LRB-4037

2001 DRAFTING REQUEST

Bill

Received: **10/15/2001**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **Dan Rossmiller**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - drugs**
Criminal Law - sentencing

Extra Copies: **MGD**

Submit via email: **YES**

Requester's email: **Sen.George@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Drug abuse treatment for first-time and second-time nonviolent drug possession offenders

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Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rryan 11/13/2001	jdyer 11/14/2001		_____ _____			S&L
/P1			jfrantze 11/15/2001	_____ _____	lrb_docadmin 11/15/2001		S&L
/P2	rryan	jdyer	jfrantze	_____	lrb_docadmin		S&L

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/2	rryan 03/05/2002	jdyer 03/05/2002	kfollet 03/05/2002	_____ _____	lrb_docadmin 03/05/2002	lrb_docadmin 03/05/2002	

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/P2	rryan	jdyer	jfrantze	_____	lrb_docadmin		

1 3/4 jd 3/4/02

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rryan	PI 11/14 jld	11/15	11/15			

FE Sent For:

<END>

State of Wisconsin

GARY R. GEORGE
SENATOR

MEMORANDUM CONFIDENTIAL

TO: Mike Dsida,
Legislative Reference Bureau Drafting Attorney

FROM: Dan Rossmiller DR

DATE: October 15, 2001

RE: Drafting Request

Senator George would like to have a bill drafted for introduction in the 2001 Legislative Session that would incorporate an approach like that used in Arizona or California to provide a treatment option and probation for persons convicted of simple possession and eligible for probation. The approach we are interested in would mandate courts to require substance abuse treatment rather than imprisonment for those convicted of non-violent drug possession offenses.

Attached please find a memo outlining the approach we are interested in seeing drafted.

Thank you in advance for your assistance.

Please feel free to contact me (6-2500) if you have any questions.

P.O. Box 7882, Madison, Wisconsin 53707-7882, 608/266-2500
Toll free: 1-877-474-2000 E-mail: Sen.George@legis.state.wi.us

MEMORANDUM

Date: July, 2001

To:

From: WISDOM and MICAH AODA Committees

Re: Request for Information re. Amending Wisconsin Statutes to Require Treatment for Nonviolent Drug Possession Offenses

---

Over 20,000 men and women are currently serving time in Wisconsin's prisons,[1] nearly three times as many as there were a decade ago.[2] The nation's "War on Drugs," and its accompanying changes in criminal justice policies (e.g., mandatory minimum sentencing and "three strikes" laws) have been a driving force in the incarceration binge of the last two decades. The following statistics underscore this trend:

◊ More than 450,000 men and women are imprisoned on drug charges nationwide, a ten-fold increase from 1980.[3]

◊ In 1999, four out of five drug arrests were for possession and one out of five for sales; and two-fifths of drug arrests were for marijuana-related[4] offenses.

◊ According to a Bureau of Justice Statistics (BJS) report about those imprisoned in state and federal correctional facilities in 1997, three out of four prisoners could be characterized as being involved with substance abuse during the time leading up to their arrest.[5]

◊ According to the BJS and The Sentencing Project, in 1996 one-fourth of all jail inmates were in custody for a drug offense, compared to one-tenth of inmates in 1983; and by 1998, drug offenders comprised 21 percent of all state prison inmates and 58 percent of federal prison inmates.[6]

In an effort to address the climbing incarceration rate, the State of Wisconsin has sought to build more prisons and has even purchased a prison built on speculation by a private developer (i.e., the facility in Stanley). In addition, one in five Wisconsin prisoners is now serving time in facilities operated by private contractors in other states.[7]

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[1] *See* Wisconsin Department of Corrections, "Offenders Under Control" (March 23, 2001).
[2] *See* the Benedict Center, circular, *Wisconsin Prison Expansion and Milwaukee* (undated).
[3] *See* [No author listed], "More States Exploring Prison Alternatives," Join Together Online, <http://www.jointogether.org/sa/wire/news> (Oct. 27, 2000).
[4] *See* The Sentencing Project, "Facts About Prisons and Prisoners" (April, 2001) (citing FBI, *Crime in the United States, 1999,* at 221).
[5] *See* U.S. Department of Justice, "More Than Three Quarters of Prisoners Had Abused Drugs in the Past" (press release, Jan. 5, 1999).
[6] *See* The Sentencing Project, "Facts About Prisons and Prisoners" supra.
[7] *See* Wisconsin Department of Corrections, "Offenders Under Control," DOC-302 (March 23, 2001). As

Acting or appearing "tough on crime" is, of course, expensive. Between 1982 and 1997, direct expenditures on corrections rose from just over $9 billion nationwide to $43.5 billion.[8] There are also very considerable human costs. For example, according to The Sentencing Project, "Black males have a 29% chance of serving time in prison at some time in their lives; Hispanic males have a 16% chance; white males have a 4% chance.[9] Faced with climbing corrections costs at a time of tight budgets, some states have reconsidered their policies and have sought to be smarter, rather than tougher, on crime, particularly drug-related crime.

In Arizona, persons convicted of personal possession of controlled substances are eligible for probation with drug treatment or education required as a condition of that probation.[10] Those indicted or convicted of violent crimes and those convicted of possession for the purpose of selling, manufacturing or transporting for sale are not eligible to participate.[11] If a person convicted of simple possession and sentenced to probation violates that probation once or even a second time, he or she is not automatically revoked and sent to prison; rather, the court has the option of placing additional terms on his or her probation, including intensified treatment and supervision.[12]

Arizona law also permits the presiding judge of the superior court of a county to establish a drug court program to adjudicate the cases of nonviolent "drug dependent persons who are charged with probation eligible offenses."[13] Under this program, where a defendant is convicted and otherwise eligible for probation, "the court, without entering a judgment of guilt and with the concurrence of the defendant, may defer further proceedings and place the defendant on probation."[14] If the defendant fulfills the terms and conditions of probation, "the court may discharge the defendant and dismiss the proceedings against the defendant or may dispose of the case as provided by law."[15]

According to a study by the Arizona Supreme Court of drug court programs in two of the state's largest counties, 77 percent of offenders participating tested drug-free at the completion of their outpatient treatment programs, thus saving the state $2.5 million in prison costs.[16] In Maricopa County, which provides treatment to addicts convicted of felonies, the program has been so successful that officials plan to expand it to reach

---

of March 23, 2001, 4338 of Wisconsin's 20,251 inmates were held in facilities operated by the Corrections Corporation of America in Minnesota, Tennessee, and Oklahoma.

[8] *See* Bureau of Justice Statistics, "Direct Expenditures for Criminal Justice by Component, 1982-1997," Justice Employment and Expenditure Extracts, 1982-97, Table 1.

[9] *See* The Sentencing Project, "Facts About Prisons and Prisoners" supra..

[10] *See* Ariz. Rev. Stat. § 13-901.01. A and C (2001).

[11] *See* id., § 13901.01 B and D.

[12] *See* id., § 13901.01 E, F and G.

[13] *See generally* Ariz. Rev. Stat. §13-3422 (2001).

[14] *See* id., § 13-3422 F.

[15] Id., §13-3422 H.

[16] *See* Join Together Cnline, "Arizona Counties Serve as Models for Shifting to Treatment," <http://www.jointogether.org> (Dec. 29, 2000). The two counties were Pima and Maricopa (which includes Phoenix, the state's largest city). The study involved 2622 offenders.

addicts who are not yet in jail and to include a family case-management program.[17]

On July 1, the State of California began to implement Proposition 36, which *mandates* probation for many persons convicted of a non-violent drug possession offenses.[18] The law does not apply to any defendant: convicted of "one or more serious violent felonies;" convicted in the same proceeding of any felony or non-drug-related misdemeanor; convicted of certain drug offenses while using a gun; who refuses treatment; or who has been previously convicted, has failed at two previous courses of treatment, and is found by "clear and convincing evidence" (the second highest standard of proof) "to be unamenable to any and all forms of available drug treatment." [19]

If an offender is found by the treatment service provider to be unamenable to any and all forms of treatment, he or she may have her probation revoked.[20] However, the law also provides for dismissal of charges when a defendant successfully completes a drug treatment program; while he or she is still prohibited from carrying a concealable firearm, the defendant is also able in many instances to "indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted of the offenses."[21] Like the Arizona law noted above, Proposition 36 also includes a "three strikes" provision which renders a defendant who has been convicted of violating probation for the third time ineligible for continued probation.[22]

In many cases where an offender on parole violates the terms of his or her parole by committing a nonviolent drug possession offense, California's new law does not permit officials to automatically revoke or suspend parole but instead instructs them to require the defendant to complete an appropriate treatment program.[23] Proposition 36 also requires the California Legislature to appropriate of $120 million annually thru the 2005-2006 fiscal year to fund substance abuse treatment programs for the nonviolent drug offenders and parole violators already noted.[24]

We are inquiring:

(1) Whether it would be possible for Wisconsin to amend its own statutes to include programs similar to those in place in Arizona and California, i.e., mandating courts to require substance abuse treatment rather than imprisonment for those convicted of nonviolent drug possession offenses,

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[17] *See* id. The case management program will include the provision of "tickets and other incentives to families who take their children to museums, zoos, historical societies and other educational sites."
[18] *See* Cal. Penal Code § 1210.01(a) (2001).
[19] *See* id., § 1210.01 (b)(1)-(5).
[20] *See* id., §1210.01(c).
[21] *See* id., § 1210.01(d)(1)-(3). The exception to the nondisclosure provision is in cases where the defendant responds to "any questionnaire or application for public office, for a position as a peace officer...for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury."
[22] *See* id., § 1210.01(e)(3)(C).
[23] *See* Cal. Penal Code § 3063.01 (2001) The exceptions generally follow those noted in FN 19 re: offenses committed with a firearm, violent felonies. etc.
[24] *See* Cal. Health & Safety Code Div. 10.8 §§ 11999.4 and 11999.5 (2001).

and certain classes of nonviolent probation and parole violators who are amenable to such treatment;

(2) Which provisions of the Wisconsin Statutes would have to be amended to affect such changes;

(3) What the projected costs of such programs would be;

(4) What, if any, savings would accrue to the state and taxpayers by offering treatment rather than imprisonment to the offenders noted above; and

(5) What effect, if any, such laws would have on the number of individuals incarcerated in the state's jails, prisons and other correctional facilities

If you have any questions or concerns or would otherwise like to further discuss this matter, please do not hesitate to contact David Liners at (414) 449-0805 or davidl@micahempowers.org. Thank you for your consideration.

