



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4037/P2

RLR:jld:jf

Wanted today,  
3/4/02

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen.

JWS rel. Clause

1 AN ACT ~~to repeal~~ 46.03 (18) (fm), 961.47, 961.472 and 961.475; ~~to amend~~ 20.410  
2 (1) (a), 20.410 (1) (b) and 961.438; and ~~to create~~ 301.03 (3j), 302.113 (9) (am)  
3 and 973.105 of the statutes; ~~relating to: drug treatment or drug education for~~  
4 ~~persons convicted of possession of controlled substances or certain other crimes,~~  
5 ; granting rule-making authority, and making an appropriation.

INSERT 1

**Analysis by the Legislative Reference Bureau**

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

INSERT 2

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

except a so-called "date rape drug"

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.

INS 2-B

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.

INSERT 3

This bill requires that, if a person is convicted of a nonviolent drug offense, the person be placed on probation and ordered to participate in drug treatment or drug education as a condition of that probation, unless certain exceptions apply. The bill defines a "nonviolent drug offense" as possession or attempted possession of a controlled substance or possession or attempted possession of drug paraphernalia that is used for taking drugs (drug paraphernalia for personal use). If any of the following exceptions applies, the sentencing court is not required to place a nonviolent drug offender on probation or order drug treatment or drug education for that offender:

a. The person has been convicted of, or served a sentence for, a serious felony (the so-called "three strikes" felonies) at any time during the five years prior to committing the nonviolent drug offense.

2. The person is convicted of a misdemeanor that is a crime against life or bodily security or a crime against children, or is convicted of any felony other than a nonviolent drug offense, in the same proceeding.

c. The person was incarcerated at the time he or she committed the nonviolent drug offense.

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

e. The person refuses to participate in drug treatment or drug education. If a person is convicted of a separate misdemeanor that is not a crime against life or bodily security or against children in the same proceeding as the nonviolent drug offense, and the court finds that the person's drug dependence significantly contributed to the commission of that misdemeanor, the court must place the person on probation for that misdemeanor as well. However, if the court does not find that drug dependence significantly contributed to commission of the misdemeanor, the court may sentence the person for the misdemeanor and order that the person serve probation for the nonviolent drug offense either concurrently with the sentence for the misdemeanor, or after serving the sentence for the misdemeanor.

The bill provides that a sentencing court may order an offender to undergo an assessment of his or her drug dependence before determining a disposition or sentence for the offender. Any assessments ordered by the court must be completed

possession  
use intervention services

possession

possession

INSERT 4

INSERT 5

In addition,

a crime

or a crime involving a firearm

use intervention services

possession

✓ by a provider who is certified by the department of health and family services (DHFS) to conduct assessments of drug dependence.

INSERT 61

Drug treatment or drug education ordered by the court may consist of outpatient treatment, treatment at a halfway house, narcotic replacement therapy, 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 or education for up to 12 months, or for the length of the probation period, whichever is less. Any treatment ordered must be provided by a treatment facility that is certified by DHFS. Thirty days before the expiration of a probationer's drug treatment or drug education, the provider of the treatment or education must submit a report to the court recommending whether the person should receive aftercare services. The court may modify the person's probation to require up to six months of aftercare.

drug use intervention services

use intervention services

INSERT 71

If a person on probation for a nonviolent drug offense violates a condition of probation that is related to drug treatment or drug education or if the person commits another nonviolent drug offense, the conditions of the person's probation may be modified, but the person's probation may not be revoked unless a hearing examiner or the department of corrections (DOC), if the person waives a hearing, finds by clear and convincing evidence that the person is a danger to himself, herself, or others or that the person is unamenable to treatment. Under the bill, a person is unamenable to treatment if the person has repeatedly committed serious violations of drug treatment or drug education rules that inhibit the person's ability to function in treatment or education; the person has continually refused to participate in drug treatment or drug education; or the person has asked to be removed from drug treatment or drug education. If a person violates a condition of probation that is not related to drug treatment or a nonviolent drug offense, the probation may be revoked as under current law.

service program

use intervention services

possession

INS 81

The bill provides that, if a person successfully completes probation for a nonviolent drug offense or a misdemeanor for which the offender's drug dependence was a significant contributing factor, without revocation, the record of the conviction is expunged and the 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.

INS 81A

The bill grants courts discretion to order the state to provide drug treatment or drug education to a person who is convicted of any crime other than a crime against life or bodily security or a crime against children, if the sentencing court finds that the person is drug dependent. The court may require that the state provide drug treatment or drug education to such a person while he or she is in prison, jail, or otherwise confined, or while the person is on extended supervision or probation.

