amended to read:

13 961.41 (1) MANUFACTURE, DISTRIBUTION OR DELIVERY. (intro.) Except as
14 authorized by this chapter, it is unlawful for any person to manufacture, distribute
15 or deliver a controlled substance or controlled substance analog. Any person who
16 violates this subsection ~~with respect to~~ is subject to the following penalties:

17 SECTION 645. 961.41 (1) (a) of the statutes is amended to read:

18 961.41 (1) (a) Schedule I and II narcotic drugs generally. Except as provided
19 in par. (d), if a person violates this subsection with respect to a controlled substance
20 included in schedule I or II which is a narcotic drug, or a controlled substance analog
21 of a controlled substance included in schedule I or II which is a narcotic drug, may
22 be fined not more than \$25,000 or imprisoned for not more than 22 years and 6
23 months or both the person is guilty of a Class E felony.

24 SECTION 646. 961.41 (1) (b) of the statutes is amended to read:

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1 961.41 (1) (b) Schedule I, II, and III nonnarcotic drugs generally. Except as
2 provided in pars. (cm) and (e) to (h), if a person violates this subsection with respect
3 to any other controlled substance included in schedule I, II, or III, or a controlled
4 substance analog of any other controlled substance included in schedule I or II, may
5 be fined not more than \$15,000 or imprisoned for not more than 7 years and 6 months
6 or both the person is guilty of a Class H felony.

7 **SECTION 647.** 961.41 (1) (cm) (intro.) of the statutes is amended to read:

8 961.41 (1) (cm) Cocaine and cocaine base. (intro.) Cocaine If the person violates
9 this subsection with respect to cocaine or cocaine base, or a controlled substance
10 analog of cocaine or cocaine base, is subject to the following penalties if and the
11 amount manufactured, distributed, or delivered is:

12 **SECTION 648.** 961.41 (1) (cm) 1. of the statutes is renumbered 961.41 (1) (cm)
13 1r. and amended to read:

14 961.41 (1) (cm) 1r. Five grams or less More than one gram but not more than
15 5 grams, the person shall be fined not more than \$500,000 and may be imprisoned
16 for not more than 15 years is guilty of a Class F felony.

17 **SECTION 649.** 961.41 (1) (cm) 1g. of the statutes is created to read:

18 961.41 (1) (cm) 1g. One gram or less, the person is guilty of a Class G felony.

19 **SECTION 650.** 961.41 (1) (cm) 2. of the statutes is amended to read:

20 961.41 (1) (cm) 2. More than 5 grams but not more than 15 grams, the person
21 shall be fined not more than \$500,000 and shall be imprisoned for not less than one
22 year nor more than 22 years and 6 months is guilty of a Class E felony.

23 **SECTION 651.** 961.41 (1) (cm) 3. of the statutes is amended to read:

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1 961.41 (1) (cm) 3. More than 15 grams but not more than 40 grams, the person
2 shall be fined not more than \$500,000 and shall be imprisoned for not less than 3
3 years nor more than 30 years is guilty of a Class D felony.

4 **SECTION 652.** 961.41 (1) (cm) 4. of the statutes is amended to read:

5 961.41 (1) (cm) 4. More than 40 grams but not more than 100 grams, the person
6 shall be fined not more than \$500,000 and shall be imprisoned for not less than 5
7 years nor more than 45 years is guilty of a Class C felony.

8 **SECTION 653.** 961.41 (1) (cm) 5. of the statutes is repealed.

9 **SECTION 654.** 961.41 (1) (d) (intro.) of the statutes is amended to read:

10 961.41 (1) (d) Heroin. (intro.) Heroin If the person violates this subsection with
11 respect to heroin or a controlled substance analog of heroin is subject to the following
12 penalties if and the amount manufactured, distributed or delivered is:

13 **SECTION 655.** 961.41 (1) (d) 1. of the statutes is amended to read:

14 961.41 (1) (d) 1. Three grams or less, the person shall be fined not less than
15 \$1,000 nor more than \$200,000 and may be imprisoned for not more than 22 years
16 and 6 months is guilty of a Class F felony.

17 **SECTION 656.** 961.41 (1) (d) 2. of the statutes is amended to read:

18 961.41 (1) (d) 2. More than 3 grams but not more than 10 grams, the person
19 shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned
20 for not less than 6 months nor more than 22 years and 6 months is guilty of a Class
21 E felony.

22 **SECTION 657.** 961.41 (1) (d) 3. of the statutes is amended to read:

23 961.41 (1) (d) 3. More than 10 grams but not more than 50 grams, the person
24 shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned

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1 ~~for not less than one year nor more than 22 years and 6 months is guilty of a Class~~
2 D felony.

3 SECTION 658. 961.41 (1) (d) 4. of the statutes is amended to read:

4 961.41 (1) (d) 4. More than 50 grams but not more than 200 grams, the person
5 shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned
6 for not less than 3 years nor more than 22 years and 6 months is guilty of a Class C
7 felony.

8 SECTION 659. 961.41 (1) (d) 5. of the statutes is repealed.

9 SECTION 660. 961.41 (1) (d) 6. of the statutes is repealed.

10 SECTION 661. 961.41 (1) (e) (intro.) of the statutes is amended to read:

11 961.41 (1) (e) Phencyclidine, amphetamine, methamphetamine, and
12 methcathinone. (intro.) Phencyclidine If the person violates this subsection with
13 respect to phencyclidine, amphetamine, methamphetamine, or methcathinone, or a
14 controlled substance analog of phencyclidine, amphetamine, methamphetamine, or
15 methcathinone, is subject to the following penalties if and the amount
16 manufactured, distributed, or delivered is:

17 SECTION 662. 961.41 (1) (e) 1. of the statutes is amended to read:

18 961.41 (1) (e) 1. Three grams or less, the person shall be fined not less than
19 \$1,000 nor more than \$200,000 and may be imprisoned for not more than 7 years and
20 6 months is guilty of a Class F felony.

21 SECTION 663. 961.41 (1) (e) 2. of the statutes is amended to read:

22 961.41 (1) (e) 2. More than 3 grams but not more than 10 grams, the person
23 shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned
24 for not less than 6 months nor more than 7 years and 6 months is guilty of a Class
25 E felony.

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1 **SECTION 664.** 961.41 (1) (e) 3. of the statutes is amended to read:

2 961.41 (1) (e) 3. More than 10 grams but not more than 50 grams, the person
3 ~~shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned~~
4 ~~for not less than one year nor more than 22 years and 6 months~~ is guilty of a Class
5 D felony.

6 **SECTION 665.** 961.41 (1) (e) 4. of the statutes is amended to read:

7 961.41 (1) (e) 4. More than 50 grams ~~but not more than 200 grams~~, the person
8 ~~shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned~~
9 ~~for not less than 3 years nor more than 22 years and 6 months~~ is guilty of a Class C
10 felony.

11 **SECTION 666.** 961.41 (1) (e) 5. of the statutes is repealed.

12 **SECTION 667.** 961.41 (1) (e) 6. of the statutes is repealed.

13 **SECTION 668.** 961.41 (1) (em) of the statutes is repealed.

14 **SECTION 669.** 961.41 (1) (f) (intro.) of the statutes is amended to read:

15 961.41 (1) (f) Lysergic acid diethylamide. (intro.) Lysergic If the person violates
16 this subsection with respect to lysergic acid diethylamide or a controlled substance
17 analog of lysergic acid diethylamide is subject to the following penalties if and the
18 amount manufactured, distributed, or delivered is:

19 **SECTION 670.** 961.41 (1) (f) 1. of the statutes is amended to read:

20 961.41 (1) (f) 1. One gram or less, the person ~~shall be fined not less than \$1,000~~
21 ~~nor more than \$200,000 and may be imprisoned for not more than 7 years and 6~~
22 ~~months~~ is guilty of a Class G felony.

23 **SECTION 671.** 961.41 (1) (f) 2. of the statutes is amended to read:

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1 961.41 (1) (f) 2. More than one gram but not more than 5 grams, the person shall
2 ~~be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not~~
3 ~~less than 6 months nor more than 7 years and 6 months~~ is guilty of a Class F felony.

4 **SECTION 672.** 961.41 (1) (f) 3. of the statutes is amended to read:

5 961.41 (1) (f) 3. More than 5 grams, the person shall be fined not less than
6 ~~\$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year~~
7 ~~nor more than 22 years and 6 months~~ is guilty of a Class E felony.

8 **SECTION 673.** 961.41 (1) (g) (intro.) of the statutes is amended to read:

9 961.41 (1) (g) Psilocin and psilocybin. (intro.) Psilocin If the person violates
10 this subsection with respect to psilocin or psilocybin, or a controlled substance analog
11 of psilocin or psilocybin, is subject to the following penalties if and the amount
12 manufactured, distributed or delivered is:

13 **SECTION 674.** 961.41 (1) (g) 1. of the statutes is amended to read:

14 961.41 (1) (g) 1. One hundred grams or less, the person shall be fined not less
15 ~~than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 7~~
16 ~~years and 6 months~~ is guilty of a Class G felony.

17 **SECTION 675.** 961.41 (1) (g) 2. of the statutes is amended to read:

18 961.41 (1) (g) 2. More than 100 grams but not more than 500 grams, the person
19 ~~shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned~~
20 ~~for not less than 6 months nor more than 7 years and 6 months~~ is guilty of a Class
21 F felony.