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

October 30, 2001

MEMORANDUM

To: Dan Rossmiller

From: Robin Ryan RR

Subject: Probation and treatment for persons convicted of drug possession

---

I have reviewed the Arizona and California drug offender treatment laws. This memo presents questions regarding drafting a similar probation and drug treatment bill for Wisconsin.

Eligibility for probation and treatment:

Under Arizona law, a person is eligible for probation and treatment for his or her first and second convictions for drug possession, except that Arizona excludes from eligibility for probation persons who have ever been convicted or indicted for a violent crime. Violent crimes include homicide, sexual assault, and some crimes against children. Arizona also excludes from probation persons who commit a crime while under the influence of a controlled substance, if the crime either involves a weapon or results in death or physical injury.

California provides that a person is eligible for probation and treatment for any conviction for drug possession except if any of the following apply:

a. The person has been convicted of a serious felony, unless the person has been free from any conviction and sentence for a felony, other than drug possession, and free from any conviction and sentence for a misdemeanor involving physical injury, for at least five years. California's definition of a serious felony includes many crimes that do not necessarily involve drugs, such as homicide, sexual assault, robbery, and kidnapping, as well as the drug crimes that prohibit providing phencyclidine (PCP), methamphetamine, cocaine, or heroin to a minor.

b. The person is convicted of a non–drug related misdemeanor in the same proceeding as the conviction for the drug possession crime.

c. The person is convicted of using a firearm while possessing or using certain drugs.

d. The person refuses treatment.

e. The person has two separate convictions for possession and has twice participated in treatment and been found unamenable to treatment.

1. Should a person automatically be ineligible for probation and treatment after the third conviction for drug possession, as in Arizona, or should the bill require that a court find that a person has at least twice before been provided treatment and that the person is unamenable to any available treatment, as in California, before the person is made ineligible for probation and treatment?

2. Should a court be able to sentence a defendant instead of granting probation if the person does not consent to participate in treatment.

3. Do you want to make any persons ineligible for probation on the basis of past convictions? If so, for which crimes?

4. May a person who is convicted of another crime that is not drug possession be granted probation that will run either concurrently or consecutively to the punishment for the other crime? Should probation with treatment be mandatory in such instances?

5. Should convictions for drug possession in other jurisdictions count as prior drug possession convictions for purposes of this bill?

6. Should convictions for drug possession that were entered before the date the bill is published as an act count as prior convictions?

Assessments:

Current Wisconsin law allows courts to order treatment for drug use instead of sentencing a person for drug possession. Before ordering treatment, the court must order an assessment of the person's drug use. Should the treatment bill maintain the assessment requirement? Alternatively, should the bill establish a process for courts, at their discretion, to obtain assessments prior to establishing conditions of probation?

Consequences for violating conditions of probation:

In Arizona, if a person on probation for a drug possession conviction violates a condition of probation, a hearing examiner may order more intense conditions of probation, but may not revoke the person's probation nor require that the person spend time in jail as a condition of probation. Hence, a person in Arizona is shielded from spending any time in jail or prison for drug possession until he or she has been convicted three times. California does permit revocation of probation if a person does not comply with the conditions of probation. Should the Wisconsin bill permit revocation of a person's probation?

Treatment of persons already incarcerated:

The Arizona legislation made certain persons who were already incarcerated for drug possession convictions on the effective date of the legislation eligible for parole. The legislation directed the Arizona Department of Corrections to identify all persons who were incarcerated for drug possession and who were not serving a sentence for any other crime within 90 days of the effective date of the legislation. The legislation made those prisoners eligible for parole, directed the parole board to release them on parole

unless they posed a danger to public safety, and directed that as a condition of parole, the prisoners participate in drug treatment or education. California did not have a similar retroactivity provision.

1. Should the Wisconsin bill require release on parole or extended supervision, whichever is applicable, for persons already incarcerated in prison for drug possession? If so, how much time should DOC be given to identify the prisoners eligible for release?

2. How should the bill treat persons who are in jail for drug possession? Persons who are jailed for misdemeanors are generally released at the end of their sentence and not placed on parole or extended supervision. Should persons in jail be released early absent any supervision? If you prefer early release under some supervisory program, who should provide the supervision? What would the supervision consist of, given that it could not be longer than the remaining term of the sentence, which for a misdemeanor generally cannot exceed nine months.

Penalty enhancement provisions:

Current law allows the enhancement of penalties for certain drug possession convictions. How should the bill treat the following penalty enhancers?

1. Current law provides that if a person possesses certain controlled substances on or near certain premises, such as public housing or a community center, the person must perform 100 hours of community service in addition to the penalty for the possession (ss. 961.495 and 938.34 (14) (t)).

2. The juvenile code imposes additional forfeitures for drug possession by a juvenile (s. 938.34 (14s)).

3. Two provisions in ch. 961, stats., provide for enhanced penalties for second or subsequent drug possession offenses. Section 961.41 (3g) (a), stats., assigns a higher maximum penalty for second and subsequent convictions for possession of narcotic drugs. This section counts any drug violation as a prior offense. Section 961.48, stats., allows courts to double the maximum penalty for any second or subsequent violation of a provision of ch. 961. Under s. 961.48, stats., only violations of the same provision count as prior convictions, and possession of some less harmful drugs is exempted from the penalty enhancement.

County and municipal ordinances:

Current law permits counties and municipalities to enact ordinances to prohibit possession of marijuana and impose a forfeiture for violations. Should these provisions be modified to prohibit forfeitures for first– and second–time offenses?

Criminal arrest and conviction record:

Under the California statute, if a person successfully completes treatment, the arrest and conviction for drug possession are automatically cleared from his or her arrest and conviction records for most purposes. Would you like a similar provision in the bill? Current law does authorize one exception under which an arrest and finding of guilt for drug possession is not placed on a person's criminal record. Section 961.47, stats., provides that if a person charged with possession or attempted possession of certain

drug does not have any prior drug–related convictions and pleads guilty or is found guilty, the court may suspend proceedings and place the person on probation. If the person successfully completes probation, the court may dismiss the proceedings against the person.

Drug treatment for persons on parole or extended supervision:

California extends the drug treatment program to persons on parole under a sentence for any crime, not just a drug possession crime, so that a person's parole cannot be revoked for a violation of a drug possession law. Instead, the state can add drug treatment as a condition of the person's parole. Would you like to extend the drug treatment and education program provided under this bill to persons on parole or extended supervision?

Time limit on treatment:

California limits drug treatment to 12 months and permits up to six months of aftercare. Should treatment in Wisconsin be time–limited?

Agency responsibilities and funding:

How should the bill be funded? The treatments costs could potentially be paid for by the person receiving treatment, private insurance, perhaps Medicaid, or state or county government. Assuming that the department of corrections is responsible for arranging treatment and monitoring people on probation, DOC may need additional funding. However, DOC also may experience savings due to fewer incarcerations.

Should the department of health and family services play a role besides regulating treatment providers?

Should counties play a role?

Dan Rossmiller
6-2500

prob & tr for poss. offenses

1. California approach on eligibility - count other states of info available

2. if not a willing participant - → jail not probation

4. if other crime non-violent want treatment optional

require DOC to provide tr. even in jail - maybe DOC can contract w/ CM's to provide while in jail

5.86. - doesn't matter as much since going w/ Cal.

~~Assessments~~ encourage - discretionary

most of cost should be on DOC

~~cover~~ private ins. & M'CMP where possible

permit revocation
have DOC write rule on when can revoke

Don't make retroactive

If convicted for drunk driving
not eligible for treatment period
Keep the issues separate

do want to get rid of arrest
– & conviction record if successful
(or dismissed as in 961.47)

drug ct. an option
(sentencing judge can & sup.
conditions)

for persons on parole / ES
revoke, but use same stds,
as DOC to write for
persons serving prob. for
possession

do want time limit on treatment

Funding
Private ins. & MCHD where
appropriate.
fund through DOC ~~probation~~
DOC pays probation agcy &
treatment

Enhancers

↳ leave additional forfeitures for juveniles

↳ don't change 961.41(3g)(a)

make record – conviction record go away – so if successful – would not count time for enhancers next time convicted

not necessarily the arrest record

juvenile code & municip ordinance – have the court stay conviction so don't pay forfeiture unless fail treatment

Disqualifying crimes
– crimes under influence & involve weapon or death or physical injury

exclude maybe use 3 strikes crimes as ones that exclude

will get back to me on disqualifying crimes

dealers?

convicted after 6D for crime committed before 6D

allow persons to choose to be sentenced ~~before~~ under old law or new law

if do nothing - old law can opt into new law

want to introduce by ≈ Nov. 15th

Dan Rossmiller 6-2500

disqualify if convicted of
any of 3 strikes offenses 939.62 (2m)(a)
2m.b.

By Thurs. at Noon

State of Wisconsin
2001 – 2002 LEGISLATURE

LRB-4037/P1
RLR:...:...