The bill also provides that, if a person on extended supervision for any offense commits a nonviolent drug offense or violates a condition of extended supervision that is related to drug treatment or drug education, the person's extended supervision may not be revoked for that violation unless a hearing examiner, or DOC, if the person waives a hearing, finds by clear and convincing evidence that the person

because

use intervention services

or a crime involving a firearm

services

services

use intervention services

DOC

possession

possession

DOC

Medical Assistance, or budget care

is a danger to himself, herself, or others or that the person is unamenable to treatment.

INS 9

Under the bill, a court must order a recipient of an assessment, <sup>or use</sup> drug treatment or drug education to pay, to the extent of his or her ability, for those services that are not covered by private insurance or state medical assistance or other state health care programs. DOC must pay for those services that are not covered by insurance or state health programs or paid for by the recipient.

intervention services

budget care

INSERT 7 10

The bill requires that ~~DOC~~, in cooperation with DHS, commission a study of the effects of providing drug treatment and drug education to nonviolent drug offenders and other offenders who are drug dependent. DOC must issue an interim report two and one-half years after the drug treatment and drug education provisions of this act are instituted, and must issue a final report five and one-half years after the provisions are instituted.

use intervention services

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

bill, if enacted as an

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

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

20.410 (1) (a) General program operations. The amounts in the schedule to operate institutions and <sup>to</sup> provide field services and administrative services ~~and~~ to provide drug <sup>use intervention services</sup> treatment and drug education under <sup>s.</sup> 973.105 to persons who are incarcerated. 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.

and for a study of the effects of drug use intervention services provided under ss. 302.11(7)(g), 302.113(9m), and 973.105

SECTION 2. 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 <sup>and</sup> minimum security correctional institutions established under s. 301.13, and drug assessments under s. 973.105 (4). No payments may be made under

INS 4-7

302.11(7)(am), 302.113(9m)(b), or

1 this paragraph for payments in accordance with other states party to the interstate  
2 corrections compact under s. 302.25.

3 **SECTION 3.** 46.03 (18) (fm) of the statutes is repealed.

4 **SECTION 4.** 301.03 (3j) of the statutes is created to read:

*use intervention services*

5 301.03 (3j) Provide drug assessments ~~and~~ <sup>and</sup> drug ~~treatment~~ <sup>and</sup> drug education for  
6 persons convicted of drug-related offenses as provided under s. 973.105.

INSERT  
5-6

7 **SECTION 5.** 302.113 (9) (am) of the statutes is created to read:

8 302.113 (9) (am) Notwithstanding par. (a), if the violation under par. (a) is a  
9 commission of a nonviolent drug offense, as defined under s. 973.105 (1) (e), or a  
10 violation of a condition of extended supervision concerning drug treatment or drug  
11 education, the division of hearings and appeals, or the department, if the person on  
12 extended supervision waives a hearing, may modify the conditions of extended  
13 supervision, but may not revoke extended supervision unless a hearing examiner for  
14 the division of hearings and appeals or the department, whichever is applicable,  
15 finds by clear and convincing evidence that the person is a danger to himself or  
16 herself or to others, or that the probationer is unamenable to treatment as provided  
17 under s. 973.105 (9).

18 **SECTION 6.** 961.438 of the statutes is amended to read:

19 **961.438 Minimum sentence.** Any minimum sentence under this chapter is  
20 a presumptive minimum sentence. Except as provided in s. 973.09 (1) (d) or 973.105  
21 (2) or (3), the court may impose a sentence that is less than the presumptive  
22 minimum sentence or may place the person on probation only if it finds that the best  
23 interests of the community will be served and the public will not be harmed and if  
24 it places its reasons on the record.

25 **SECTION 7.** 961.47 of the statutes is repealed.

INSERT  
5-3

INSERT  
5-17

1 SECTION 8. 961.472 of the statutes is repealed.

2 SECTION 9. 961.475 of the statutes is repealed.

3 SECTION 10. 973.105 of the statutes is created to read:

possession

4 **973.105 Probation and treatment for nonviolent drug offenders. (1)**

5 In this section:

6 (a) "Approved treatment facility" has the meaning given under s. 51.01 (2).

7 (b) "Drug dependent" has the meaning given in s. 51.01 (8).

INS 6-7

8 (c) "Drug paraphernalia for personal use" means drug paraphernalia, as  
9 defined under s. 961.571 (1) (a), that is primarily used by a person to inject, ingest,  
10 inhale, or otherwise introduce into the person's body a controlled substance or  
11 controlled substance analog.

day treatment, transitional residential treatment, detoxification,

means

12 (d) "Drug treatment" includes inpatient residential drug treatment if needed  
13 to address special detoxification or relapse situations or severe dependence,  
14 outpatient treatment, treatment at a halfway house, or narcotic replacement  
15 therapy.