22 **SECTION 676.** 961.41 (1) (g) 3. of the statutes is amended to read:

23 961.41 (1) (g) 3. More than 500 grams, the person shall be fined not less than
24 ~~\$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year~~
25 ~~nor more than 22 years and 6 months~~ is guilty of a Class E felony.

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1 **SECTION 677.** 961.41 (1) (h) (intro.) of the statutes is amended to read:

2 961.41 (1) (h) Tetrahydrocannabinols. (intro.) ~~Tetrahydrocannabinols~~ If the
3 person violates this subsection with respect to tetrahydrocannabinols, included
4 under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, is
5 subject to the following penalties if and the amount manufactured, distributed or
6 delivered is:

7 **SECTION 678.** 961.41 (1) (h) 1. of the statutes is amended to read:

8 961.41 (1) (h) 1. Five ~~Two~~ Two hundred grams or less, or ~~10~~ 4 or fewer plants
9 containing tetrahydrocannabinols, the person shall be fined ~~not less than \$500 nor~~
10 ~~more than \$25,000 and may be imprisoned for not more than 4 years and 6 months~~
11 is guilty of a Class I felony.

12 **SECTION 679.** 961.41 (1) (h) 2. of the statutes is amended to read:

13 961.41 (1) (h) 2. More than ~~500~~ 200 grams but not more than ~~2,500~~ 1,000 grams,
14 or more than ~~10~~ 4 plants containing tetrahydrocannabinols but not more than ~~50~~ 20
15 plants containing tetrahydrocannabinols, the person shall be fined ~~not less than~~
16 ~~\$1,000 nor more than \$50,000 and shall be imprisoned for not less than 3 months nor~~
17 ~~more than 7 years and 6 months~~ is guilty of a Class H felony.

18 **SECTION 680.** 961.41 (1) (h) 3. of the statutes is amended to read:

19 961.41 (1) (h) 3. More than ~~2,500~~ 1,000 grams but not more than 2,500 grams,
20 or more than ~~50~~ 20 plants containing tetrahydrocannabinols but not more than 50
21 plants containing tetrahydrocannabinols, the person shall be fined ~~not less than~~
22 ~~\$1,000 nor more than \$100,000 and shall be imprisoned for not less than one year~~
23 ~~nor more than 15 years~~ is guilty of a Class G felony.

24 **SECTION 681.** 961.41 (1) (h) 4. of the statutes is created to read:

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1 961.41 (1) (h) 4. More than 2,500 grams but not more than 10,000 grams, or
2 more than 50 plants containing tetrahydrocannabinols but not more than 200 plants
3 containing tetrahydrocannabinols, the person is guilty of a Class F felony.

4 **SECTION 682.** 961.41 (1) (h) 5. of the statutes is created to read:

5 961.41 (1) (h) 5. More than 10,000 grams, or more than 200 plants containing
6 tetrahydrocannabinols, the person is guilty of a Class E felony.

7 **SECTION 683.** 961.41 (1) (i) of the statutes is amended to read:

8 961.41 (1) (i) Schedule IV drugs. Except as provided in par. (im), if a person
9 violates this subsection with respect to a substance included in schedule IV, may be
10 fined not more than \$10,000 or imprisoned for not more than 4 years and 6 months
11 or both the person is guilty of a Class H felony.

12 **SECTION 684.** 961.41 (1) (im) of the statutes is repealed and recreated to read:

13 961.41 (1) (im) Flunitrazepam. If a person violates this subsection with respect
14 to flunitrazepam, the person is guilty of a Class G felony.

15 **SECTION 685.** 961.41 (1) (j) of the statutes is amended to read:

16 961.41 (1) (j) Schedule V drugs. ~~A- If a person violates this subsection with~~
17 respect to a substance included in schedule V, may be fined not more than \$5,000 or
18 imprisoned for not more than 2 years or both the person is guilty of a Class I felony.

19 **SECTION 686.** 961.41 (1m) (intro.) of the statutes is amended to read:

20 961.41 (1m) POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER.
21 (intro.) Except as authorized by this chapter, it is unlawful for any person to possess,
22 with intent to manufacture, distribute or deliver, a controlled substance or a
23 controlled substance analog. Intent under this subsection may be demonstrated by,
24 without limitation because of enumeration, evidence of the quantity and monetary
25 value of the substances possessed, the possession of manufacturing implements or

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1 paraphernalia, and the activities or statements of the person in possession of the
2 controlled substance or a controlled substance analog prior to and after the alleged
3 violation. Any person who violates this subsection ~~with respect to~~ is subject to the
4 following penalties:

5 SECTION 687. 961.41 (1m) (a) of the statutes is amended to read:

6 961.41 (1m) (a) Schedule I and II narcotic drugs generally. Except as provided
7 in par. (d), if a person violates this subsection with respect to a controlled substance
8 included in schedule I or II which is a narcotic drug or a controlled substance analog
9 of a controlled substance included in schedule I or II which is a narcotic drug, ~~may~~
10 ~~be fined not more than \$25,000 or imprisoned for not more than 22 years and 6~~
11 ~~months or both~~ the person is guilty of a Class E felony.

12 SECTION 688. 961.41 (1m) (b) of the statutes is amended to read:

13 961.41 (1m) (b) Schedule I, II, and III nonnarcotic drugs generally. Except as
14 provided in pars. (cm) and (e) to (h), if a person violates this subsection with respect
15 to any other controlled substance included in schedule I, II, or III, or a controlled
16 substance analog of any other controlled substance included in schedule I or II, may
17 ~~be fined not more than \$15,000 or imprisoned for not more than 7 years and 6 months~~
18 ~~or both~~ the person is guilty of a Class H felony.

19 SECTION 689. 961.41 (1m) (cm) (intro.) of the statutes is amended to read:

20 961.41 (1m) (cm) Cocaine and cocaine base. (intro.) ~~Cocaine~~ If a person violates
21 this subsection with respect to cocaine or cocaine base, or a controlled substance
22 analog of cocaine or cocaine base, is subject to the ~~following penalties if and~~ the
23 amount possessed, with intent to manufacture, distribute or deliver, is:

24 SECTION 690. 961.41 (1m) (cm) 1. of the statutes is renumbered 961.41 (1m)
25 (cm) 1r. and amended to read:

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SECTION 690

1 961.41 (1m) (cm) 1r. ~~Five grams or less~~ More than one gram but not more than
2 5 grams, the person shall be fined not more than \$500,000 and may be imprisoned
3 ~~for not more than 15 years~~ is guilty of a Class F felony.

4 **SECTION 691.** 961.41 (1m) (cm) 1g. of the statutes is created to read:

5 961.41 (1m) (cm) 1g. One gram or less, the person is guilty of a Class G felony.

6 **SECTION 692.** 961.41 (1m) (cm) 2. of the statutes is amended to read:

7 961.41 (1m) (cm) 2. More than 5 grams but not more than 15 grams, the person
8 ~~shall be fined not more than \$500,000 and shall be imprisoned for not less than one~~
9 ~~year nor more than 22 years and 6 months~~ is guilty of a Class E felony.

10 **SECTION 693.** 961.41 (1m) (cm) 3. of the statutes is amended to read:

11 961.41 (1m) (cm) 3. More than 15 grams but not more than 40 grams, the
12 ~~person shall be fined not more than \$500,000 and shall be imprisoned for not less~~
13 ~~than 3 years nor more than 30 years~~ is guilty of a Class D felony.

14 **SECTION 694.** 961.41 (1m) (cm) 4. of the statutes is amended to read:

15 961.41 (1m) (cm) 4. More than 40 grams ~~but not more than 100 grams~~, the
16 ~~person shall be fined not more than \$500,000 and shall be imprisoned for not less~~
17 ~~than 5 years nor more than 45 years~~ is guilty of a Class C felony.

18 **SECTION 695.** 961.41 (1m) (cm) 5. of the statutes is repealed.

19 **SECTION 696.** 961.41 (1m) (d) (intro.) of the statutes is amended to read:

20 961.41 (1m) (d) Heroin. (intro.) ~~Heroin~~ If a person violates this subsection with
21 respect to heroin or a controlled substance analog of heroin ~~is subject to the following~~
22 ~~penalties if~~ and the amount possessed, with intent to manufacture, distribute or
23 deliver, is:

24 **SECTION 697.** 961.41 (1m) (d) 1. of the statutes is amended to read:

ASSEMBLY BILL 3

1 961.41 (1m) (d) 1. ~~Three grams or less, the person shall be fined not less than~~
2 ~~\$1,000 nor more than \$100,000 and may be imprisoned for not more than 22 years~~
3 ~~and 6 months is guilty of a Class F felony.~~

4 **SECTION 698.** 961.41 (1m) (d) 2. of the statutes is amended to read:

5 961.41 (1m) (d) 2. More than 3 grams but not more than 10 grams, the person
6 ~~shall be fined not less than \$1,000 nor more than \$200,000 and shall be imprisoned~~
7 ~~for not less than 6 months nor more than 22 years and 6 months is guilty of a Class~~
8 E felony.