LPS- please fix request sheet

jld

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

JS-Note

AN ACT Gen ...; **relating to:** drug treatment for persons convicted of possession of controlled substances and granting rule–making authority plain and making an appropriation

---

Analysis by the Legislative Reference Bureau

Insert Analysis

~~THIS is a preliminary draft. An analysis will be provided in a later version.~~

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

SECTION 1. 20.410 (1) (b) of the statutes is amended to read:

20.410 **(1)** (b) *Services for community corrections.* The amounts in the schedule to provide services related to probation, extended supervision and parole, the intensive sanctions program under s. 301.048, the community residential confinement program under s. 301.046, programs of intensive supervision of adult offenders and minimum security correctional institutions established under s. 301.13, and for drug assessments and drug treatment ordered under s. 961.476. No

payments may be made under this paragraph for payments in accordance with other states party to the interstate corrections compact under s. 302.25.

History: 1989 a. 31 ss. 340, 361 to 380, 382 to 392; 1989 a. 107, 122, 359; 1991 a. 39; 1993 a. 16, 98, 377, 437, 490; 1995 a. 27, 77, 416, 440; 1997 a. 4, 27, 35, 237, 252, 275, 283, 284; 1999 a. 9, 89.

SECTION 2. 46.03 (18) (fm) of the statutes is repealed.

SECTION 3. 301.03 (3j) of the statutes is created to read:

301.03 **(3j)** Provide drug abuse assessments and drug abuse treatment for persons convicted of offenses under s. 961.41 (3g) as provided under s. 961.476.

SECTION 4. 302.113 (9) (am) of the statutes is created to read:

302.113 **(9)** (am) Notwithstanding par. (a), if the violation under par. (a) is a commission of an offense under s. 961.41 (3g) or a violation of a condition of extended supervision concerning drug treatment, the division of hearings and appeals or the department of corrections may modify the conditions of extended supervision, but may not revoke extended supervision unless a hearing examiner for the division of hearings and appeals finds by a preponderance of the evidence that the person is a danger to himself or herself or to others, or that the probationer is unamenable to treatment as determined in accordance with the rules promulgated under s. 961.476 (6) (b).

SECTION 5. 961.47 of the statutes is repealed.

SECTION 6. 961.472 of the statutes is repealed.

SECTION 7. 961.475 of the statutes is repealed.

SECTION 8. 961.476 of the statutes is created to read:

Insert 2-21 (4) (2) (B)

961.476 Probation and drug treatment for possession. (1) If a person is convicted of possession of or attempted possession of a controlled substance or a controlled substance analog under s. 961.41 (3g), the sentencing court shall,

withhold sentence, or impose sentence and stay its execution, and place the person on probation under s. 973.09 unless any of the following applies:

(a) The person has ever been convicted of a felony identified under s. 939.62 (2m) (a) 2m. b.

(b) The person is convicted of another crime in the same proceeding.

(c) The person is found in the same proceeding to have violated a local ordinance that is in conformity with s. 346.63 (1) for driving a motor vehicle while the person has a prohibited alcohol concentration.

(d) The person was incarcerated under a sentence for another crime at the time of the offense for which he or she is being sentenced.

(e) The person has been previously convicted for possession of, or attempted possession of, a controlled substance or a controlled substance analog under s. 961.41 (3g), has been provided treatment for drug use in connection with any such prior conviction, and has been found unamenable to treatment.

(f) The person refuses to participate in drug treatment as a condition of probation.

(3) Before establishing conditions of probation under this section or before making a finding as to whether a person is unamenable to treatment, a court may order the person to comply with an assessment of his or her use of controlled substances. The court shall designate an approved treatment facility, as defined under s. 51.01 (2), that is certified by the department of health and family services to provide assessment services to conduct the assessment. The court may order that the treatment facility provide a proposed treatment plan. The treatment facility shall submit an assessment report to the court within 14 days of the order for an

assessment. At the request of the treatment facility, the court may extend the time for submitting a report by not more than 20 additional workdays.

(4) If a court places a person on probation under this section, the court shall require as a condition of probation that the person participate in drug treatment provided by an approved treatment facility, as defined under s. 51.01 (2). The treatment may not be longer than 12 months, or the period of probation, whichever is less. The court may order up to 6 months of aftercare to follow the treatment.

(5) Notwithstanding s. 973.09 (4) (a), a person placed on probation under sub. (1) may not be confined in a county jail, Huber facility, work camp, or tribal jail as a condition of probation.

(6) (a) Notwithstanding s. 973.10 (2), if a person on probation under sub. (2) commits an offense under s. 961.41 (3g) or violates a condition of probation concerning drug treatment, the division of hearings and appeals or, if the probationer waived his or her right to a hearing, the department of corrections may modify the conditions of probation, but may not revoke probation unless a hearing examiner finds by a preponderance of the evidence that the person is a danger to himself or herself or to others or that the probationer is unamenable to treatment. If the probationer violates a condition of probation that is not related to drug treatment, the department of corrections or the division of hearings and appeals may revoke probation as provided under s. 973.10 (2).

(b) The department of corrections shall promulgate rules regarding the standards for determining whether a person is unamenable to treatment.

(7) When a court orders probation under sub. (2) for a conviction of an offense under s. 961.41 (3g), the court shall order that the record of conviction be expunged upon successful completion of the probation. A person successfully completes probation

if the person completes the term of probation without the probation being revoked. Upon successful completion of probation, the department of corrections shall issue a certificate of discharge and shall forward the certificate to the court of record, which shall expunge the record of conviction. Disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for 2nd or subsequent convictions under s. 961.48, do not apply to a conviction that has been expunged under this subsection.

(8) (a) If a person is convicted of an offense under s. 961.41 (3g) and sub. (2) does not apply, a court may at its own discretion order that the person be placed on probation and participate in drug treatment as a condition of probation, or that the person participate in drug treatment while incarcerated in jail or in prison, as long as the person agrees to participate in drug treatment. The court may order that any period of probation ordered under this subsection run concurrently or consecutively to any sentence or to any other order of probation or to any sentence.

(9) (a) The court shall order any person who receives a drug assessment or drug treatment under this section to pay for that assessment or treatment to the extent that the person is able to pay.

(b) From the appropriation under s. 20.410 (1) (b), the department of corrections shall pay for the cost of any assessments or treatment ordered under this section, including drug treatment provided to a person while he or she is incarcerated in jail, that is not paid for by the person receiving the assessment or treatment or that person's insurance.

SECTION 9. Initial applicability.

(1) The treatment of section 961.476 of the statutes first applies to offenses committed on the effective date of this subsection, but persons sentenced on or after

the effective date of this subsection for offenses committed before the effective date of this subsection may choose to be sentenced in accordance with section 961.476 of the statutes.

SECTION 10. Effective date. This act takes effect on the first day of the 6th month beginning after publication except as follow:

(1) The treatment of section 961.476 (6) (b) of the statutes takes effect on the day after publication.

(END)

D-note

Insert Analysis:

Current law prohibits possession of various controlled substances. The penalties for possession of a controlled substance vary from a fine not to exceed $500 or imprisonment for not more than 30 days or both for possession of many drugs, to a fine not to exceed $5,000 or imprisonment for not more than two years or both for possession of several narcotic drugs and for other nonnarcotic drugs including, methamphetamine, ketamine, and flunitrazepam. For possession of many controlled substances, the maximum penalty is greater for a second or subsequent conviction.

Under current law, a court may place a person who is convicted of possession of a controlled substance and who volunteers to participate in drug treatment on probation if a drug treatment facility agrees to treat the person. If the person participates in treatment and probation is not revoked, the court may discharge the person's sentence at the end of the probation period. In addition, if a person has no prior drug–related convictions and pleads guilty or is found guilty of a possession offense for which the maximum penalty is a fine of not more than $500 or imprisonment for not more than 30 days or both, and the person successfully completes probation for the offense, the court may discharge the person's sentence without creating a record of conviction.

Generally, if a person is on probation and violates a condition of probation, the probation may be revoked and the person may be ordered to serve a sentence of imprisonment. Similarly, if a person serving a bifurcated sentence (consisting of a term of incarceration followed by a term of extended supervision) is released to extended supervision and violates a condition of extended supervision, the extended supervision may be revoked and the person may be returned to prison to serve the remainder of the bifurcated sentence in prison.

This bill requires that a court place a person on probation and order the person to participate in drug treatment if the person is convicted of possession or attempted possession of a controlled substance unless any of the following conditions applies:

1. The person has been convicted of a serious felony (the so–called "three strikes" felonies).

2. The person is convicted of another crime or is found to have violated a drunk driving ordinance in the same proceeding.

3. The person was incarcerated at the time he or she committed the offense.

4. The person has previously been convicted of possession or attempted possession of a controlled substance, has been provided drug treatment in connection with any such conviction, and is found by the sentencing court to be unamenable to treatment.

5. The person refuses to participate in drug treatment.

The drug treatment may consist of outpatient treatment, treatment at a halfway house, narcotic replacement therapy, drug education or prevention courses, or inpatient residential drug treatment if it is needed to address special detoxification or relapse situations or severe drug dependence. A court may order

treatment for up to 12 months, or for the length of the probation period, whichever is less. The treatment must be provided by a treatment facility that is certified by the department of health and family services.

If a person on probation for possession of a controlled substance violates a condition of probation that is related to drug treatment or if the person commits another possession offense, the conditions of the person's probation may be modified, but the person's probation may not be revoked unless a hearing examiner finds by a preponderance of the evidence that the person is a danger to himself, herself, or others and or that the person is unamenable to treatment. The bill directs the department of corrections to promulgate rules establishing standards for determining whether a person is unamenable to treatment. However, if a person violates a condition of probation that is not related to drug treatment or possession of a controlled substance, the probation may be revoked as under current law.

The bill creates a similar restriction on revoking extended supervision for any person serving a term of extended supervision for any crime. If a person on extended supervision violates a condition of extended supervision that is related to drug treatment or commits a controlled substances possession offense, the person's extended supervision may not be revoked for that violation unless a hearing examiner finds by a preponderance of the evidence that the person is a danger to himself, herself, or others or that the person is unamenable to treatment.