INSERT 6-15

16 (g) "Nonviolent drug offense" means an offense, or attempt to commit an  
17 offense, under s. 961.573 (1) that involves drug paraphernalia for personal use, or an  
18 offense, or attempt to commit an offense, under s. 961.41 (3g).

possession

(a) to (e)

possession

19 (2) (a) If a person is convicted of a nonviolent drug offense, the sentencing court  
20 shall withhold sentence for the offenses or impose sentence for the offense and stay  
21 its execution, and shall place the person on probation under s. 973.09 and require that the  
22 person participate in drug use intervention services as a condition of probation  
23 for the offense, unless any of the following applies:

1 1. At any time during the 5 years prior to the date on which the person  
2 committed the offense for which he or she is being sentenced, the person committed  
3 or was serving a sentence for a felony identified under s. 939.62 (2m) (a) 2m. b.

4 2. The person is convicted of another crime other than a nonviolent drug offense  
5 in the same proceeding.

6 4.28 The person was incarcerated under a sentence for another crime when he or  
7 she committed the nonviolent drug offense.

8 5.3 The person has previously been provided drug treatment under this section  
9 and the court finds that the person is unamenable to treatment in accordance with  
10 sub. (9).

11 6.5 The person refuses to participate in drug treatment or drug education as a  
12 condition of probation.

13 (b) Notwithstanding par. (a) 2., if the other crime under par. (a) 2. is a  
14 misdemeanor, other than a misdemeanor under ch. 940 or 948, the sentencing court  
15 shall withhold sentence for the nonviolent drug offense, or impose sentence for the  
16 nonviolent drug offense and stay its execution, place the person on probation under  
17 s. 973.09 for the nonviolent drug offense, and order that the person participate in  
18 drug treatment or drug education as a condition of probation for the nonviolent drug  
19 offense. If the court finds that the person is drug dependent and that the person's  
20 drug dependence significantly contributed to the commission of the misdemeanor,  
21 the court shall place the person on probation under s. 973.09 for that misdemeanor  
22 and require that the person participate in drug treatment or drug education as a  
23 condition of probation for the misdemeanor. If the court determines that the person  
24 is not drug dependent, or that the person is drug dependent but the drug dependence  
25 did not significantly contribute to the commission of the misdemeanor, the court may

by clear and convincing evidence

use intervention services

JWS 7-5

or s. 302.11(7)(a.g.) or 302.113(9m)

use intervention services

use intervention services

OR s. 316.63, for a misdemeanor firearms offense

offense

1 place the person on probation for the misdemeanor as provided under sub. (3). If the  
 2 court does not place the person on probation for the misdemeanor, the court shall  
 3 determine whether the person shall serve probation for the nonviolent drug <sup>possession</sup> offense  
 4 concurrently with the sentence for the misdemeanor or consecutively to the sentence  
 5 for the misdemeanor. use intervention services ✓ or s. 346.63 for a felony firearms offense ✓

6 (3) If a person is convicted of a crime other than felony under ch. 940 or 948,  
 7 is not eligible for mandatory probation and drug ~~treatment or drug education~~  
 8 sub. (2), and is ~~is~~ found by the sentencing court to be drug dependent, the sentencing  
 9 court may order that the department provide ~~to~~ the person drug ~~treatment or drug~~ <sup>use intervention services</sup>  
 10 ~~education~~. The court may order that the department provide the ~~treatment or~~ <sup>services</sup>  
 11 ~~education~~ to the person while he or she is on probation, while the person is  
 12 incarcerated in prison or in a county jail, while the person is otherwise confined, or  
 13 while the person is on extended supervision.

14 (a) (4) Before determining a disposition under sub. (2) or (3), a court may order an  
 15 offender to ~~comply~~ <sup>submit to</sup> with an assessment of his or her use of controlled substances. The  
 16 court shall designate an approved treatment facility that is certified by the  
 17 department of health and family services to provide assessment services to conduct  
 18 any assessment ordered under this ~~subsection~~ <sup>paragraph</sup>. The court may order that the  
 19 treatment facility provide a proposed ~~treatment or education~~ <sup>for drug use intervention services</sup> plan. The treatment  
 20 facility shall submit an assessment report to the court within 14 days of the order for  
 21 an assessment. At the request of the treatment facility, the court may extend the  
 22 time for submitting a report by not more than 20 additional workdays.

23 (5) The department is responsible for providing, or securing the provision of,  
 24 any drug ~~treatment or drug education~~ <sup>use intervention services</sup> ordered under this section. ✓ Drug

Upon receipt of the report the court shall provide a copy to the offender or his or her attorney.

INSERT 8-22 →



INS  
9-2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

treatment ordered under this section must be provided by an approved treatment facility.