9 **SECTION 699.** 961.41 (1m) (d) 3. of the statutes is amended to read:

10 961.41 (1m) (d) 3. More than 10 grams but not more than 50 grams, the person
11 ~~shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned~~
12 ~~for not less than one year nor more than 22 years and 6 months is guilty of a Class~~
13 D felony.

14 **SECTION 700.** 961.41 (1m) (d) 4. of the statutes is amended to read:

15 961.41 (1m) (d) 4. More than 50 grams but not more than 200 grams, the person
16 ~~shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned~~
17 ~~for not less than 3 years nor more than 22 years and 6 months is guilty of a Class C~~
18 felony.

19 **SECTION 701.** 961.41 (1m) (d) 5. of the statutes is repealed.

20 **SECTION 702.** 961.41 (1m) (d) 6. of the statutes is repealed.

21 **SECTION 703.** 961.41 (1m) (e) (intro.) of the statutes is amended to read:

22 961.41 (1m) (e) Phencyclidine, amphetamine, methamphetamine, and
23 methcathinone. (intro.) Phencyclidine If a person violates this subsection with
24 respect to phencyclidine, amphetamine, methamphetamine, or methcathinone, or a
25 controlled substance analog of phencyclidine, amphetamine, methamphetamine, or

ASSEMBLY BILL 3**SECTION 703**

1 methcathinone, is subject to the following penalties if and the amount possessed,
2 with intent to manufacture, distribute, or deliver, is:

3 **SECTION 704.** 961.41 (1m) (e) 1. of the statutes is amended to read:

4 961.41 (1m) (e) 1. Three grams or less, the person shall be fined not less than
5 \$1,000 nor more than \$100,000 and may be imprisoned for not more than 7 years and
6 6 months is guilty of a Class F felony.

7 **SECTION 705.** 961.41 (1m) (e) 2. of the statutes is amended to read:

8 961.41 (1m) (e) 2. More than 3 grams but not more than 10 grams, the person
9 shall be fined not less than \$1,000 nor more than \$200,000 and shall be imprisoned
10 for not less than 6 months nor more than 7 years and 6 months is guilty of a Class
11 E felony.

12 **SECTION 706.** 961.41 (1m) (e) 3. of the statutes is amended to read:

13 961.41 (1m) (e) 3. More than 10 grams but not more than 50 grams, the person
14 shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned
15 for not less than one year nor more than 22 years and 6 months is guilty of a Class
16 D felony.

17 **SECTION 707.** 961.41 (1m) (e) 4. of the statutes is amended to read:

18 961.41 (1m) (e) 4. More than 50 grams but not more than 200 grams, the person
19 shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned
20 for not less than 3 years nor more than 22 years and 6 months is guilty of a Class C
21 felony.

22 **SECTION 708.** 961.41 (1m) (e) 5. of the statutes is repealed.

23 **SECTION 709.** 961.41 (1m) (e) 6. of the statutes is repealed.

24 **SECTION 710.** 961.41 (1m) (em) of the statutes is repealed.

25 **SECTION 711.** 961.41 (1m) (f) (intro.) of the statutes is amended to read:

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1 961.41 (1m) (f) Lysergic acid diethylamide. (intro.) Lysergie If a person violates
2 this subsection with respect to lysergic acid diethylamide or a controlled substance
3 analog of lysergic acid diethylamide is subject to the following penalties if and the
4 amount possessed, with intent to manufacture, distribute or deliver, is:

5 **SECTION 712.** 961.41 (1m) (f) 1. of the statutes is amended to read:

6 961.41 (1m) (f) 1. One gram or less, the person shall be ~~fin~~ed not less than
7 \$1,000 nor more than \$100,000 and may be imprisoned for not more than 7 years and
8 6 months is guilty of a Class G felony.

9 **SECTION 713.** 961.41 (1m) (f) 2. of the statutes is amended to read:

10 961.41 (1m) (f) 2. More than one gram but not more than 5 grams, the person
11 ~~shall be fined not less than \$1,000 nor more than \$200,000 and shall be imprisoned~~
12 ~~for not less than 6 months nor more than 7 years and 6 months~~ is guilty of a Class
13 F felony.

14 **SECTION 714.** 961.41 (1m) (f) 3. of the statutes is amended to read:

15 961.41 (1m) (f) 3. More than 5 grams, the person shall be ~~fin~~ed not less than
16 \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year
17 ~~nor more than 22 years and 6 months~~ is guilty of a Class E felony.

18 **SECTION 715.** 961.41 (1m) (g) (intro.) of the statutes is amended to read:

19 961.41 (1m) (g) Psilocin and psilocybin. (intro.) Psilocin If a person violates
20 this subsection with respect to psilocin or psilocybin, or a controlled substance analog
21 of psilocin or psilocybin, is subject to the following penalties if and the amount
22 possessed, with intent to manufacture, distribute or deliver, is:

23 **SECTION 716.** 961.41 (1m) (g) 1. of the statutes is amended to read:

ASSEMBLY BILL 3

1 961.41 (1m) (g) 1. One hundred grams or less, the person shall be ~~fin~~ed not less
2 than ~~\$1,000 nor more than \$100,000 and may be imprisoned for not more than 7~~
3 ~~years and 6 months~~ is guilty of a Class G felony.

4 SECTION 717. 961.41 (1m) (g) 2. of the statutes is amended to read:

5 961.41 (1m) (g) 2. More than 100 grams but not more than 500 grams, the
6 person shall be ~~fin~~ed not less than ~~\$1,000 nor more than \$200,000 and shall be~~
7 ~~imprisoned for not less than 6 months nor more than 7 years and 6 months~~ is guilty
8 of a Class F felony.

9 SECTION 718. 961.41 (1m) (g) 3. of the statutes is amended to read:

10 961.41 (1m) (g) 3. More than 500 grams, the person shall be ~~fin~~ed not less than
11 ~~\$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year~~
12 ~~nor more than 22 years and 6 months~~ is guilty of a Class E felony.

13 SECTION 719. 961.41 (1m) (h) (intro.) of the statutes is amended to read:

14 961.41 (1m) (h) Tetrahydrocannabinols. (intro.) Tetrahydrocannabinols If a
15 person violates this subsection with respect to tetrahydrocannabinols, included
16 under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, is
17 subject to the following penalties if and the amount possessed, with intent to
18 manufacture, distribute, or deliver, is:

19 SECTION 720. 961.41 (1m) (h) 1. of the statutes is amended to read:

20 961.41 (1m) (h) 1. ~~Five~~ Two hundred grams or less, or ~~10~~ 4 or fewer plants
21 containing tetrahydrocannabinols, the person shall be ~~fin~~ed not less than ~~\$500 nor~~
22 ~~more than \$25,000 and may be imprisoned for not more than 4 years and 6 months~~
23 is guilty of a Class I felony.

24 SECTION 721. 961.41 (1m) (h) 2. of the statutes is amended to read:

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1 961.41 (1m) (h) 2. More than ~~500~~ 200 grams but not more than ~~2,500~~ 1,000
2 grams, or more than ~~10~~ 4 plants containing tetrahydrocannabinols but not more than
3 ~~50~~ 20 plants containing tetrahydrocannabinols, the person shall be fined not less
4 than ~~\$1,000 nor more than \$50,000~~ and shall be imprisoned for not less than ~~3~~
5 ~~months nor more than 7 years~~ and 6 months is guilty of a Class H felony.

6 **SECTION 722.** 961.41 (1m) (h) 3. of the statutes is amended to read:

7 961.41 (1m) (h) 3. More than ~~2,500~~ 1,000 grams but not more than 2,500 grams,
8 or more than ~~50~~ 20 plants containing tetrahydrocannabinols but not more than 50
9 plants containing tetrahydrocannabinols, the person shall be fined not less than
10 ~~\$1,000 nor more than \$100,000~~ and shall be imprisoned for not less than one year
11 ~~nor more than 15 years~~ is guilty of a Class G felony.

12 **SECTION 723.** 961.41 (1m) (h) 4. of the statutes is created to read:

13 961.41 (1m) (h) 4. More than 2,500 grams but not more than 10,000 grams, or
14 more than 50 plants containing tetrahydrocannabinols but not more than 200 plants
15 containing tetrahydrocannabinols, the person is guilty of a Class F felony.

16 **SECTION 724.** 961.41 (1m) (h) 5. of the statutes is created to read:

17 961.41 (1m) (h) 5. More than 10,000 grams, or more than 200 plants containing
18 tetrahydrocannabinols, the person is guilty of a Class E felony.

19 **SECTION 725.** 961.41 (1m) (i) of the statutes is amended to read:

20 961.41 (1m) (i) Schedule IV drugs. Except as provided in par. (im), if a person
21 violates this subsection with respect to a substance included in schedule IV, ~~may be~~
22 ~~fined not more than \$10,000 or imprisoned for not more than 4 years and 6 months~~
23 ~~or both~~ the person is guilty of a Class H felony.

24 **SECTION 726.** 961.41 (1m) (im) of the statutes is repealed and recreated to read:

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SECTION 726

1 961.41 (1m) (im) *Flunitrazepam*. If a person violates this subsection with
2 respect to flunitrazepam, the person is guilty of a Class G felony.