The bill provides that if a person successfully completes probation for possession of a controlled substance, without revocation, the record of the conviction is expunged and the possession offense for which the person served probation cannot be counted as a prior conviction for subsequent penalty enhancers or for other disabilities or disqualifications related to convictions.

The bill requires that a recipient of drug treatment or of a drug assessment pay for the treatment or assessment to the extent of his or her ability. The department of corrections is responsible for funding the costs of treatment and assessments that are not covered by the recipient or by insurance.

If a person who is convicted for possession of a controlled substance is not eligible for mandatory probation and drug treatment, a court may still place the person on probation and order drug treatment, as under current law, as long as the person voluntarily agrees to drug treatment. Under the bill, the department of corrections is responsible for funding the treatment and any related assessments, if the person or his or her insurance does not pay for the treatment or assessment. Further, the bill provides that if a court orders that a person receive drug treatment while incarcerated in jail, that the department of corrections is responsible for the cost of the treatment that is not covered by the recipient or insurance.

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

Insert 2–21

INS 2-21

(1) In this section, "drug treatment" includes outpatient treatment, treatment at a halfway house, narcotic replacement therapy, drug education or prevention courses, or inpatient residential drug treatment as needed to address special detoxification or relapse situations or severe dependence.

(end ins)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4037/P1dn
RLR:....

Dan Rossmiller:

There are a couple of items in the bill that I would like to draft in greater detail for the next draft:

1. Requirements relating to providers of treatment services.

2. Instructions on the circumstances under which private and public insurance must cover treatment or assessments.

3. The bill directs the department of corrections to pay for treatment and assessments out of a specified current appropriation. I would like to explore whether another current appropriation account would be a more appropriate source, or whether the bill should create a new appropriation account.

Please note the following resolutions of several issues in the bill:

1. The bill does not limit the number of times an individual may have a conviction record for possession expunged. Should it?

2. Please review proposed s. 961.476 (6) (b) to see if it provides the department of corrections sufficient guidance for writing a rule on standards for determining whether a person is unamenable to treatment.

3. The bill provides the same treatment provisions for convictions for attempt as for convictions for possession of controlled substances. Should it?

4. We had discussed applying the treatment provisions to ordinance violations. This bill does not address ordinance violations, because currently the only available penalty for an ordinance violation is a forfeiture. The bill would have to create a probation program operated by counties and municipalities in order for a court to order probation for an ordinance violation. Since an ordinance violation does not result in a conviction, a person who violates an ordinance will not have a conviction record. Further, probation and treatment (which the person has to pay for) could be viewed as more onerous than a forfeiture.

5. The bill requires that a treatment provider be an "approved treatment facility," which is defined as any publicly or privately operated treatment facility or unit thereof

approved by the department [of health and family services] for the treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons. Given that some treatment will likely consist only of education and prevention, should all providers be required to be approved treatment facilities?

6. The bill provides for inpatient treatment as well as outpatient treatment, although it limits inpatient treatment to cases in which inpatient treatment is needed to address special detoxification or relapse situations or severe dependence. Do you want any further limitations on inpatient treatment, particularly for persons who are incarcerated? For example, should a judge be able to order the department of corrections to send a person to an inpatient drug treatment facility at department expense while the person is incarcerated?

Robin Ryan
Legislative Attorney
Phone: (608) 261–6927
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4037/P1dn
RLR:jld:jf

November 15, 2001

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Ryan, Robin

From: Rossmiller, Dan
Sent: December 17, 2001 7:23 PM
To: Ryan, Robin
Subject: Suggested Changes to LRB 4037/P1

Dear Robin:

Thank you for all your hard work on the draft to provide drug treatment and probation for those convicted of simple drug posession offenses. A number of individuals and groups have reveiwed the preliminary draft and have made suggestions, which are listed below. (I will have to send you a hard copy of the Ohio provisions referenced below because I have been unable to open the electronic copy.) I would like to try to schedule a meeting to review these proposed changes with you at your earliest convenience. If possible, I would like to include Ron Sklansky, the Leg. Council attorney to the Seante Judiciary Committee in our discussion. Please let me know when we can get together to discuss these changes. Thanks.

Dan Rossmiller

- *Consider adding an "Statement of Legislative Intent " section to the legislation.* Those who have reveiwed the current preliminary draft have indicated they think that the corresponding section of the Ohio Initiative would provide an excellent template for a new Wisconsin statute. Perhaps most importantly, it underscores the cost savings and fiscal relevance of the bill, even after appropriating funds for drug treatment services (see below).

- *Expand the statute to cover the use of controlled substances and possession of drug paraphernalia.* This change would prevent the exclusion of otherwise qualified individuals from obtaining access to treatment, particularly where prosecutors might use a paraphernalia possession charge as leverage to exclude treatment or to encourage a plea bargain agreement that excluded it.

- *Include a section permitting criminal proceedings to be stayed instead of, or in addition to, suspending execution of sentence.* This would reduce court and litigation costs. In addition, it would provide an opportunity for defendants to avoid the stigma of having a felony conviction on their records. As you know, record of such conviction can be a significant barrier to employment and other important elements of a person's rehabilitation and reintegration into the community.

- *Rather than permanently disqualify individuals who have in the past committed one of the so-called "three strikes" felonies, add a "washout" period (e.g., 5 years) to enable those with older felony convictions to have access to treatment.*

- *Modifying the disqualifying offenses provision to preclude creating a perverse prosecutorial incentive to overcharge a defendant (e.g., with additional petty offenses) in order to avoid diversion to treatment.*

- *Make the Department of Health and Family Services (DHFS), Bureau of Substance Abuse Services, rather than the Department of Corrections (DOC), is the lead agency for setting treatment standards for program participants.* DHFS would presumably have far more expertise and credibility than the DOC in establishing appropriate standards for treatment, e.g., determining whether a person is (un) amenable to treatment.

- *Require independent treatment professionals, under judicial supervision, to: (1) conduct assessments; (2) develop treatment recommendations; and (3) determine unamenability to treatment.* If the primary purpose of this legislation is to address addiction as primarily (though not exclusively) a public health issue rather than a criminal justice issue, it is important to keep key medical decisions within the hands of qualified treatment professionals.

- *Raise the standard for establishing that an individual is "unamenable to treatment" from "a preponderance of evidence" to "clear and convincing evidence."* The preponderance of evidence standard is the weakest available, and it may not satisfactorily protect the interests of the addicts that the statute aims to help, particularly because failure-even multiple failure-in treatment is not unusual in the recovery process.

- *Expand the definition of "drug treatment" to include the provision of necessary auxiliary services like vocational training, education, family counseling, etc.* Many people arrested for low-level criminal offenses not only need to get clean and sober but to develop basic educational and life skills.

- *Add a provision protecting the appropriate confidentiality of drug treatment records.* Confidentiality between treatment providers and patients is a critical factor in the recovery process and the success of treatment.

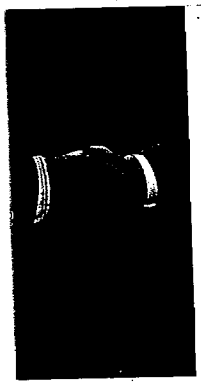
- *Make sure that there is adequate funding and treatment capacity.* The diversion-to-treatment scheme created by this bill will save Wisconsin millions of dollars. The Arizona Supreme Court last week reported that a similar scheme in that state saved taxpayers a net of $6.7 million in FY 1999, while funding treatment for thousands of persons. In the first six months of California's proposition 36, it is estimated that the state has saved $55 million in avoided incarceration costs. This bill should provide adequate funding for treatment to be offered under the bill. To this end, there needs to be research done to determine the number of people arrested for drug-related offenses who would be diverted to treatment programs. Adequate funding would not only assist existing treatment providers, it would also provide an incentive for others (e.g., non-profits, faith-based organizations) to create new programs and increase capacity. As the Arizona and California experiences make clear, the money invested in drug treatment is offset, many times over, by dollars saved through reducing incarceration rates, recidivism, drug-related morbidity, etc. In a time of fiscal restraint and tightened budgets, this bill sends a powerful message to taxpayers that wasteful spending is over.

- *Allow the sentencing or supervising court, upon the recommendation of a qualified treatment professional, to order an additional six months of aftercare following the completion of treatment.* Many people, particularly long-time addicts, need additional support after they are released from treatment. Good aftercare can significantly increase an individual's chances for long-term recovery. However, this aftercare treatment, where ordered, should not expose the individual to possible criminal consequences if the person fails to complete it.

- *Include a data gathering and research component.* This proposed legislation is premised on the strong consensus and burgeoning proof that offering drug treatment rather than prison to nonviolent offenders is better for them, their families, their communities, public safety and the state budget. Good research (e.g., a longitudinal study of those diverted from prison to treatment) would again establish this fact and help garner further public support for this initiative. In addition, it would also provide a measure of accountability for treatment providers, and help determine which treatment approaches and providers are most effective. Wisconsin's excellent colleges and universities would be well suited to provide this research.

- *Consider adding a provision similar to section (3) (c) of the Ohio Drug Treatment Initiative.* This

allows courts the discretion to be able to include certain other non-violent offenders whose primary problem is an addiction, under this legislation. The language of the Ohio legislation allows the spirit of this legislation to be carried over to other non-violent offenders when it is a matter of common sense, yet it does not tie the hands of the court in such situations.



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(608) 267-9695

Legislative Hotline:
(800) 362-9696

Robin -

F.Y.I.

This is legislation under development in Ohio. It was forwarded to me and I thought you might find it useful.

Dan Rossmiller

OHIO DRUG TREATMENT INITIATIVE

FINAL DRAFT

ARTICLE IV, Section 24

(A) **INTENTS AND PURPOSES.** The purposes and intent of the voters in adding this section to the Ohio constitution are as follows:

(1) To break the cycle of drug use, addiction and crime as early as possible by guaranteeing treatment and rehabilitation services to non-violent drug users entering the criminal justice system.