(6) If a person is placed on probation under sub. (2) or (3) and ordered to participate in drug ~~treatment or drug education~~ as a condition <sup>of</sup> probation, the ~~period of drug treatment or drug education~~ <sup>services</sup> may not be <sup>for</sup> longer than 12 months or the length of the probation, whichever is shorter. By 30 days before the expiration of the ~~period of drug treatment or drug education~~ <sup>services</sup>, the ~~treatment~~ <sup>service</sup> provider shall submit a report to the sentencing court recommending whether the person receiving <sup>drug use intervention services</sup> ~~treatment or education~~ should participate in aftercare services. Prior to the completion of a person's probation, the sentencing court may modify the conditions of a person's probation to require that the person participate in up to 6 months of aftercare services upon completion of drug ~~treatment or drug education~~ <sup>use intervention services</sup>.

(7) Notwithstanding s. 973.09 (4) (a), a person placed on probation under sub. (2) may not be confined in a county jail, Huber facility, work camp, or tribal jail as a condition of probation.

(8) (a) Notwithstanding s. 973.10 (2), if a person placed on probation under sub. (2) or (3) commits a nonviolent drug <sup>possession</sup> offense or violates a condition of probation concerning drug ~~treatment or drug education~~ <sup>use intervention services</sup>, the division of hearings and appeals or, if the probationer waived his or her right to a hearing, the department may modify the conditions of probation, but may not revoke probation unless a hearing examiner or the department, whichever is applicable, finds by clear and convincing evidence that the person is <sup>unamenable</sup> ~~unamenable~~ to treatment as provided under sub. (9) or is a danger to himself or herself or to others. If the probationer violates a condition of probation that is not related to drug ~~treatment or drug education~~ <sup>use intervention services</sup>, the department or the

1 division of hearings and appeals may revoke probation as provided under s. 973.10  
2 (2).

3 (b) Upon the request of a person who is the subject of a determination  
4 concerning amenability to treatment under par. (a), the treatment provider  
5 responsible for providing the person treatment under this section shall submit a  
6 report to the department or the division of hearings and appeals, whichever is  
7 applicable, regarding the person's amenability to treatment. The treatment provider  
8 may testify regarding the person's amenability to treatment at any revocation  
9 proceeding under par. (a).

10 (9) (a) A person is unamenable to treatment if any of the following applies:

11 1. The person has repeatedly committed serious violations of drug <sup>use intervention service</sup> treatment  
12 ~~or drug education~~ rules that inhibit the person's ability to <sup>participate</sup> ~~function~~ in ~~treatment~~ or  
13 ~~education~~. <sup>the services</sup>

14 2. The person has continually refused to participate in drug <sup>use intervention services</sup> treatment or drug  
15 ~~education~~ ordered under this section. <sup>or s. 302.11(7)(ag) or 302.113(9m)(a)</sup>

16 3. The person has asked to be removed from drug <sup>use intervention services</sup> treatment or drug education  
17 ordered under this section. <sup>or s. 302.11(7)(ag) or 302.113(9m)(a)</sup>

18 (b) The department of health and family services may promulgate rules for  
19 determining whether a person is unamenable to treatment under this subsection.

20 (10) When a court orders probation under sub. (2) for a nonviolent drug <sup>possession</sup> offense  
21 or a misdemeanor, other than a misdemeanor under ch. 940 or 948, the court shall  
22 order that the record of conviction for that offense be expunged upon successful  
23 completion of the probation. A person successfully completes probation if the person  
24 completes the term of probation without <sup>revocation of</sup> the probation ~~being~~ revoked. Upon  
25 successful completion of probation, the department shall issue a certificate of

including satisfaction of any  
restitution ordered under s. 973.20 ✓

DT  
s. 346.63  
of a misdemeanor  
felonies offense

1 discharge and shall forward the certificate to the court of record, which shall expunge  
2 the record of conviction. Disqualifications or disabilities imposed by law upon  
3 conviction of a crime, including the additional penalties imposed for 2nd or  
4 subsequent convictions under s. 961.48, do not apply to a conviction that has been  
5 expunged under this subsection.

6 (11) (a) If a person who is ordered under this section to <sup>or participate in drug use intervention services</sup> ~~participate in~~ an  
7 assessment, ~~drug treatment, or drug education~~ is enrolled in a private insurance  
8 plan that is required under s. 632.89 to cover such services, or otherwise covers such  
9 services, the insurer shall pay for any assessment, <sup>or drug use intervention service</sup> ~~drug treatment, or drug education~~  
10 ordered under this section that is covered by the insurance plan.