3 **SECTION 727.** 961.41 (1m) (j) of the statutes is amended to read:

4 961.41 (1m) (j) *Schedule V drugs*. ~~A~~ If a person violates this subsection with
5 respect to a substance included in schedule V, may be fined not more than \$5,000 or
6 imprisoned for not more than 2 years or both the person is guilty of a Class I felony.

7 **SECTION 728.** 961.41 (1n) (c) of the statutes is amended to read:

8 961.41 (1n) (c) A person who violates par. (a) or (b) ~~may be fined not more than~~
9 ~~\$250,000 or imprisoned for not more than 15 years or both~~ is guilty of a Class F felony.

10 **SECTION 729.** 961.41 (1q) of the statutes is amended to read:

11 961.41 (1q) PENALTY RELATING TO TETRAHYDROCANNABINOLS IN CERTAIN CASES.
12 Under s. 961.49 (2), 1999 stats., and subs. (1) (h) and (1m) (h) and s. 961.49 (2), if
13 different penalty provisions apply to a person depending on whether the weight of
14 tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is
15 considered, the greater penalty provision applies.

16 **SECTION 730.** 961.41 (1r) of the statutes is amended to read:

17 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
18 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m) and s. 961.49 (2) (b), an amount
19 includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid
20 diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
21 methcathinone or tetrahydrocannabinols or any controlled substance analog of any
22 of these substances together with any compound, mixture, diluent, plant material
23 or other substance mixed or combined with the controlled substance or controlled
24 substance analog. In addition, in determining amounts under subs. (1) (h) and (1m)

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1 (h), the amount of tetrahydrocannabinols means anything included under s. 961.14
2 (4) (t) and includes the weight of any marijuana.

3 **SECTION 731.** 961.41 (2) (intro.) of the statutes is amended to read:

4 961.41 (2) COUNTERFEIT SUBSTANCES. (intro.) Except as authorized by this
5 chapter, it is unlawful for any person to create, manufacture, distribute, deliver or
6 possess with intent to distribute or deliver, a counterfeit substance. Any person who
7 violates this subsection with respect to is subject to the following penalties:

8 **SECTION 732.** 961.41 (2) (a) of the statutes is amended to read:

9 961.41 (2) (a) Counterfeit schedule I and II narcotic drugs. ~~A~~ If a person
10 violates this subsection with respect to a counterfeit substance included in schedule
11 I or II which is a narcotic drug, may be fined not more than \$25,000 or imprisoned
12 for not more than 22 years and 6 months or both the person is guilty of a Class E
13 felony.

14 **SECTION 733.** 961.41 (2) (b) of the statutes is amended to read:

15 961.41 (2) (b) Counterfeit schedule I, II, III, and IV drugs. Any Except as
16 provided in par. (cm), if a person violates this subsection with respect to any other
17 counterfeit substance included in schedule I, II or, III, or IV, may be fined not more
18 than \$15,000 or imprisoned for not more than 7 years and 6 months or both the
19 person is guilty of a Class H felony.

20 **SECTION 734.** 961.41 (2) (c) of the statutes is repealed.

21 **SECTION 735.** 961.41 (2) (cm) of the statutes is amended to read:

22 961.41 (2) (cm) Counterfeit flunitrazepam. ~~A~~ If a person violates this
23 subsection with respect to a counterfeit substance which is flunitrazepam, may be
24 fined not more than \$15,000 or imprisoned for not more than 7 years and 6 months
25 or both the person is guilty of a Class G felony.

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SECTION 736

1 **SECTION 736.** 961.41 (2) (d) of the statutes is amended to read:

2 961.41 (2) (d) Counterfeit schedule V drugs. ~~A~~ If a person violates this
3 subsection with respect to a counterfeit substance included in schedule V, may be
4 fined not more than \$5,000 or imprisoned for not more than 2 years or both the person
5 is guilty of a Class I felony.

6 **SECTION 737.** 961.41 (3g) (a) 1. of the statutes is renumbered 961.41 (3g) (am)
7 and amended to read:

8 961.41 (3g) (am) Schedule I and II narcotic drugs. ~~Except as provided in subd.~~
9 ~~2., if the~~ If a person possesses a controlled substance included in schedule I or II
10 which is a narcotic drug, or possesses a controlled substance analog of a controlled
11 substance included in schedule I or II which is a narcotic drug, the person may, upon
12 a first conviction, be fined not more than \$5,000 or imprisoned for not more than 2
13 years or both, and, for a 2nd or subsequent offense, the person may be fined not more
14 than \$10,000 or imprisoned for not more than 3 years or both is guilty of a Class I
15 felony.

16 **SECTION 738.** 961.41 (3g) (a) 2. of the statutes is repealed.

17 **SECTION 739.** 961.41 (3g) (a) 3. of the statutes is repealed.

18 **SECTION 740.** 961.41 (3g) (b) of the statutes is amended to read:

19 961.41 (3g) (b) Other drugs generally. ~~Except as provided in pars. (c), (d), (dm),~~
20 ~~(e) and (f), if the person possesses or attempts to possess a controlled substance or~~
21 ~~controlled substance analog, other than a controlled substance included in schedule~~
22 ~~I or II that is a narcotic drug or a controlled substance analog of a controlled~~
23 ~~substance included in schedule I or II that is a narcotic drug, the person is guilty of~~
24 ~~a misdemeanor, punishable under s. 939.61.~~

25 **SECTION 741.** 961.41 (3g) (c) of the statutes is amended to read:

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1 961.41 (3g) (c) Cocaine and cocaine base. If a person possess or attempts to
2 possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine
3 base, the person shall be fined not more than \$5,000 and may be imprisoned for not
4 more than one year in the county jail upon a first conviction and is guilty of a Class
5 I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense
6 is considered a 2nd or subsequent offense if, prior to the offender's conviction of the
7 offense, the offender has at any time been convicted of any felony or misdemeanor
8 under this chapter or under any statute of the United States or of any state relating
9 to controlled substances, controlled substance analogs, narcotic drugs, marijuana,
10 or depressant, stimulant, or hallucinogenic drugs.

11 **SECTION 742.** 961.41 (3g) (d) of the statutes is amended to read:

12 961.41 (3g) (d) Certain hallucinogenic and stimulant drugs. If a person
13 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,
14 amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, or a
15 controlled substance analog of lysergic acid diethylamide, phencyclidine,
16 amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, the person
17 may be fined not more than \$5,000 or imprisoned for not more than one year in the
18 county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd
19 or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd
20 or subsequent offense if, prior to the offender's conviction of the offense, the offender
21 has at any time been convicted of any felony or misdemeanor under this chapter or
22 under any statute of the United States or of any state relating to controlled
23 substances, controlled substance analogs, narcotic drugs, marijuana, or depressant,
24 stimulant, or hallucinogenic drugs.

25 **SECTION 743.** 961.41 (3g) (dm) of the statutes is repealed.

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SECTION 744

1 **SECTION 744.** 961.41 (3g) (e) of the statutes is amended to read:

2 961.41 (3g) (e) Tetrahydrocannabinols. If a person possesses or attempts to
3 possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled
4 substance analog of tetrahydrocannabinols, the person may be fined not more than
5 \$1,000 or imprisoned for not more than 6 months or both upon a first conviction and
6 is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this
7 paragraph, an offense is considered a 2nd or subsequent offense if, prior to the
8 offender's conviction of the offense, the offender has at any time been convicted of any
9 felony or misdemeanor under this chapter or under any statute of the United States
10 or of any state relating to controlled substances, controlled substance analogs,
11 narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

12 **SECTION 745.** 961.41 (3g) (f) of the statutes is amended to read:

13 961.41 (3g) (f) Gamma-hydroxybutyric acid, gamma-butyrolactone, ketamine,
14 or flunitrazepam. If a person possesses or attempts to possess
15 gamma-hydroxybutyric acid, gamma-butyrolactone, ketamine or flunitrazepam,
16 the person ~~may be fined not more than \$5,000 or imprisoned for not more than 2 years~~
17 ~~or both~~ is guilty of a Class H felony.

18 **SECTION 746.** 961.41 (4) (am) 3. of the statutes is amended to read:

19 961.41 (4) (am) 3. A person ~~convicted of violating~~ who violates this paragraph
20 ~~may be fined not more than \$5,000 or imprisoned for not more than 2 years or both~~
21 is guilty of a Class I felony.

22 **SECTION 747.** 961.42 (2) of the statutes is amended to read:

23 961.42 (2) Any person who violates this section ~~may be fined not more than~~
24 ~~\$25,000 or imprisoned not more than 2 years or both~~ is guilty of a Class I felony.

25 **SECTION 748.** 961.43 (2) of the statutes is amended to read:

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1 961.43 (2) Any person who violates this section ~~may be fined not more than~~
2 ~~\$30,000 or imprisoned not more than 6 years or both~~ is guilty of a Class H felony.

3 **SECTION 749.** 961.437 (4) (a) of the statutes is amended to read:

4 961.437 (4) (a) For a first offense, the person ~~shall be fined not less than \$1,000~~
5 ~~nor more than \$100,000 or imprisoned for not more than 7 years and 6 months or both~~
6 is guilty of a Class H felony.

7 **SECTION 750.** 961.437 (4) (b) of the statutes is amended to read:

8 961.437 (4) (b) For a 2nd or subsequent offense, the person ~~shall be fined not~~
9 ~~less than \$5,000 nor more than \$150,000 or imprisoned for not more than 15 years~~
10 ~~or both~~ is guilty of a Class F felony.