(2) To halt the wasteful expenditure of millions of dollars each year on the incarceration and reincarnation of non-violent drug users who would be better served by treatment and rehabilitation, and to promote medical and public health responses to drug abuse that reject incarceration for non-violent defendants charged with drug possession or use.

(3) To provide substance abuse treatment and rehabilitation programs to non-violent defendants charged with drug possession or use, in order to reduce or eliminate substance abuse and addiction and increase the employability of such persons.

(4) To enhance public safety by reducing drug-use-related crime and by preserving jail and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and dependence through professionally supervised drug treatment programs.

(5) To rest primary responsibility for the supervision of non-violent defendants charged with drug possession or use with community-based treatment providers, with medically appropriate links to the criminal justice system, and to ensure that drug testing is used as a treatment tool, with relapse understood to be a part of the process of recovery, not an occasion for punishment.

(6) To maintain existing efforts in Ohio to prevent drug use and to provide treatment and rehabilitation to substance users and abusers, whether or not they are involved in the criminal justice system, without reducing funding for such efforts in order to pay for treatment and rehabilitation programs made necessary by this measure.

(B) **TREATMENT MOTION, HEARING AND ASSESSMENT.**

(1) If an offender is charged with or convicted of illegal possession or use of a controlled substance, the offender may file a request for treatment.

(2) Upon receipt of a request for treatment, the court shall stay all criminal proceedings related to the illegal possession or use of a controlled substance charge

pending its final determination as to whether the offender is eligible under this section for treatment. The court may make its initial determination as to whether the offender is eligible for treatment with or without a hearing. This initial determination shall be made within three days of receipt of the request for treatment.

(3) If the court makes an initial determination that an offender is not eligible for treatment without conducting a hearing on that issue, the offender may, within three days, request a hearing before that determination becomes final. If the offender requests a hearing on the initial determination, within seven days thereafter the court shall conduct a hearing to determine whether the offender is eligible under this section for treatment, and the court shall enter its final determination as to whether the offender is eligible for treatment.

(4) If the court finds under division (C) of this section that the offender is eligible for treatment, the court shall accept the offender's request for treatment, including all waivers described in subdivision J(5) of this section. In addition, the court shall stay all criminal proceedings, including sentencing, related to the illegal possession or use of a controlled substance charge, and shall order the release of the offender if the offender is in custody due to the stayed criminal proceedings. No offender found to be eligible for treatment and entitled to such release shall be sentenced to a term of incarceration unless and until the offender is removed from treatment under subdivision (F) of this section.

(5) The court shall order an assessment of each offender found to be eligible for treatment under this section by a qualified treatment professional for the purposes of determining the offender's addiction severity and need for treatment, determining the types of drug treatment and social services that might be appropriate for the offender, and recommending an appropriate treatment plan. The assessment shall be completed within seven days of the court's determination that the individual is eligible for treatment under this section.

(6) If the court finds that an offender is not eligible for treatment under this section, the criminal proceedings against the offender may proceed as if the offender's request for treatment had not been made.

(C) ELIGIBILITY FOR TREATMENT.

(1) A first- or second-time offender shall be eligible for treatment if the court finds all of the following:

(a) The offender is charged with illegal possession or use of a controlled substance;

(b) The offender has not been convicted of or imprisoned for a violent felony within five years of committing the current offense;

(c) The offender has not been sentenced to a term of incarceration that would interfere with the offender's participation in the treatment plan; and,

(d) In the same proceeding, the offender has not been convicted of and does not have pending charges for:

(i) any felony other than an illegal possession or use offense, or any misdemeanor involving theft, violence or the threat of violence;

(ii) an offense of trafficking, sale or manufacture of controlled substances;

(iii) an offense of possession of drugs with the intent or for the purpose of trafficking, sale or manufacture of controlled substances; or,

(iv) an offense of illegally operating a motor vehicle under the influence of alcohol or a controlled substance.

(2) A repeat offender shall be eligible for treatment if the court finds both of the following:

(a) The offender satisfies all of the eligibility requirements of division (C)(1) of this section; and,

(b) The requested treatment is in the best interests of the offender and the public.

If the court denies the request for treatment of a repeat offender who satisfies all of the eligibility requirements of division (C)(1) of this section, the offender may be sentenced to a maximum of ninety days in a county jail or community-based corrections facility for the illegal possession or use offense.

(3) If an offender does not qualify under division (C)(1) or division (C)(2) of this section solely due to the offender's failure to satisfy the eligibility requirement of division (C)(1)(d)(i) of this section, the offender may nonetheless be found eligible for treatment if the court finds all of the following:

(a) The offense or offenses do not include a violent felony or any misdemeanor involving violence or the threat of violence;

(b) The offense or offenses resulted from drug abuse or addiction;

(c) Treatment of the individual is in the best interests of the offender and the public; and,

(d) The individual has not been proven to pose a danger to the safety of others.

(D) **TREATMENT PLAN.** If the court grants an offender's request for treatment:

(1) The qualified treatment professional designated by the court under division (B)(5) of this section, after conducting an assessment of the offender, shall determine the type and duration of the treatment program or programs that the offender shall receive, and the methods of monitoring the offender's progress while in treatment. The qualified treatment professional shall prepare and submit this treatment plan to the court with a list of treatment providers capable of administering the proposed treatment program or programs.

(2) The court shall review this treatment plan and shall adopt the treatment plan as submitted, if the court finds that the plan complies with this section. If the treatment plan as submitted is found not to comply with this section or to be otherwise unsatisfactory, the court shall request the designated qualified treatment professional to reconsider and submit a revised treatment plan to the court.

(3) The court shall designate an appropriate treatment provider to administer the treatment plan adopted by the court from the list of treatment providers included in the qualified treatment professional's treatment plan. The qualified treatment professional who submitted the treatment plan shall not be appointed as the treatment provider unless no other treatment provider is available to administer the treatment plan.

(4) The court may add reasonable conditions to the offender's terms of release to ensure compliance with the treatment plan and other court orders.

(5) The court may require an offender who is reasonably able to do so to pay all or a portion of the cost of the offender's participation in a treatment plan. However, such payment requirement shall not be so burdensome as to make participation in a treatment plan inaccessible, nor shall such payment requirement be excessive or punitive in nature.

(6) The court shall not require the offender to waive confidentiality of medical or treatment information as a condition for participating in a treatment plan, except that the offender may be required to give written consent for the disclosure to the court of drug and alcohol abuse treatment information by the treatment provider, including objective data generated during treatment, but not including confidential communications. Such written consent shall be non-revocable, and shall be in a

form that meets the requirements of all applicable federal and state laws and regulations governing the confidentiality of drug and alcohol abuse treatment information.

(7) If the offender does not consent to the terms and conditions imposed by the court, the offender's request for treatment may be deemed withdrawn and the criminal proceedings against the offender may proceed as if the offender's request for treatment had not been made, except that no otherwise confidential drug or alcohol abuse treatment information made available to the court may be used by any person in this or in other civil or criminal proceedings without the offender's further written consent.

(8) The court shall require the offender to participate in and cooperate with the treatment program of the designated treatment provider for a period of time designated in the treatment plan, not to exceed 12 months. This period of time may be extended only if, based on information provided by a qualified treatment professional who has assessed the individual, the court finds by clear and convincing evidence that an extension of such period is necessary for treatment to be successful. No extension of the period of time designated for an offender's treatment plan shall exceed an additional 6 months. Under no circumstances shall the total time period of treatment required under this section exceed a total of 18 months; nor shall court supervision of any offender extend more than 90 days beyond the end of treatment.

(9) The court shall order the offender to appear for treatment according to the treatment plan no later than 14 days after the court has found the offender to be eligible for treatment, unless the court, because of lack of space or other good cause shown, authorizes an extension of the date for entry into treatment. No offender shall be required to wait more than 30 days to enter treatment.

(E) MODIFICATION OF TREATMENT PLAN AT TREATMENT PROVIDER'S INITIATION.

(1) Nothing in this section shall be construed to require a treatment provider to retain an offender who commits a major violation of that program's rules.

(2) If at any point during the course of treatment, the treatment provider determines that the treatment being provided is unsuitable for the offender, or that it is impracticable for the treatment provider to continue to administer the treatment plan, the treatment provider shall so notify the court.

(3) If at any point during the course of treatment, the treatment provider notifies the court that the treatment being provided is unsuitable for the offender, or that it is impracticable for the treatment provider to continue to administer the treatment plan, the court, after notice and an opportunity for a hearing, and subject to the recommendation of a qualified treatment professional, may modify the terms of

the treatment plan to ensure that the offender receives an alternative treatment program or related programs.

(F) PROGRAM VIOLATIONS, CONSEQUENCES, REMOVAL FROM TREATMENT PLAN

(1) **Consequences of Removal.**

(a) If an offender who has not been convicted of the illegal possession or use of a controlled substance charge that gave rise to the request for treatment is removed from a treatment plan pursuant to the provisions of this subdivision, the offender may be tried, and if convicted may be sentenced to up to ninety days in county jail or in a community-based corrections facility for the illegal possession or use offense.

(b) If an offender who has been convicted of the illegal possession or use of a controlled substance charge that gave rise to the request for treatment is removed from a treatment plan pursuant to the provisions of this subdivision, the offender may be sentenced to up to ninety days in county jail or in a community-based corrections facility for the illegal possession or use offense.

(c) If an offender is removed from a treatment plan pursuant to the provisions of this subdivision, and has had additional criminal charges or convictions stayed by the court, prosecution, conviction or sentencing for such additional charges may be conducted without limitation by the provisions of this section.