11 (b) If a ~~recipient of~~ <sup>badger care</sup> medical assistance or ~~a recipient of health care coverage~~ <sup>submit to</sup>  
12 ~~under s. 49.665~~ is ordered under this section to ~~participate in~~ an assessment, ~~drug~~  
13 ~~treatment, or drug education~~ that is a health care service or other benefit described  
14 under s. 49.46 (2), the department of health and family services shall pay for the  
15 assessment, <sup>or service</sup> ~~treatment, or education~~ as provided under s. 49.46 (2).

16 (c) The court shall order any person who receives an assessment, <sup>or</sup> ~~drug~~  
17 <sup>use intervention service</sup> ~~treatment, or drug education~~ under this section to pay, to the extent of the person's  
18 ability, for the cost of the assessment, <sup>or service</sup> ~~treatment, or education~~ that is not covered  
19 under par. (a) or (b).

20 (d) From the appropriation under s. 20.410 (1) (b), the department shall pay for  
21 assessments ordered under sub. (4) that are not paid for under par. (a), (b), or (c), and  
22 shall pay for drug <sup>use intervention services</sup> ~~treatment or drug education~~ ordered under this section for persons  
23 on probation that <sup>are</sup> ~~is~~ not paid for under par. (a), (b), or (c). From the appropriation  
24 under s. 20.410 (1) (a), the department shall pay for ~~drug treatment or drug~~

use intervention services

or participate in drug use intervention service

submit to

are

1 ~~education~~ ordered under this section for persons who are incarcerated that is not  
2 paid for under par. (a), (b), or (c).

3 ~~(12) The department of corrections, in cooperation with the department of~~  
4 ~~health and family services, shall commission a study of the results of drug treatment~~  
5 ~~and drug education services provided under this section. The study shall measure~~  
6 ~~the results of drug treatment and drug education provided under this section over~~  
7 ~~the 5-year period that begins on the effective date of this subsection .... [revisor~~  
8 ~~inserts date]. The department of corrections shall issue an interim report by the date~~  
9 ~~that is 30 months after the effective date of this subsection .... [revisor inserts date],~~  
10 ~~and shall issue a final report by the date that is 66 months after the effective date~~  
11 ~~of this subsection .... [revisor inserts date]. The department of corrections shall~~  
12 ~~submit the reports required under this subsection to the governor, the majority~~  
13 ~~leader of the senate, the speaker of the assembly, and the cochairpersons of the joint~~  
14 ~~committee on finance.~~

INS 12-14

15 SECTION 11. Initial applicability.

16 (1) The treatment of sections 46.03 (18) (fm), 961.47, 961.472, 961.475, and  
17 973.105 of the statutes first applies to offenses committed on the effective date of this  
18 subsection, but persons sentenced on or after the effective date of this subsection for  
19 offenses committed before the effective date of this subsection may choose to be  
20 sentenced in accordance with section 973.105 of the statutes.

21 SECTION 12. Effective date. This act takes effect on the first day of the 6th

22 month beginning after publication except as follows:

23 (1) The treatment of section 973.105 (9) (b) of the statutes takes effect on the  
24 day after publication.

INS 12-24

(END)

Section 13  
Should be  
the nonstat.

and section 13 of this act  
auto ref  
B (from  
INS 12-14)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4037/lins  
RLR:.....

1 **Insert rel. clause:**

2 ~~§~~ probation and treatment for persons convicted of possession of certain  
3 controlled substances or certain other crimes; treatment for persons on parole who  
4 violate conditions of parole relating to possession of certain controlled substances or  
5 to drug treatment requirements; treatment for persons on extended supervision who  
6 violate conditions of extended supervision relating to possession of certain controlled  
7 substances or to drug treatment; ~~§~~

**Insert 1:**

***Penalties for drug possession offenses***

1. *Current law penalties for drug possession offenses.* ~~§~~

**Insert 2:**

Current law provides that a court may allow a person who is convicted for possession of a controlled substance to participate in treatment for drug dependency as an alternative to sentencing if the offender volunteers to participate in treatment and if a treatment facility agrees to provide treatment. The treatment is for the period of time deemed necessary by the treatment facility, but may not exceed the maximum possible sentence length for the possession offense unless the offender consents to a longer term. At the end of the treatment period, the court may waive sentencing for the drug possession offense. However, if treatment is ineffective or if the offender does not comply with treatment, the court may sentence the person for the drug possession offense.

If a person is convicted for possession of heroin, cocaine, or certain hallucinogens or stimulants, including lysergic acid diethylamide (LSD), phencyclidine (PCP), or methamphetamine, the sentencing court must order that the offender submit to an assessment of the offender's drug dependence to determine whether the offender is appropriate for treatment. The county department that is responsible for providing drug treatment services is responsible for providing the assessment, though the offender is required to pay a fee for the assessment.

Conditional discharge is another alternative to sentencing for conviction of a drug possession offense.