11 **SECTION 751.** 961.438 of the statutes is repealed.

12 **SECTION 752.** 961.455 (1) of the statutes is amended to read:

13 961.455 (1) Any person who has attained the age of 17 years who knowingly
14 solicits, hires, directs, employs or uses a person who is under the age of 17 years of
15 ~~age or under~~ for the purpose of violating s. 961.41 (1) ~~may be fined not more than~~
16 ~~\$50,000 or imprisoned for not more than 15 years or both~~ is guilty of a Class F felony.

17 **SECTION 753.** 961.455 (3) of the statutes is amended to read:

18 961.455 (3) Solicitation under sub. (1) occurs in the manner described under
19 s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s.
20 ~~939.30 or 948.35.~~

21 **SECTION 754.** 961.46 (1) of the statutes is renumbered 961.46 and amended to
22 read:

23 **961.46 Distribution to persons under age 18.** Except as provided in sub.
24 (3), any If a person 17 years of age or over who violates s. 961.41 (1) by distributing
25 or delivering a controlled substance included in schedule I or II which is a narcotic

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1 ~~drug or a controlled substance analog of a controlled substance included in schedule~~
2 ~~I or II which is a narcotic drug to a person 17 years of age or under who is at least~~
3 ~~3 years his or her junior is punishable by the fine authorized by s. 961.41 (1) (a) or~~
4 ~~a term of imprisonment of up to twice that authorized by s. 961.41 (1) (a), or both, the~~
5 applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the
6 offense may be increased by not more than 5 years.

7 **SECTION 755.** 961.46 (2) of the statutes is repealed.

8 **SECTION 756.** 961.46 (3) of the statutes is repealed.

9 **SECTION 757.** 961.465 of the statutes is repealed.

10 **SECTION 758.** 961.472 (2) of the statutes is amended to read:

11 961.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found
12 guilty of possession or attempted possession of a controlled substance or controlled
13 substance analog under s. 961.41 (3g) ~~(a) 2.~~ (am), (c), or (d) ~~or (dm)~~, the court shall
14 order the person to comply with an assessment of the person's use of controlled
15 substances. The court's order shall designate a facility that is operated by or
16 pursuant to a contract with the county department established under s. 51.42 and
17 that is certified by the department of health and family services to provide
18 assessment services to perform the assessment and, if appropriate, to develop a
19 proposed treatment plan. The court shall notify the person that noncompliance with
20 the order limits the court's ability to determine whether the treatment option under
21 s. 961.475 is appropriate. The court shall also notify the person of the fee provisions
22 under s. 46.03 (18) (fm).

23 **SECTION 759.** 961.48 (1) of the statutes is renumbered 961.48 (1) (intro.) and
24 amended to read:

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1 961.48 (1) (intro.) ~~Except as provided in subs. (2) and (4), any~~ If a person who
2 is charged under sub. (2m) with a felony offense under this chapter that is a 2nd or
3 subsequent offense as provided under this chapter sub. (3) and the person is
4 convicted of that 2nd or subsequent offense may be fined an amount up to twice that
5 otherwise authorized or imprisoned for a term up to twice the term otherwise
6 authorized or both, the maximum term of imprisonment for the offense may be
7 increased as follows:

8 **SECTION 760.** 961.48 (1) (a) and (b) of the statutes are created to read:

9 961.48 (1) (a) By not more than 6 years, if the offense is a Class C or D felony.

10 (b) By not more than 4 years, if the offense is a Class E, F, G, H, or I felony.

11 **SECTION 761.** 961.48 (2) of the statutes is repealed.

12 **SECTION 762.** 961.48 (2m) (a) of the statutes is amended to read:

13 961.48 (2m) (a) Whenever a person charged with ~~an~~ a felony offense under this
14 chapter may be subject to a conviction for a 2nd or subsequent offense, he or she is
15 not subject to an enhanced penalty under sub. (1) ~~or (2)~~ unless any applicable prior
16 convictions are alleged in the complaint, indictment or information or in an amended
17 complaint, indictment or information that is filed under par. (b) 1. A person is not
18 subject to an enhanced penalty under sub. (1) ~~or (2)~~ for an offense if an allegation of
19 applicable prior convictions is withdrawn by an amended complaint filed under par.
20 (b) 2.

21 **SECTION 763.** 961.48 (3) of the statutes is amended to read:

22 961.48 (3) For purposes of this section, ~~an~~ a felony offense under this chapter
23 is considered a 2nd or subsequent offense if, prior to the offender's conviction of the
24 offense, the offender has at any time been convicted of any felony or misdemeanor
25 offense under this chapter or under any statute of the United States or of any state

ASSEMBLY BILL 3**SECTION 763**

1 relating to controlled substances or controlled substance analogs, narcotic drugs,
2 marijuana or depressant, stimulant or hallucinogenic drugs.

3 **SECTION 764.** 961.48 (4) of the statutes is repealed.

4 **SECTION 765.** 961.49 (1) of the statutes is renumbered 961.49, and 961.49
5 (intro.) of the statutes, as renumbered, is amended to read:

6 **961.49 Distribution of or possession with intent to deliver a controlled**
7 **substance on or near certain places.** (intro.) If any person violates s. 961.41 (1)
8 (cm), (d), (e), (~~em~~), (f), (g) or (h) by delivering or distributing, or violates s. 961.41 (1m)
9 (cm), (d), (e), (~~em~~), (f), (g) or (h) by possessing with intent to deliver or distribute,
10 cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin,
11 psilocybin, amphetamine, methamphetamine, methcathinone or any form of
12 tetrahydrocannabinols or a controlled substance analog of any of these substances
13 and the delivery, distribution or possession takes place under any of the following
14 circumstances, the maximum term of imprisonment prescribed by law for that crime
15 may be increased by 5 years:

16 **SECTION 766.** 961.49 (2) of the statutes is repealed.

17 **SECTION 767.** 961.49 (3) of the statutes is repealed.

18 **SECTION 768.** 961.492 of the statutes is repealed.

19 **SECTION 769.** 961.55 (1) (d) 3. of the statutes is amended to read:

20 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41
21 (3g) (b), (c), (d), (~~dm~~), (e) or (f); and

22 **SECTION 770.** 961.573 (3) of the statutes is amended to read:

23 961.573 (3) No person may use, or possess with the primary intent to use, drug
24 paraphernalia to manufacture, compound, convert, produce, process, prepare, test,
25 analyze, pack, repack or store methamphetamine or a controlled substance analog

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1 of methamphetamine in violation of this chapter. Any person who violates this
2 subsection ~~may be fined not more than \$10,000 or imprisoned for not more than 5~~
3 ~~years or both~~ is guilty of a Class H felony.

4 **SECTION 771.** 961.574 (3) of the statutes is amended to read:

5 961.574 (3) No person may deliver, possess with intent to deliver, or
6 manufacture with intent to deliver, drug paraphernalia, knowing that it will be
7 primarily used to manufacture, compound, convert, produce, process, prepare, test,
8 analyze, pack, repack or store methamphetamine or a controlled substance analog
9 of methamphetamine in violation of this chapter. Any person who violates this
10 subsection ~~may be fined not more than \$10,000 or imprisoned for not more than 5~~
11 ~~years or both~~ is guilty of a Class H felony.

12 **SECTION 772.** 961.575 (3) of the statutes is amended to read:

13 961.575 (3) Any person 17 years of age or over who violates s. 961.574 (3) by
14 delivering drug paraphernalia to a person 17 years of age or under ~~may be fined not~~
15 ~~more than \$50,000 or imprisoned for not more than 10 years or both~~ is guilty of a
16 Class G felony.

17 **SECTION 773.** 967.04 (9) of the statutes is amended to read:

18 967.04 (9) In any criminal prosecution or juvenile fact-finding hearing under
19 s. 48.31 or 938.31, the court may admit into evidence a videotaped deposition taken
20 under subs. (7) and (8) without an additional hearing under s. 908.08. In any
21 proceeding under s. 302.113 (9) (am), 302.114 (9) (am), 304.06 (3), or 973.10 (2), the
22 hearing examiner may order and preside at the taking of a videotaped deposition
23 using the procedure provided in subs. (7) and (8) and may admit the videotaped
24 deposition into evidence without an additional hearing under s. 908.08.

25 **SECTION 774.** 968.255 (1) (a) 2. of the statutes is amended to read:

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SECTION 774

1 968.255 (1) (a) 2. Arrested for any misdemeanor under s. 167.30, 940.19, 941.20
2 (1), 941.23, 941.237, 941.24, 948.60, ~~948.605 (2) (a)~~ or 948.61.

3 **SECTION 775.** 968.31 (1) (intro.) of the statutes is amended to read:

4 968.31 (1) (intro.) Except as otherwise specifically provided in ss. 196.63 or
5 968.28 to 968.30, whoever commits any of the acts enumerated in this section ~~may~~
6 ~~be fined not more than \$10,000 or imprisoned for not more than 7 years and 6 months~~
7 ~~or both~~ is guilty of a Class H felony:

8 **SECTION 776.** 968.34 (3) of the statutes is amended to read:

9 968.34 (3) Whoever knowingly violates sub. (1) shall may be fined not more
10 than \$10,000 or imprisoned for not more than ~~2 years~~ 9 months or both.