(2) **Non-Drug Related Violations.** Where an offender participates in a treatment plan, and violates the terms of that treatment plan either by committing an offense that is not an illegal possession or use of a controlled substance offense, or by violating a non-drug-related condition set by the court, the court shall conduct a hearing to consider evidence of the offense or violation, and to determine whether the offender shall be removed from the treatment plan or otherwise sanctioned.

(a) If the offender has been convicted of a new offense that is not illegal possession or use of a controlled substance, the court may remove the offender from the treatment plan provided that the court also finds by a preponderance of the evidence at least one of the following:

(i) the severity of the offense justifies removal, or

(ii) the offense indicates that the individual poses a danger to the safety of others.

(b) If the alleged violation of a non-drug-related condition of the treatment plan is proved by clear and convincing evidence, the court may remove the offender from the treatment plan provided that the court also finds by a clear and convincing evidence at least one of the following:

(i) the severity of the offense justifies removal, or

(ii) the offense indicates that the individual poses a danger to the safety of others.

(c) If the court does not remove the offender from treatment after finding that an offense or violation occurred, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional, and may impose proportionate sanctions for the offense or violation, not including incarceration.

(3) **Drug-Related Violations.**

(a) Where an offender participates in a treatment plan, and is alleged to have committed a severe drug-related violation or multiple drug-related violations of that plan, the court may hold a hearing to consider evidence of the violation or violations and necessary responses, including sanctions, amendment of the treatment plan, or removal of the offender from treatment.

(b) If, at the hearing, the court finds by clear and convincing evidence that an offender did commit the alleged drug-related violation or violations, and the court finds this conduct to represent a serious disruption of the treatment plan, the court shall proceed as follows:

(i) If the court has not previously found the offender to have committed a serious disruption of the treatment plan during the current course of treatment, the court shall consider evidence that the offender poses a danger to the safety of others. Provided that the court so finds by clear and convincing evidence, the court may remove the offender from treatment. If the court does not find that the offender poses a danger to the safety of others, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional, and may impose proportionate sanctions for the serious disruption of the treatment plan, not including incarceration.

(ii) If the court has once previously found the offender to have committed a serious disruption of the treatment plan during the current course of treatment, the court shall consider evidence that the offender poses a danger to the safety of others or is unamenable to treatment. Provided that the court finds by clear and convincing evidence that the offender either poses a danger to the safety of others or is unamenable to treatment, the court may remove the offender from treatment. If the court does not so find, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional, and may impose proportionate sanctions for the serious disruption of the treatment plan, not including incarceration.

(iii) If the court has more than once previously found the offender to have committed a serious disruption of the treatment plan during the current course of treatment, the court may remove the offender from treatment. If the court does not remove the offender from treatment, the court may amend the offender's treatment plan to modify or intensify the form of treatment and to extend the period of treatment, subject to the recommendations of a qualified treatment professional, and may impose proportionate sanctions for the serious disruption of the treatment plan.

(4) **Treatment period extension; limitation.** If the court extends the period of treatment pursuant to this subdivision, the total period of treatment required shall not exceed 18 months.

(G) COMPLETION OF PROGRAM; BENEFITS; LIMITATIONS.

(1) If the court grants an offender's request for treatment prior to a conviction for an illegal possession or use offense, and the treatment provider notifies the court that the offender has completed the treatment plan, or the treatment plan as modified, the court shall dismiss the stayed proceedings against the offender without an adjudication of guilt and there shall not be a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime. Notwithstanding such dismissal of proceedings, the court may order continued supervision of the offender for up to 90 days.

(2) If the court grants an offender's request for treatment after a conviction for an illegal possession or use offense, and the treatment provider notifies the court that the offender has completed the treatment plan, or the treatment plan as modified, the court shall dismiss the stayed proceedings against the offender.

Notwithstanding such dismissal of proceedings, the court may order continued supervision of the offender for up to 90 days.

(3) If the court grants an offender's request for treatment and the treatment provider notifies the court that the period of time designated in the treatment plan, or the treatment plan as modified, has expired, but, in the opinion of the treatment provider, the offender has not successfully completed the treatment plan, then the court may, after consultation with the treatment provider and a qualified treatment professional who has assessed the offender, take any of the following actions:

(a) Dismiss the stayed proceedings and terminate the treatment plan with a finding that the offender has either:

(i) successfully completed the treatment plan, or

(ii) completed the treatment plan without a determination of successful completion.

(b) Order an extension of the period of treatment, provided that such extension does not cause the total required treatment period to exceed 18 months; or

(c) Order continued supervision of the offender for a period of up to 90 days.

(4) Any time after 90 days subsequent an offender's completion of a treatment plan, or a treatment plan as modified, the offender may file a motion for the sealing of records and, if applicable, the expungement of the conviction which gave rise to the request for treatment. Upon receipt of such a motion the court shall consult with the treatment provider and, in the court's discretion, a qualified treatment professional who has assessed the offender, to determine whether the offender has successfully completed treatment. If the court so finds by a preponderance of the evidence, the court shall, as applicable to the case, order the sealing of records related to the offender's charge or conviction for illegal possession or use of a controlled substance, and expunge any conviction.

(5) Notwithstanding the sealing of records related to the offense in question or the expungement of any conviction, law enforcement agencies shall keep records of offenders' arrests, convictions and referrals to treatment for illegal possession or use of a controlled substance. Such records shall be maintained for the exclusive law enforcement purposes of enabling prosecutors and the courts to have information about the number of prior illegal possession or use offenses on record for a person later charged with or convicted of illegal possession or use, and to conduct criminal record checks for persons applying for a position as a law enforcement officer. With these exceptions, all law enforcement records of sealed

or expunged records of illegal possession or use offenses shall be confidential and not subject to any disclosure.

(6) Neither the successful completion of the treatment plan, nor the sealing of records, nor the expungement of a conviction under this section relieve an offender of the obligation to disclose the arrest and any expunged conviction in response to any direct question contained in any questionnaire or application for a position as a law enforcement officer.

(H) FUNDING FOR TREATMENT.

(1) Within 60 days of enactment of this section, the Governor shall designate a state department to direct implementation of the programs required by this section, which shall be referred to as the lead agency. Such department shall meet the following criteria:

(a) The department has a mission that is primarily concerned with public health matters;

(b) The department has a demonstrated capacity for administering funds for multiple types of treatment programs; and,

(c) The department has affiliated agencies or bodies in counties or multi-county regions to which funds may be distributed.

(2) The General Assembly shall enact legislation and the lead agency shall promulgate regulations for the implementation of this section consistent with its purposes and intent. The lead agency shall ensure that recipient counties or multi-county regional bodies provide a diversity of treatment programs to ensure the availability of a continuum of services from low-threshold to residential drug treatment, as well as services designed for the special needs of women and parents, pregnant women, and other culturally and linguistically diverse populations.

(3) A special fund to be known as the "Substance Abuse Treatment Fund" is hereby created within the state treasury for carrying out the purposes of this section.

(4) Upon enactment of this Amendment there is hereby appropriated $15 million from the state General Fund to the Substance Abuse Treatment Fund for the remainder of the 2002-2003 fiscal year, to pay for the costs of preparing state and local government entities and treatment programs for implementation of this measure. For each fiscal year thereafter, until and including the 2008-2009 fiscal year, there is hereby appropriated annually from the General Fund to the Substance Abuse Treatment Fund $28.5 million, or such greater amount as the General Assembly may determine to be necessary to ensure that all persons eligible for, and who elect, treatment under this provision, receive such treatment

and that all other requirements imposed by this section may be fulfilled. Notwithstanding Section 22, Article II, or any other provision of this Constitution, no further act of appropriation shall be necessary for such annual appropriations to occur. Such funds shall be transferred to the Substance Abuse Treatment Fund no later than the first day of each fiscal year. After the 2008-2009 fiscal year, the amount of funding required by this section shall become discretionary and subject to routine budgetary processes.

(5) The State of Ohio shall maintain its prior efforts to provide substance abuse treatment and rehabilitation during at least the first six fiscal years following passage of this section. During this six-fiscal-year period, and concluding with fiscal year 2008-2009, funds appropriated to pay for treatment programs under this section shall supplement, and not supplant, funding for substance abuse prevention and treatment programs and other rehabilitation programs operating prior to the enactment of this provision. During this six-fiscal-year period, the General Assembly shall continue to appropriate funds for substance abuse prevention and treatment programs and other rehabilitation programs in amounts equal to or greater than the amounts appropriated for substance abuse prevention and treatment programs and other rehabilitation programs in fiscal year 2000-2001, without taking into account any funds from the Substance Abuse Treatment Fund.

(6) Except as otherwise provided herein, the director of the lead agency shall distribute annually all monies appropriated to the Substance Abuse Treatment Fund to the department's affiliated agencies or bodies in counties or multi-county regions to pay for the costs of providing treatment programs for offenders eligible under this section and for offenders placed in treatment under other intervention-in-lieu-of-incarceration programs established by statute.

(7) The director of the lead agency shall determine the allocation of the monies from the Substance Abuse Treatment Fund to each county or multi-county regions through a fair and equitable distribution formula for estimating the need for funds that includes factors such as population, the number of arrests for illegal possession or use of a controlled substance, substance abuse treatment and rehabilitation services caseload, the need for infrastructure development to provide treatment and rehabilitative services, and such other factors as the director of the lead agency may deem appropriate. The lead agency may also reserve up to five percent of the funds available in the Substance Abuse Treatment Fund to pay for the lead agency's administrative costs associated with implementing this section, and may reserve up to one percent of the funds available to pay for a long-term study of the offender populations and treatment programs affected by this section.