INSERT 2-B:  
§ This bill repeals both the voluntary treatment alternative to sentencing and the conditional discharge alternative.

**Insert 3:**



2. *Eligibility for probation and drug treatment for nonviolent drug possession offenses.* no ¶

**Insert 4:**

b. The person is convicted in the same proceeding of a crime other than a nonviolent drug possession offense, or is found to have violated a prohibition against drunk driving for the same act or incident that led to conviction for the nonviolent drug possession offense.

**Insert 5:**

d. The person has previously been provided drug use intervention services in connection with a conviction for a nonviolent drug possession offense or while on parole or extended supervision and the court finds by clear and convincing evidence that the person is unamenable to treatment.

**Insert 6:**

3. *Treatment services.* Under the bill, the department of corrections (DOC) must arrange for the provision of any drug use intervention services ordered by the court. Drug use intervention services ordered by the court may consist of drug treatment (including hospitalization, inpatient or outpatient treatment, detoxification, narcotic replacement therapy, transitional residential treatment, or day treatment), drug education, or any other service intended to address a person's drug dependence or drug use. The bill requires that drug treatment services be provided by a certified treatment provider, and requires that ~~the department of health and family services (DHFS)~~ promulgate rules prescribing the standards for drug education ordered as a component of drug use intervention services. If the nonviolent drug possession offender is a medical assistance or badger care recipient, DOC is required to arrange for a certified ~~medical assistance~~ provider to furnish any court-ordered service that is covered by ~~medical assistance~~ or badger care, as long as such a provider is available. The bill permits DOC to contract with counties to provide the required drug use intervention services.

(MA)  
(MA)

**Insert 7:**

¶ 4. *Violation of a condition of probation.* no ¶

**Insert 8:**

¶ 5. *Expunging the record of a nonviolent drug possession offense.* no ¶

**Insert 8A:**

¶ 6. *Discretionary treatment.* no ¶

**Insert 9:**

⊕ 7. *Payment for services.*

no ⊕

**Insert 10:**

***Parole and extended supervision***

Under current law, a person on parole must comply with a standard set of conditions of parole, including that the person may not commit any crimes. (A person released from prison to supervision under a sentence for a crime committed before \* December 31, 1999, is placed on parole.) If a parolee violates a condition of parole, for example by committing a crime, the person's parole may be revoked and the person may be returned to prison.

Similarly, a person on extended supervision must comply with conditions of extended supervision. (A person released from prison to supervision under a sentence for a crime committed on or after December 31, 1999, is released to extended \* supervision.) Conditions of extended supervision are set by the sentencing court and DOC, and may include individualized requirements, such as participation in drug treatment. If a person violates a condition of extended supervision, the person's \* extended supervision may be revoked and the person may be returned to prison.

\* The bill provides that, if a person on parole or extended supervision commits a nonviolent drug possession offense, or if a person on extended supervision commits a violation of a condition related to drug treatment, the person's parole or extended supervision, whichever is applicable, may not be revoked for the violation unless one of the following circumstances apply:

a. In the five years prior to the violation, the person either committed or was serving a sentence for a so-called three-strikes offense. ✓

b. The person is serving a sentence for a firearms offense or a drunk driving offense.

c. The person has previously been provided drug use intervention services in connection with a nonviolent drug possession ✓ offense or as a condition of parole or extended supervision, and the administrative law judge, or DOC, if the person waives \* a revocation hearing, finds by clear and convincing evidence that the person is unamenable to treatment.

d. The person refuses to participate in drug use intervention services. ✓

Instead of revoking parole or extended supervision, the administrative law judge, or DOC, if the person waives a revocation hearing, may require that the person participate in drug use intervention services, or if the person is already required to participate in such services, may modify the requirements for participation in drug use intervention services. Before modifying conditions of parole or extended supervision, an administrative law judge, or DOC, if a revocation hearing is waived, may require that the person on parole or extended supervision submit to an assessment of the person's drug use or drug dependence.

Under the bill, DOC must arrange for the provision of drug use intervention services ordered as a condition of parole or extended supervision. Under the bill, drug use intervention service for parolees and for persons on extended supervision

⑤

↓

INS 10 cont

are the same services as those available under the bill for persons placed on probation for a nonviolent drug possession offense. The requirements related to treatment providers and the responsibilities for paying for services are also the same as those provided under the bill for probation.

**Study of drug use intervention services**

(end ins 10)

1

2

**Insert 4-7:**

auto ref A (to Ins 12-24)

3

paren

**SECTION 1.** 20.410 (1) (a) of the statutes, as affected by 2001 Wisconsin Act this

4

act, is amended to read:

plain

incarcerated

5

20.410 (1) (a) *General program operations.* The amounts in the schedule to

6

operate institutions and provide field services and administrative services and to

to

to

plain

7

provide drug use intervention services, and for a study of the effects of drug use

under s. 973.105 to persons who are

8

intervention services provided under ss. 302.11 (7) (ag), 302.113 (9m), and 973.105.

plain

9

No payments may be made under this paragraph for payments in accordance with

10

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; 2001 a. 16.