11 **SECTION 777.** 968.43 (3) of the statutes is amended to read:

12 968.43 (3) Any person who violates an oath or affirmation required by sub. (2)
13 ~~may be imprisoned for not more than 7 years and 6 months~~ is guilty of a Class H
14 felony

15 **SECTION 778.** 969.08 (10) (a) of the statutes is amended to read:

16 969.08 (10) (a) "Commission of a serious crime" includes a solicitation,
17 conspiracy or attempt, under ~~s. 948.35, 1999 stats., or s. 939.30, 939.31, or 939.32 or~~
18 ~~948.35~~, to commit a serious crime.

19 **SECTION 779.** 969.08 (10) (b) of the statutes is amended to read:

20 969.08 (10) (b) "Serious crime" means any crime specified in ~~s. 943.23 (1m),~~
21 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03,
22 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201,
23 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g.,
24 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c),
25 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), (1m) or (1r),

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1 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03,
2 948.04, 948.05, 948.06, 948.07 or 948.30.

3 **SECTION 780.** 971.17 (1) of the statutes is renumbered 971.17 (1) (a) and
4 amended to read:

5 971.17 (1) (a) Felonies committed before the effective date of this paragraph
6 [revisor inserts date]. ~~When~~ Except as provided in par. (c), when a defendant is found
7 not guilty by reason of mental disease or mental defect of a felony committed before
8 the effective date of this paragraph [revisor inserts date], the court shall commit
9 the person to the department of health and family services for a specified period not
10 exceeding two-thirds of the maximum term of imprisonment that could be imposed
11 under s. 973.15 (2) (a) against an offender convicted of the same ~~crime or crimes~~
12 felony, including imprisonment authorized by ss. ~~346.65 (2) (f), (2j) (d) or (3m),~~
13 ~~939.62, 939.621, 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b)~~
14 ~~and 961.48 and other~~ any applicable penalty enhancement statutes, as applicable,
15 subject to the credit provisions of s. 973.155.

16 (c) Felonies punishable by life imprisonment. ~~If the maximum term of~~
17 ~~imprisonment is~~ a defendant is found not guilty by reason of mental disease or
18 mental defect of a felony that is punishable by life imprisonment, the commitment
19 period specified by the court may be life, subject to termination under sub. (5).

20 **SECTION 781.** 971.17 (1) (b) of the statutes is created to read:

21 971.17 (1) (b) Felonies committed on or after the effective date of this paragraph
22 [revisor inserts date]. Except as provided in par. (c), when a defendant is found
23 not guilty by reason of mental disease or mental defect of a felony committed on or
24 after the effective date of this paragraph [revisor inserts date], the court shall
25 commit the person to the department of health and family services for a specified

ASSEMBLY BILL 3**SECTION 781**

1 period not exceeding the maximum term of confinement in prison that could be
2 imposed on an offender convicted of the same felony, plus imprisonment authorized
3 by any applicable penalty enhancement statutes, subject to the credit provisions of
4 s. 973.155.

5 **SECTION 782.** 971.17 (1) (d) of the statutes is created to read:

6 971.17 (1) (d) *Misdemeanors.* When a defendant is found not guilty by reason
7 of mental disease or mental defect of a misdemeanor, the court shall commit the
8 person to the department of health and family services for a specified period not
9 exceeding two-thirds of the maximum term of imprisonment that could be imposed
10 against an offender convicted of the same misdemeanor, including imprisonment
11 authorized by any applicable penalty enhancement statutes, subject to the credit
12 provisions of s. 973.155.

13 **SECTION 783.** 971.365 (1) (a) of the statutes is amended to read:

14 971.365 (1) (a) In any case under s. 961.41 (1) (em), 1999 stats., or s. 961.41 (1)
15 (cm), (d), (e), ~~(em)~~, (f), (g) or (h) involving more than one violation, all violations may
16 be prosecuted as a single crime if the violations were pursuant to a single intent and
17 design.

18 **SECTION 784.** 971.365 (1) (b) of the statutes is amended to read:

19 971.365 (1) (b) In any case under s. 961.41 (1m) (em), 1999 stats., or s. 961.41
20 (1m) (cm), (d), (e), ~~(em)~~, (f), (g) or (h) involving more than one violation, all violations
21 may be prosecuted as a single crime if the violations were pursuant to a single intent
22 and design.

23 **SECTION 785.** 971.365 (1) (c) of the statutes is amended to read:

24 971.365 (1) (c) In any case under s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41
25 (3g) (dm), 1999 stats., or s. 961.41 (3g) (a) 2. (am), (c), (d), ~~(dm)~~ or (e) involving more

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1 than one violation, all violations may be prosecuted as a single crime if the violations
2 were pursuant to a single intent and design.

3 **SECTION 786.** 971.365 (2) of the statutes is amended to read:

4 971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent
5 prosecution for any acts in violation of s. 961.41 (1) (em), 1999 stats., s. 961.41 (1m)
6 (em), 1999 stats., s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats.,
7 or s. 961.41 (1) (cm), (d), (e), (~~em~~), (f), (g), or (h), (1m) (cm), (d), (e), (~~em~~), (f), (g), or (h)
8 or (3g) (a) 2. (~~am~~), (c), (d), (~~dm~~) or (e) on which no evidence was received at the trial
9 on the original charge.

10 **SECTION 787.** 972.15 (2c) of the statutes is amended to read:

11 972.15 (2c) If the defendant is subject to being sentenced under s. 973.01 and
12 he or she satisfies the criteria under s. 302.045 (2) (b) and (c), the person preparing
13 the presentence investigation report shall include in the report a recommendation
14 as to whether the defendant should be eligible for the challenge incarceration
15 program under s. 302.045.

16 **SECTION 788.** 973.01 (1) of the statutes is amended to read:

17 973.01 (1) BIFURCATED SENTENCE REQUIRED. Except as provided in sub. (3),
18 whenever a court sentences a person to imprisonment in the Wisconsin state prisons
19 for a felony committed on or after December 31, 1999, or a misdemeanor committed
20 on or after the effective date of this subsection ... [revisor inserts date], the court
21 shall impose a bifurcated sentence that consists of a term of confinement in prison
22 followed by a term of extended supervision under s. 302.113 this section.

23 **SECTION 789.** 973.01 (2) (intro.) of the statutes is amended to read:

24 973.01 (2) STRUCTURE OF BIFURCATED SENTENCES. (intro.) ~~The court shall ensure~~
25 that a A bifurcated sentence is a sentence that consists of a term of confinement in

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1 prison followed by a term of extended supervision under s. 302.113. The total length
2 of a bifurcated sentence equals the length of the term of confinement in prison plus
3 the length of the term of extended supervision. An order imposing a bifurcated
4 sentence imposed under sub. (1) complies this section shall comply with all of the
5 following:

6 **SECTION 790.** 973.01 (2) (a) of the statutes is amended to read:

7 973.01 (2) (a) *Total length of bifurcated sentence.* Except as provided in par. (c),
8 the total length of the bifurcated sentence may not exceed the maximum period of
9 imprisonment for the specified in s. 939.50 (3), if the crime is a classified felony, or
10 the maximum term of imprisonment provided by statute for the crime, if the crime
11 is not a classified felony, plus additional imprisonment authorized by any applicable
12 penalty enhancement statutes.

13 **SECTION 791.** 973.01 (2) (b) (intro.) of the statutes is amended to read:

14 973.01 (2) (b) *Imprisonment Confinement portion of bifurcated sentence.*
15 (intro.) The portion of the bifurcated sentence that imposes a term of confinement
16 in prison may not be less than one year, ~~subject to any minimum sentence prescribed~~
17 ~~for the felony, and, except as provided in par. (c), may not exceed~~ is subject to
18 whichever of the following limits is applicable:

19 **SECTION 792.** 973.01 (2) (b) 2. of the statutes is repealed.

20 **SECTION 793.** 973.01 (2) (b) 3. of the statutes is amended to read:

21 973.01 (2) (b) 3. For a Class C felony, the term of confinement in prison may
22 not exceed ~~10~~ 25 years.

23 **SECTION 794.** 973.01 (2) (b) 4. of the statutes is amended to read:

24 973.01 (2) (b) 4. For a Class D felony, the term of confinement in prison may
25 not exceed ~~5~~ 15 years.

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1 **SECTION 795.** 973.01 (2) (b) 5. of the statutes is amended to read:

2 973.01 (2) (b) 5. For a Class E felony, the term of confinement in prison may
3 not exceed 2 10 years.

4 **SECTION 796.** 973.01 (2) (b) 6. of the statutes is renumbered 973.01 (2) (b) 10.
5 (intro.) and amended to read:

6 973.01 (2) (b) 10. (intro.) For any felony crime other than a felony specified in
7 subds. 1. to 5. one of the following, the term of confinement in prison may not exceed
8 75% of the total length of the bifurcated sentence.:

9 **SECTION 797.** 973.01 (2) (b) 6m. of the statutes is created to read:

10 973.01 (2) (b) 6m. For a Class F felony, the term of confinement in prison may
11 not exceed 7 years and 6 months.

12 **SECTION 798.** 973.01 (2) (b) 7. of the statutes is created to read:

13 973.01 (2) (b) 7. For a Class G felony, the term of confinement in prison may
14 not exceed 5 years.