(8) Each county or multi-county region shall spend at least 85 percent of the funds distributed under this article on the provision of community-based treatment and

rehabilitation services to offenders eligible under this section, persons placed in treatment under other intervention-in-lieu-of-incarceration programs established by statute, or persons who commit drug-related violations of the terms of supervised release from prison. No county or multi-county region shall, in any fiscal year, devote more than 15 percent of the funds provided under this section to non-treatment expenses made necessary by the provisions of this section, including, but not limited to, case management and administration costs for treatment providers, transportation for offenders to treatment, additional probation department costs and court costs. The director of the lead agency may stipulate permissible uses of such non-treatment funds.

(9) Each county or multi-county regional body receiving funds shall be required to submit to the lead agency annual reports or more frequent reports, subject to annual audits by the Auditor of State, detailing the use of funds provided under this section.

(10) The lead agency shall annually collect and publish data to evaluate the effectiveness and financial impact of the treatment programs implemented under this section. The study shall include, but not be limited to, a review of the implementation process; any changes in overall drug-related costs of probation, incarceration, and supervised release; changes in recidivism rates for non-violent drug offenders; reductions in crime; reductions in prison and jail construction; changes in health outcomes for drug users; reduced welfare costs; increased employability of persons completing treatment elected under this section; comparisons of treatment modalities; adequacy of funds appropriated; and other impacts or issues identified by the department. The lead agency shall also collect data on the race, gender and age of drug offenders, demographic information on types and numbers of controlled substances arrests, prosecutions, diversions to treatment under this section and otherwise, and completion of treatment.

(11) At any time after a minimum of five years serving as the lead agency, the department chosen by the Governor may be reconsidered or changed. If a new department is designated as the lead agency, it shall meet all criteria specified in this division and shall serve as the lead agency for a minimum of five years.

(I) **LIMITED SCOPE OF TREATMENT RIGHT.** Nothing in this section prohibits the general assembly from authorizing treatment or treatment in lieu of conviction for persons not otherwise eligible under this section.

(J) **DEFINITIONS.** As used in this section,

(1) "**Illegal possession or use of a controlled substance**" means a violation of Ohio civil or criminal statutes involving having, holding, controlling, obtaining, or storing a quantity of a controlled substance consistent with personal use; or consuming, using, or being under the influence of a controlled substance; and including other

non-violent illegal acts incidental to drug possession or use, such as possession of drug paraphernalia, purchase of a controlled substance, and transportation of a controlled substance merely as an extension of possession for personal use.

(2) **"Treatment program" or "treatment"** mean a state-approved treatment and/or rehabilitation program, or set of programs, designed to reduce or eliminate substance abuse or drug dependency and to increase employability. Such program or programs may include outpatient treatment, half-way house treatment, sober living environments, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. Such program or programs may also include, as deemed appropriate, access to vocational training, literacy training, family counseling, mental health services, or similar support services. A Veterans Administration facility may also serve as a treatment program for an appropriate client, irrespective of state licensure. The terms "treatment program" or "treatment" shall not include programs offered in a prison or jail facility or in other forms of incarceration.

(3) **"Treatment provider"** means an appropriately licensed provider, certified facility, or licensed and credentialed professional that provides a "treatment program."

(4) **"Qualified treatment professional"** means an individual with specialized knowledge, skill, experience, training, or education in the areas of psychology, psychiatry or addiction therapy who has the expertise needed to conduct the addiction and life skills assessments necessary to determine an offender's suitability to one or more forms of treatment and to recommend an appropriate treatment plan.

(5) **"Request for treatment" or "request"** means a motion filed by an individual facing charges of illegal possession or use of controlled substance or who has been convicted of such an offense The request shall include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred. The request shall also include the defendant's written consent for limited disclosure of information to the court by a qualified treatment professional to be designated by the court, as necessary to and as provided for in division (B)(5) of this section for the creation of a treatment plan for the individual. Such written consent shall be non-revocable, and shall be governed by, and in a form that meets the requirements of, federal and state laws and regulations protecting the confidentiality of drug and alcohol abuse treatment information.

(6) **"Violent felony"** means any felony that includes as one or more elements of the offense proof that the offender has caused or threatened to cause any injury, illness, or other physiological impairment to any person.

(7) **"Repeat offender"** means an offender who is charged with or convicted of an offense of illegal possession or use of a controlled substance and:

(a) Has had two or more prior convictions for illegal possession or use of a controlled substance after the enactment of this section; or,

(b) Has participated in two or more prior courses of treatment under this section.

(8) **"First- or second-time offender"** means an offender who is charged with or convicted of an offense of illegal possession or use and is not a repeat offender.

(9) **"Unamenable to treatment"** means that an offender:

(a) has repeatedly committed serious violations of treatment program rules that inhibit the offender's ability to function in the treatment program,

(b) has continually refused to participate in the treatment program, or

(c) has asked to be removed from the treatment plan adopted by the court.

(10) **"Objective data"** means confidential drug and alcohol treatment information that is specific and quantified, such as attendance records, drug test results, and progress reports, and does not include confidential communications made by a patient to a treatment provider or program in the course of diagnosis, treatment or referral for treatment for drug or alcohol abuse.

(K) **EFFECTIVE DATE.** Except for those portions of subdivision (H) of this measure requiring immediate effect, this section shall take effect on the 1st day of July following the election at which it is approved, and shall apply to all qualifying charges, convictions and criminal sentences before the court from that day forward.

Response - sent to Dan Rossmiller 1/8/02

January 3, 2002
RLR

1. *Consider adding an "Statement of Legislative Intent " section to the legislation.* Those who have reviewed the current preliminary draft have indicated they think that the corresponding section of the Ohio Initiative would provide an excellent template for a new Wisconsin statute. Perhaps most importantly, it underscores the cost savings and fiscal relevance of the bill, even after appropriating funds for drug treatment services (see below).

The LRB recommends against including intent statements in bills. We can discuss the reasons for not including an intent statement. Please let me know if there are specific substantive provisions from the Ohio intent statement that you would like included in the bill.

2. *Expand the statute to cover the use of controlled substances and possession of drug paraphernalia.* This change would prevent the exclusion of otherwise qualified individuals from obtaining access to treatment, particularly where prosecutors might use a paraphernalia possession charge as leverage to exclude treatment or to encourage a plea bargain agreement that excluded it.

Use of a controlled substance is not prohibited under current law, so the bill does not need to address use.

Drug paraphernalia includes material used to plant, cultivate, process, and package controlled substances, not just material used to inject or ingest controlled substances. Should the bill require that persons who possess paraphernalia be eligible for probation and drug treatment, or should eligibility be at the discretion of the court? Should the eligibility provisions distinguish between persons who possess paraphernalia for use of controlled substances versus those who possess paraphernalia for manufacture or distribution?

3. *Include a section permitting criminal proceedings to be stayed instead of, or in addition to, suspending execution of sentence.* This would reduce court and litigation costs. In addition, it would provide an opportunity for defendants to avoid the stigma of having a felony conviction on their records. As you know, record of such conviction can be a significant barrier to employment and other important elements of a person's rehabilitation and reintegration into the community.

The proposed change has the same effect as the bill. Under the bill, the court enters a judgment of guilty either after a defendant pleads guilty or no contest or after the court or jury finds the defendant guilty. After judgment is entered, the court places the defendant on probation. If the defendant successfully completes probation, his or her conviction is expunged. The provisions in the bill are modeled on s. 973.015 stats.

Under the proposed change, a court must continue the proceedings at least through the entry of a plea, or through trial, if the defendant pleads not guilty. At that point, the court could defer entering a judgment of guilty and place the person on probation. If the defendant successfully completes probation, the court would dismiss the charges. However, if the defendant fails to complete probation, the court would enter the judgment of guilty and proceed to sentencing. This process is the same as the process provided under s. 961.47, stats.

Since the results are the same, the difference in the process is an administrative matter. I do not think that the proposed change provides any cost savings, because under either method a trial is necessary for persons who plead not guilty, but is not necessary for those who plead guilty or no contest. Perhaps courts have a reason for preferring one method over the other.

The Ohio initiative is different from the bill not so much because it stays court proceedings at a different point, but

because 1) it requires the defendant to request treatment, and 2) it does not place the defendant on probation, rather the defendant is monitored by a treatment provider.

4. ∅ *Rather than permanently disqualify individuals who have in the past committed one of the so-called "three strikes" felonies, add a "washout" period (e.g., 5 years) to enable those with older felony convictions to have access to treatment.*

How should the five-year period be measured? From the last commission of a "three-strikes" felony, from the date of the conviction from that felony, from the time the defendant completed serving his or her sentence for that felony, or a combination of the above?

5. ∅ *Modifying the disqualifying offenses provision to preclude creating a perverse prosecutorial incentive to overcharge a defendant (e.g., with additional petty offenses) in order to avoid diversion to treatment.*

Perhaps the disqualification could be based on the maximum period of incarceration for the other offense. For example, those persons who are convicted in the same proceeding for a crime for which the maximum period of confinement is more than 90 days are disqualified. (The maximum period of confinement for a Class B misdemeanor is 90 days.) I presume that a court should still be able to sentence a person for a non-disqualifying crime, as opposed to requiring that the person be placed on probation for that crime, and that the court should order that the drug treatment probation run either concurrently to or consecutively to the sentence for the other offense.

6. o *Make the Department of Health and Family Services (DHFS), Bureau of Substance Abuse Services, rather than the Department of Corrections (DOC), is the lead agency for setting treatment standards for program participants.* DHFS would presumably have far more expertise and credibility than the DOC in establishing appropriate standards for treatment, e.g., determining whether a person is (un)amenable to treatment.

See response under next bullet

7. o *Require independent treatment professionals, under judicial supervision, to: (1) conduct assessments; (2) develop treatment recommendations; and (3) determine unamenability to treatment.* If the primary purpose of this legislation is to address addiction as primarily (though not exclusively) a public health issue rather than a criminal justice issue, it is important to keep key medical decisions within the hands of qualified treatment professionals.