11

12

13

**Insert 5-3:**

14

**SECTION 2.** 51.42 (7) (b) 12. of the statutes is created to read:

15

51.42 (7) (b) 12. Prescribe standards for drug education programs that serve

16

persons who are ordered to participate in drug education as a condition of parole

17

under s. 302.11 (7) (ag), as a condition of extended supervision under s. 302.113 (9m),

18

or as a condition of probation under s. 973.105.

19

20

**Insert 5-6:**





INS 5-6

1 ~~Q~~ , for parolees who violate conditions of parole that are related to drug possession  
2 offenses or drug treatment, as provided under s. 302.11 (7) (ag), and for persons on  
3 extended supervision who violate conditions of extended supervision that are related  
4 to drug possession offenses or drug treatment, as provided under s. 302.113 (9m)

6 **Insert 5-17:**

7 **SECTION 3.** 302.11 (7) (ag), (am) and (ar) of the statutes are created to read:

8 302.11 (7) (ag) Notwithstanding par. (a), if a parolee commits a nonviolent drug  
9 possession offense, as defined in s. 973.105 (1) (g), or violates a condition of parole  
10 concerning drug use intervention services, as defined in s. 973.105 (1) (e), the division  
11 of hearing and appeals, or the department, if the parolee waives a hearing, may not  
12 revoke parole for that violation but may require that the parolee participate in drug  
13 use intervention services as a condition of parole or, if participation in drug use  
14 intervention services is already a condition of parole, may modify the requirements  
15 for participation in drug use intervention services, unless any of the following  
16 applies:

17 1. At any time during the 5 years prior to the date on which the parolee  
18 committed the nonviolent drug possession offense or the violation of a condition of  
19 parole concerning drug use intervention services, the parolee committed or was  
20 serving a sentence for a felony identified under s. 939.62 (2m) (a) 2m. b.

21 2. The parolee is serving a sentence for a firearms offense, as defined in s.  
22 973.105 (1) (f), or for a crime under s. 346.63.

23 3. The parolee has previously been provided drug use intervention services  
24 under this paragraph or s. 302.113 (9m) (a) or 973.105 and the division of hearings  
25 and appeals or the department, whichever is applicable, finds by clear and

1 convincing evidence that the parolee is unamenable to treatment in accordance with  
2 s. 973.105 (9) or that the person is a danger to himself or herself or others.

3 4. The parolee refuses to participate in drug use intervention services as a  
4 condition of parole.

5 (am) Before making a determination regarding revocation or conditions of  
6 parole under par. (ag), the division of hearings and appeals or the department may  
7 require that a parolee submit to an assessment of his or her use of controlled  
8 substances.

9 (ar) Any assessment required under par. (am) shall meet the conditions for  
10 assessments under s. 973.105 (4). Any drug use intervention services required under  
11 par. (ag) shall meet the conditions for services under s. 973.105 (5).

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

13 302.113 (9m) (a) Notwithstanding sub. (9) and except as provided under par.  
14 (d), if a person released to extended supervision under this section commits a  
15 nonviolent drug possession offense, as defined in s. 973.105 (1) (g), or violates a  
16 condition of extended supervision concerning drug use intervention services, as  
17 defined in s. 973.105 (1) (e), the division of hearing and appeals, or the department,  
18 if the person on extended supervision waives a hearing, may not revoke extended  
19 supervision for that violation but may require that the <sup>person</sup> ~~parolee~~ participate in drug  
20 use intervention services as a condition of extended supervision or, if participation  
21 in drug use intervention services is already a condition of extended supervision, may  
22 modify the requirements for participation in drug use intervention services, unless  
23 any of the following applies:

24 1. At any time during the 5 years prior to the date on which the person  
25 committed the nonviolent drug possession offense or the violation of a condition of

1 extended supervision concerning drug use intervention services, the person  
2 committed or was serving a sentence for a felony identified under s. 939.62 (2m) (a)  
3 2m. b. ✓

4 2. The person is serving a sentence for a firearms offense, as defined in s.  
5 973.105 (1) (f), or for a crime under s. 346.63. ✓

6 3. The person has previously been provided drug use intervention services  
7 under this subsection ✓ or s. 302.11 (7) (ag) ✓ or 973.105 ✓ and the division of hearings and  
8 appeals or the department, whichever is applicable, finds by clear and convincing  
9 evidence that the person is unamenable to treatment in accordance with s. 973.105  
10 (9) ✓ or that the person is a danger to himself or herself or others.