15 **SECTION 799.** 973.01 (2) (b) 8. of the statutes is created to read:

16 973.01 (2) (b) 8. For a Class H felony, the term of confinement in prison may
17 not exceed 3 years.

18 **SECTION 800.** 973.01 (2) (b) 9. of the statutes is created to read:

19 973.01 (2) (b) 9. For a Class I felony, the term of confinement in prison may not
20 exceed one year and 6 months.

21 **SECTION 801.** 973.01 (2) (b) 10. a. and b. of the statutes are created to read:

22 973.01 (2) (b) 10. a. A felony specified in subds. 1. to 9.

23 b. An attempt to commit a classified felony if the attempt is punishable under
24 s. 939.32 (1) (intro.).

ASSEMBLY BILL 3**SECTION 802**

1 **SECTION 802.** 973.01 (2) (c) of the statutes is renumbered 973.01 (2) (c) 1. and
2 amended to read:

3 973.01 (2) (c) 1. The Subject to the minimum period of extended supervision
4 required under par. (d), the maximum term of confinement in prison specified in par.
5 (b) may be increased by any applicable penalty enhancement statute. If the
6 maximum term of confinement in prison specified in par. (b) is increased under this
7 paragraph, the total length of the bifurcated sentence that may be imposed is
8 increased by the same amount.

9 **SECTION 803.** 973.01 (2) (c) 2. of the statutes is created to read:

10 973.01 (2) (c) 2. If more than one of the following penalty enhancement statutes
11 apply to a crime, the court shall apply them in the order listed in calculating the
12 maximum term of imprisonment for that crime:

- 13 a. Sections 939.621, 939.632, 939.645, 961.46, and 961.49.
14 b. Section 939.63.
15 c. Section 939.62 (1) or 961.48.

16 **SECTION 804.** 973.01 (2) (d) of the statutes is renumbered 973.01 (2) (d) (intro.)
17 and amended to read:

18 973.01 (2) (d) *Minimum and maximum term of extended supervision.* (intro.)
19 The term of extended supervision that follows the term of confinement in prison may
20 not be less than 25% of the length of the term of confinement in prison imposed under
21 par. (b). and, for a classified felony, is subject to whichever of the following limits is
22 applicable:

23 **SECTION 805.** 973.01 (2) (d) 1. to 6. of the statutes are created to read:

24 973.01 (2) (d) 1. For a Class B felony, the term of extended supervision may not
25 exceed 20 years.

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1 2. For a Class C felony, the term of extended supervision may not exceed 15
2 years.

3 3. For a Class D felony, the term of extended supervision may not exceed 10
4 years.

5 4. For a Class E, F, or G felony, the term of extended supervision may not exceed
6 5 years.

7 5. For a Class H felony, the term of extended supervision may not exceed 3
8 years.

9 6. For a Class I felony, the term of extended supervision may not exceed 2 years.

10 **SECTION 806.** 973.01 (4) of the statutes is amended to read:

11 973.01 (4) NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. A
12 person sentenced to a bifurcated sentence under sub. (1) shall serve the term of
13 confinement in prison portion of the sentence without reduction for good behavior.
14 The term of confinement in prison portion is subject to extension under s. 302.113 (3)
15 and, if applicable, to reduction under s. 302.045 (3m), or 302.113 (9g).

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16 **SECTION 807.** 973.01 (6) of the statutes is amended to read:

17 973.01 (6) NO PAROLE. A person serving a bifurcated sentence imposed under
18 sub. (1) is not eligible for release on parole under that sentence.

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19 **SECTION 808.** 973.0135 (1) (b) 2. of the statutes is amended to read:

20 973.0135 (1) (b) 2. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m)
21 or (1r), 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., s.
22 940.01, 940.02, 940.03, 940.05, 940.09 (1) (1c), 940.16, 940.19 (5), 940.195 (5), 940.21,
23 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g),
24 (1m) or (1r), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c),
25 948.05, 948.06, 948.07, 948.08, or 948.30 (2), ~~948.35 (1) (b) or (c) or 948.36.~~

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1 SECTION 809. 973.017 of the statutes is created to read:

2 973.017 Bifurcated sentences; use of guidelines; consideration of
3 aggravating and mitigating factors. (1) DEFINITION. In this section, "sentencing
4 decision" means a decision as to whether to impose a bifurcated sentence under s.
5 973.01 ^{to} or ~~place~~ [✓] a person on probation and a decision as to the length of a bifurcated
6 sentence, including the length of each component of the bifurcated sentence, the
7 amount of a fine, and the length of a term of probation.

8 (2) GENERAL REQUIREMENT. When a court makes a sentencing decision
9 concerning a person convicted of a criminal offense committed on or after the
10 effective date of this subsection [revisor inserts date], the court shall consider all
11 of the following:

12 (a) If the offense is a felony, the sentencing guidelines adopted by the
13 sentencing commission under s. 973.30 or, if the sentencing commission has not
14 adopted a guideline for the offense, any applicable temporary sentencing guideline
15 adopted by the criminal penalties study committee created under 1997 Wisconsin
16 Act 283.

17 (b) Any applicable mitigating factors and any applicable aggravating factors,
18 including the aggravating factors specified in subs. (3) to (8).

19 (3) AGGRAVATING FACTORS; GENERALLY. When making a sentencing decision for
20 any crime, the court shall consider all of the following as aggravating factors:

21 (a) The fact that the person committed the crime while his or her usual
22 appearance was concealed, disguised, or altered, with the intent to make it less likely
23 that he or she would be identified with the crime.

24 (b) The fact that the person committed the crime using information that was
25 disclosed to him or her under s. 301.46.

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1 (c) The fact that the person committed the crime for the benefit of, at the
2 direction of, or in association with any criminal gang, as defined in s. 939.22 (9), with
3 the specific intent to promote, further, or assist in any criminal conduct by criminal
4 gang members, as defined in s. 939.22 (9g).

5 (d) The fact that the person committed the felony while wearing a vest or other
6 garment designed, redesigned, or adapted to prevent bullets from penetrating the
7 garment.

8 (e) 1. Subject to subd. 2., the fact that the person committed the felony with the
9 intent to influence the policy of a governmental unit or to punish a governmental unit
10 for a prior policy decision, if any of the following circumstances also applies to the
11 felony committed by the person:

12 a. The person caused bodily harm, great bodily harm, or death to another.

13 b. The person caused damage to the property of another and the total property
14 damaged is reduced in value by \$25,000 or more. For the purposes of this subd. 1.
15 b., property is reduced in value by the amount that it would cost either to repair or
16 to replace it, whichever is less.

17 c. The person used force or violence or the threat of force or violence.

18 2. a. In this subdivision, "labor dispute" includes any controversy concerning
19 terms, tenure, or conditions of employment or concerning the association or
20 representation of persons in negotiating, fixing, maintaining, changing, or seeking
21 to arrange terms or conditions of employment, regardless of whether the disputants
22 stand in the proximate relation of employer and employee.

23 b. Subdivision 1. does not apply to conduct arising out of or in connection with
24 a labor dispute.

ASSEMBLY BILL 3**SECTION 809**

1 (4) AGGRAVATING FACTORS; SERIOUS SEX CRIMES COMMITTED WHILE INFECTED WITH
2 CERTAIN DISEASES. (a) In this subsection:

3 1. "HIV" means any strain of human immunodeficiency virus, which causes
4 acquired immunodeficiency syndrome.

5 2. "Serious sex crime" means a violation of s. 940.225 (1) or (2), 948.02 (1) or (2),
6 or 948.025.

7 3. "Sexually transmitted disease" means syphilis, gonorrhea, hepatitis B,
8 hepatitis C, or chlamydia.

9 4. "Significantly exposed" means sustaining a contact which carries a potential
10 for transmission of a sexually transmitted disease or HIV by one or more of the
11 following:

12 a. Transmission, into a body orifice or onto mucous membrane, of blood; semen;
13 vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or
14 amniotic fluid; or other body fluid that is visibly contaminated with blood.

15 b. Exchange, during the accidental or intentional infliction of a penetrating
16 wound, including a needle puncture, of blood; semen; vaginal secretions;
17 cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other
18 body fluid that is visibly contaminated with blood.

19 c. Exchange, into an eye, an open wound, an oozing lesion, or other place where
20 a significant breakdown in the epidermal barrier has occurred, of blood; semen;
21 vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or
22 amniotic fluid; or other body fluid that is visibly contaminated with blood.

23 (b) When making a sentencing decision concerning a person convicted of a
24 serious sex crime, the court shall consider as an aggravating factor the fact that the
25 serious sex crime was committed under all of the following circumstances:

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1 1. At the time that he or she committed the serious sex crime, the person
2 convicted of committing the serious sex crime had a sexually transmitted disease or
3 acquired immunodeficiency syndrome or had had a positive test for the presence of
4 HIV, antigen, or nonantigenic products of HIV or an antibody to HIV.

5 2. At the time that he or she committed the serious sex crime, the person
6 convicted of committing the serious sex crime knew that he or she had a sexually
7 transmitted disease or acquired immunodeficiency syndrome or that he or she had
8 had a positive test for the presence of HIV, antigen, or nonantigenic products of HIV
9 or an antibody to HIV.