Under the bill, a judge may at his or her discretion order that a defendant found guilty of drug possession participate in a drug assessment conducted by a treatment facility that is certified by the Department of Health and Family Services to conduct such assessments. The judge may also order that the assessor provide a proposed treatment plan. (See proposed s. 961.476 (3)). Do you want the assessment to be mandatory in all cases?

I will change the bill to require that DHFS, rather than DOC, write guidelines for determining whether a person is amenable to treatment.

Under the bill, a hearing examiner from the Division of Hearings and Appeals can determine whether a person is amenable to treatment. The change you propose requires that a treatment provider be involved in determining

amenability to treatment. I can change the bill so that a court rather than a hearing examiner must hear any probation, parole, or extended supervision revocation proceeding that involves a question of whether the defendant is amenable to treatment. Prior to a revocation hearing on amenability to treatment, a treatment provider would assess the defendant and the treatment provider would be called as an expert witness at the revocation hearing.

Under current law DHFS is required to certify drug treatment facilities. The bill does not increase DHFS responsibilities with respect to such certification. Would you like the bill to require that DHFS establish treatment standards for treatment of persons ordered to participate in treatment as part of probation?

8.

- *Raise the standard for establishing that an individual is "unamenable to treatment" from "a preponderance of evidence" to "clear and convincing evidence."* The preponderance of evidence standard is the weakest available, and it may not satisfactorily protect the interests of the addicts that the statute aims to help, particularly because failure-even multiple failure-in treatment is not unusual in the recovery process.

OK

9.

- *Expand the definition of "drug treatment" to include the provision of necessary auxiliary services like vocational training, education, family counseling, etc.* Many people arrested for low-level criminal offenses not only need to get clean and sober but to develop basic educational and life skills.

Under current law, a court may already impose as a condition of probation any condition that appears to be reasonable and appropriate (see s. 973.09 (1) (a), stats.). It is therefore not necessary to specify that a court may order other conditions of probation such as vocational training and education. However, if you do want these other optional conditions specified I will add them, though not under the definition of "drug treatment." You may also want to add a requirement that DOC provide and fund the services.

10.

- *Add a provision protecting the appropriate confidentiality of drug treatment records.* Confidentiality between treatment providers and patients is a critical factor in the recovery process and the success of treatment.

Drug dependence treatment records maintained by treatment facilities are already confidential under s. 51.30 (4), stats. However, s. 51.30 (4) provides that certain people may obtain access to such treatment records without the informed consent of the patient, including a person who has a court order for access, and correctional facility or probation, extended supervision, and parole agents who is responsible for supervising the patient, among others.

11.

- *Make sure that there is adequate funding and treatment capacity.* The diversion-to-treatment scheme created by this bill will save Wisconsin millions of dollars. The Arizona Supreme Court last week reported that a similar scheme in that state saved taxpayers a net of $6.7 million in FY 1999, while funding treatment for thousands of persons. In the first six months of California's proposition 36, it is estimated that the state has saved $55 million in avoided incarceration costs. This bill should provide adequate funding for treatment to be offered under the bill. To this end, there needs to be research done to determine the number of people arrested for drug-related offenses who would be diverted to treatment programs. Adequate funding would not only assist existing treatment providers, it would also provide an incentive for others (e.g., non-profits, faith-based organizations) to create new programs and increase capacity. As the

Arizona and California experiences make clear, the money invested in drug treatment is offset, many times over, by dollars saved through reducing incarceration rates, recidivism, drug-related morbidity, etc. In a time of fiscal restraint and tightened budgets, this bill sends a powerful message to taxpayers that wasteful spending is over.

12. o *Allow the sentencing or supervising court, upon the recommendation of a qualified treatment professional, to order an additional six months of aftercare following the completion of treatment.* Many people, particularly long-time addicts, need additional support after they are released from treatment. Good aftercare can significantly increase an individual's chances for long-term recovery. However, this aftercare treatment, where ordered, should not expose the individual to possible criminal consequences if the person fails to complete it.

Proposed s. 961.476 (4) in the bill already allows a court to order up to six months of aftercare (though it does not define what aftercare is). The bill does not require that the aftercare be recommended by a treatment professional? Should it?

13. o *Include a data gathering and research component.* This proposed legislation is premised on the strong consensus and burgeoning proof that offering drug treatment rather than prison to nonviolent offenders is better for them, their families, their communities, public safety and the state budget. Good research (e.g., a longitudinal study of those diverted from prison to treatment) would again establish this fact and help garner further public support for this initiative. In addition, it would also provide a measure of accountability for treatment providers, and help determine which treatment approaches and providers are most effective. Wisconsin's excellent colleges and universities would be well suited to provide this research.

Do you want to specify a department that is responsible for commissioning the study (DHFS or DOC)? When should the study be commissioned? What is the duration of the study? When are reports due? To whom are reports due?

14. o *Consider adding a provision similar to section (3) (c) of the Ohio Drug Treatment Initiative.* This allows courts the discretion to be able to include certain other non-violent offenders whose primary problem is an addiction, under this legislation. The language of the Ohio legislation allows the spirit of this legislation to be carried over to other non-violent offenders when it is a matter of common sense, yet it does not tie the hands of the court in such situations.

OK. I can modify proposed s. 961.476 (8) to specify that a court may order drug treatment, either with probation or while the defendant is incarcerated, for a defendant who is convicted of a non-violent crime other than drug possession, if the court finds that the defendant is drug dependent and if the defendant is willing to participate in treatment.

Ryan, Robin

From: Rossmiller, Dan
Sent: January 15, 2002 12:17 PM
To: Ryan, Robin
Subject: drug treatment bill

Robin:

Thanks for the meeting.

FYI--There is a new issue to think about. I wanted to get word to you so that you could think about this before our meeting.

The proponents of the bill really want to make sure that everyone who is addicted and "non violent" is covered under the bill.

I suspect one way to look at this is to require an assessment of everyone who commits certain crimes such as prostitution, burglary (breaking and entering), auto theft, etc. that are likely markers for drug addiction to determiine if the person is addicted and whether the person is committing these crimes to support a drug habit.

Perhaps we could structure the basic bill to take effect upon publication or a certain time period after publication and then have the expanded version take effect. This would give treatment providers a chance to "ramp up" capacity so they wouldn't be hit with a huge influx all at once.

Any thoughts you have would be welcome.

Dan

1/15/02

Dan Rossmiller

22nd – want bill done by Tues.

maybe add to TIS

2. expand to cover drug para
elig at discretion of court
if small scale – for own use
– paraphernalia – for ~~*~~ for personal use
mand. elig
– other @ discr. of court

Dan agrees – staying proceedings not dep.

Keep as is.

4. 5 years from completion of sent.

6.

assessment mandatory? –

DHFS licensed facility to provide "tr." (applies to jail tr.)

Judge has option to req. ed. if treatment not necessary } let DOC figure out who does what

if need real "tr." – in DHFS cert. facilities

allow ~~dog~~ expert to report or be at hrg. Revocation } require rpt. at preliminary hrgs. or by phone

10. no change on conf. of records

12. aftercare by dr. profession
within 30 days before completion of tr. –
treatment provide ~~provide~~ rec.
on offender

13. DOC in coop. w/ DHFS get rpt.
2 yr. & 5 yr. study
(1) rpt. to Gov (2) Sen. Maj. Lead (3) Assem Spk.
(4) ~~chairs of JFC~~ joint TIS Rev Com. (ask Mike)
or (4) chairs of JFC for – stand alone bill

TIS
Student. Com.

14. non-violent crime = anything
but 940 or 948

Discretionary if no drug poss. charge
charged w/ other non-violent crime
either offender asks for tr. & mandatory assess.
or judge makes findings that drug dependent

5. Mandatory tr. – non-violent misdemeanor
not a bar to mandatory
tr.

make sure def. covers non-violent felons.

TIS Keep ct. authority to order drug tr.

conviction only expunged for poss. convictions

Keep sep. systems for violent offenders & non-violent

DOC as provider of tr. – require DHFS to license DOC as provider

Ryan, Robin

From: Ryan, Robin
Sent: January 16, 2002 9:51 AM
To: Rossmiller, Dan
Subject: Questions for drug treatment draft

I want to make sure I have the mandatory/discretionary provisions correct before I begin redrafting. The questions are in bold.

Mandatory probation and treatment
Guilty of drug poss. or poss. of paraphernalia for personal use.
Exceptions:
1. 3 strikes crime in last 5 years
2. Convicted of felony under 940 or 948 in same proceeding
3. Convicted of drunk driving in same proceeding
4. Incarcerated at time of drug offense
5. Found unamenable to treatment
6. defendant refuses to participate in treatment

If a person who is eligible for mandatory probation and treatment is convicted of a misdemeanor in the same proceeding, is the court required to give the defendant probation and treatment for the misdemeanor offense or just for the drug offense? Think particularly of a case where the defendant is convicted of drug possession along with 5 Class A misdemeanors.

Discretionary probation and treatment
Guilty of a crime other than a felony under 940 or 948 and found to be drug dependent.

Is the point of the discretionary provision to allow the judge to order treatment provided by DOC, or to order treatment and probation? If the goal is just to allow the court to order treatment paid for by DOC then I don't think any exceptions are necessary, but if the goal is to allow the court to order probation as well, which of the exceptions should apply?
My guess is that the following should apply
1. **3 strikes in the last 5 years**
2. **convicted of drunk driving in same proceeding**
3. **found unamenable to treatment**
4. **defendant refuses to participate in treatment**

ANSWERS From Dan: 1/17/02
If misd, related to drug poss. offense → mandatory treatment & probation & record of misd. may be expunged
If misd not related to drug offense - probation and treatment for the misd. is discretionary - and conviction record cannot be expunged.

No exemptions for discretionary offenses - goal is to allow court to order DOC to pay for treatment

Can't be confined under probation for misd. that is related to drug dependence.

Use OAR 10 def. of "unamenable to treatment"
DHFS may promulgate [1] rules for determining unamenability.