10 3. The victim of the serious sex crime was significantly exposed to HIV or to the
11 sexually transmitted disease, whichever is applicable, by the acts constituting the
12 serious sex crime.

13 **(5) AGGRAVATING FACTORS; VIOLENT FELONY COMMITTED AGAINST ELDER PERSON.** (a)

14 In this subsection:

15 1. "Elder person" means any individual who is 62 years of age or older.

16 2. "Violent felony" means any felony under s. 940.19 (2), (4), (5), or (6), 940.225
17 (1), (2), or (3), 940.23, or 943.32.

18 (b) When making a sentencing decision concerning a person convicted of a
19 violent felony, the court shall consider as an aggravating factor the fact that the
20 victim of the violent felony was an elder person. This paragraph applies even if the
21 person mistakenly believed that the victim had not attained the age of 62 years.

22 **(6) AGGRAVATING FACTORS; CHILD SEXUAL ASSAULT OR CHILD ABUSE BY CERTAIN**
23 **PERSONS.** (a) In this subsection, "person responsible for the welfare the child"
24 includes the child's parent, stepparent, guardian, foster parent, or treatment foster
25 parent; an employee of a public or private residential home, institution, or agency;

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1 any other person legally responsible for the child's welfare in a residential setting;
2 or a person employed by one who is legally responsible for the child's welfare to
3 exercise temporary control or care for the child.

4 (b) When making a sentencing decision concerning a person convicted of a
5 violation of s. 948.02 (1) or (2), 948.025 (1), or 948.03 (2) or (3), the court shall consider
6 as an aggravating factor the fact that the person was a person responsible for the
7 welfare of the child who was the victim of the violation.

8 (7) AGGRAVATING FACTORS; HOMICIDE OR INJURY BY INTOXICATED USE OF A VEHICLE.

9 When making a sentencing decision concerning a person convicted of a violation of
10 s. 940.09 (1) or 940.25 (1), the court shall consider as an aggravating factor the fact
11 that, at the time of the violation, there was a minor passenger under 16 years of age
12 or an unborn child in the person's motor vehicle.

13 (8) AGGRAVATING FACTORS; CONTROLLED SUBSTANCES OFFENSES. (a) *Distribution*

14 *or delivery to prisoners.* 1. In this paragraph, "precinct" means a place where any
15 activity is conducted by a prison, jail, or house of correction.

16 2. When making a sentencing decision concerning a person convicted of
17 violating s. 961.41 (1) or (1m), the court shall consider as an aggravating factor the
18 fact that the violation involved delivering, distributing, or possessing with intent to
19 deliver or distribute a controlled substance or controlled substance analog to a
20 prisoner within the precincts of any prison, jail, or house of correction.

21 (b) *Distribution or delivery on public transit vehicles.* When making a
22 sentencing decision concerning a person convicted of violating s. 961.41 (1) or (1m),
23 the court shall consider as an aggravating factor the fact that the violation involved
24 delivering, distributing, or possessing with intent to deliver or distribute a controlled
25 substance included in schedule I or II or a controlled substance analog of any

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1 controlled substance included in schedule I or II and that the person knowingly used
2 a public transit vehicle during the violation.

3 (9) AGGRAVATING FACTORS NOT AN ELEMENT OF THE CRIME. The aggravating factors
4 listed in this section are not elements of any crime. A prosecutor is not required to
5 charge any aggravating factor or otherwise allege the existence of an aggravating
6 factor in any pleading for a court to consider the aggravating factor when making a
7 sentencing decision.

8 (10) USE OF GUIDELINES; NO RIGHT TO OR BASIS FOR APPEAL. The requirement
9 under sub. (2) (a) that a court consider sentencing guidelines adopted by the
10 sentencing commission or the criminal penalties study committee does not require
11 a court to make a sentencing decision that is within any range or consistent with a
12 recommendation specified in the guidelines, and there is no right to appeal a court's
13 sentencing decision based on the court's decision to depart in any way from any
14 guideline. ~~In any appeal from a court's sentencing decision, the appellate court may
15 reverse the sentencing decision only if it determines that the sentencing court
16 erroneously exercised its discretion in making the sentencing decision.~~

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17 SECTION 810. 973.03 (3) (e) 1. and 2. of the statutes are amended to read:

18 973.03 (3) (e) 1. A crime which is a Class A ~~or~~ B, or C felony.

19 2. A crime which is a Class C D, E, F, or G felony listed in s. 969.08 (10) (b), but
20 not including any crime specified in s. 943.10.

21 SECTION 811. 973.03 (3) (e) 3. of the statutes is repealed.

22 SECTION 812. 973.032 (4) (c) 2. of the statutes is amended to read:

23 973.032 (4) (c) 2. The person is sentenced for the escape under s. 946.42 (4) (b)
24 to a sentence of imprisonment concurrent with the sentence to the intensive
25 sanctions program.

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SECTION 813

1 SECTION 813. 973.09 (2) (b) 1. of the statutes is amended to read:

2 973.09 (2) (b) 1. Except as provided in subd. 2., for felonies, not less than one
3 year nor more than either the statutory maximum term of imprisonment
4 confinement in prison for the crime or 3 years, whichever is greater.

5 SECTION 814. 973.15 (2m) of the statutes is created to read:

6 973.15 (2m) (a) *Definitions*. In this subsection:

7 1. "Determinate sentence" means a bifurcated sentence imposed under s.
8 973.01 or a life sentence under which a person is eligible for release to extended
9 supervision under s. 973.014 (1g) (a) 1. or 2.

10 2. "Indeterminate sentence" means a sentence to the Wisconsin state prisons
11 other than one of the following:

12 a. A determinate sentence.

13 b. A sentence under which the person is not eligible for release on parole under
14 s. 939.62 (2m) (c) or 973.014 (1) (c).

15 3. "Period of confinement in prison," with respect to any sentence to the
16 Wisconsin state prisons, means any time during which a person is incarcerated
17 under that sentence, including any extensions imposed under s. 302.11 (3), 302.113
18 (3), or 302.114 (3) and any period of confinement in prison required to be served under
19 s. 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

20 (b) *Determinate sentences imposed to run concurrent with or consecutive to*
21 *determinate sentences*. 1. If a court provides that a determinate sentence is to run
22 concurrent with another determinate sentence, the person sentenced shall serve the
23 periods of confinement in prison under the sentences concurrently and the terms of
24 extended supervision under the sentences concurrently.

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1 2. If a court provides that a determinate sentence is to run consecutive to
2 another determinate sentence, the person sentenced shall serve the periods of
3 confinement in prison under the sentences consecutively and the terms of extended
4 supervision under the sentences consecutively and in the order in which the
5 sentences have been pronounced.

6 (c) *Determinate sentences imposed to run concurrent with or consecutive to*
7 *indeterminate sentences.* 1. If a court provides that a determinate sentence is to run
8 concurrent with an indeterminate sentence, the person sentenced shall serve the
9 period of confinement in prison under the determinate sentence concurrent with the
10 period of confinement in prison under the indeterminate sentence and the term of
11 extended supervision under the determinate sentence concurrent with the parole
12 portion of the indeterminate sentence.

13 2. If a court provides that a determinate sentence is to run consecutive to an
14 indeterminate sentence, the person sentenced shall serve the period of confinement
15 in prison under the determinate sentence consecutive to the period of confinement
16 in prison under the indeterminate sentence and the parole portion of the
17 indeterminate sentence consecutive to the term of extended supervision under the
18 determinate sentence.

19 (d) *Indeterminate sentences imposed to run concurrent with or consecutive to*
20 *determinate sentences.* 1. If a court provides that an indeterminate sentence is to run
21 concurrent with a determinate sentence, the person sentenced shall serve the period
22 of confinement in prison under the indeterminate sentence concurrent with the
23 period of confinement in prison under the determinate sentence and the parole
24 portion of the indeterminate sentence concurrent with the term of extended
25 supervision required under the determinate sentence.

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1 2. If a court provides that an indeterminate sentence is to run consecutive to
2 a determinate sentence, the person sentenced shall serve the period of confinement
3 in prison under the indeterminate sentence consecutive to the period of confinement
4 in prison under the determinate sentence and the parole portion of the
5 indeterminate sentence consecutive to the term of extended supervision under the
6 determinate sentence.

7 (e) *Revocation in multiple sentence cases.* If a person is serving concurrent
8 determinate sentences and extended supervision is revoked in each case, or if a
9 person is serving a determinate sentence concurrent with an indeterminate sentence
10 and both extended supervision and parole are revoked, the person shall concurrently
11 serve any periods of confinement in prison required under those sentences under s.
12 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

13 **SECTION 815.** 973.155 (1) (b) of the statutes is amended to read:

14 973.155 (1) (b) The categories in par. (a) include custody of the convicted
15 offender which is in whole or in part the result of a probation, extended supervision
16 or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10 (2) placed
17 upon the person for the same course of conduct as that resulting in the new
18 conviction.

19 **SECTION 816.** 973.30 of the statutes is created to read:

20 **973.30 Sentencing commission.** (1) DUTIES. The sentencing commission
21 shall do all of the following:

22 (a) Select an executive director having appropriate training and experience to
23 study sentencing practices and prepare proposed sentencing guidelines.

24 (b) Monitor and compile data regarding sentencing practices in the state.