11 4. The person refuses to participate in drug use intervention services as a  
12 condition of extended supervision. ✓

13 (b) Before making a determination regarding revocation or conditions of  
14 extended supervision under par. (a), ✓ the division of hearings and appeals or the  
15 department may require that a <sup>person on extended supervision</sup> ~~parolee~~ submit to an assessment of his or her use of  
16 controlled substances.

17 (c) Any assessment required under par. (b) ✓ shall meet the conditions for  
18 assessments under s. 973.105 (4). Any drug use intervention services required under  
19 par. (a) ✓ shall meet the conditions for services under s. 973.105 (5). ✓

20 (d) The division of hearings and appeals or the department may not modify a  
21 condition of extended supervision under par. (a) ✓ if the modification conflicts with a  
22 condition of extended supervision set by a court under s. 973.01 (5). ✓

23  
24 **Insert 6-7:**



INS 6-7

1 (c) "Drug paraphernalia for personal use" means any equipment, product, or  
2 material of any kind that is used, designed for use, or primarily intended for use by  
3 a person to inject, ingest, inhale, or otherwise introduce into the person's body a  
4 controlled substance or controlled substance analog in violation of ch. 961, but does  
5 not include items under s. 961.571 (1) (b).

6  
7 **Insert 6-15:**

8 (e) "Drug use intervention services" means drug treatment, drug education,  
9 vocational assistance, or any other service intended to address a person's drug  
10 dependence or drug use.

11 (f) "Firearms offense" means an offense under s. 941.20, 941.21, 941.23,  
12 941.235, 941.237, 941.26, 941.28, 941.29, or 941.296.

13  
14 **Insert 7-5:**

15 3. The person is found to have violated s. 346.63 or an ordinance that is in  
16 conformity with s. 346.63 for the same act or incident or series of acts or incidents  
17 that resulted in conviction for the nonviolent drug possession offense.

18  
19 **Insert 8-22:**

20 (b) If the court orders an assessment under par. (a) for an offender who is a  
21 medical assistance or badger care recipient, the court shall order that the assessment  
22 be provided by a provider who is certified as a medical assistance provider, if a  
23 certified provider is available. If the medical assistance or badger care recipient is  
24 enrolled in a health care maintenance organization, the court shall order that the  
25 assessment be provided by a provider who is an employce of the health maintenance



Ins 8-22 cont

1 organization or with whom the health care maintenance organization contracts for  
2 services, if such a provider is available.

3  
4 **Insert 9-2:**

5 (b) If the department is required under this section<sup>✓</sup> to provide a health service  
6 or benefit specified under s. 49.46 (2)<sup>✓</sup> to an offender who is a medical assistance or  
7 badger care recipient, the department shall arrange for that health service or benefit  
8 to be provided by a provider who is certified as a medical assistance provider, if a  
9 certified provider is available. If the medical assistance or badger care recipient is  
10 enrolled in a health care maintenance organization, the department shall arrange  
11 for the health service or benefit to be provided by a provider who is an employee of  
12 the health maintenance organization or with whom the health care maintenance  
13 organization contracts for services, if such a provider is available.

14 (c) Subject to the requirements under par. (a) and (b)<sup>✓</sup>, the department may  
15 contract with an appropriate county department under s. 51.42<sup>✓</sup> to provide drug use  
16 intervention services under this section<sup>✓</sup>.

17  
18 **Insert 12-14:**

19 (12) The department of health and family services, after consultation with the  
20 department<sup>of corrections</sup>, shall commission a study of the results of drug use intervention services  
21 provided under this section and under ss. 302.11 (7) (ag)<sup>✓</sup> and 302.113 (9m) (a)<sup>✓</sup>. By  
22 the first day of the 31st month after the effective date of this subsection<sup>✓</sup>.... [revisor  
23 inserts date] <sup>g</sup> the department of health and family services shall issue an interim  
24 report on results from the first 2 years of drug use intervention services. By the first  
25 day of the 67th month after the effective date of this<sup>✓</sup> subsection .... [revisor inserts



1 date] <sup>g</sup>..., the department of health and family services shall issue a final report on  
 2 results from the first 5 years of drug use intervention services. The department of  
 3 health and family services shall submit the reports required under this subsection  
 4 to the governor, the majority leader of the senate, the speaker of the assembly, and  
 5 the cochairpersons of the joint committee on finance. Notwithstanding the purposes  
 6 for which money is appropriated under s. 20.410 (1) (a), all costs incurred in  
 7 commissioning the study and issuing the reports required under this subsection  
 8 shall be paid from the appropriation to the department under s. 20.410 (1) (a).

9 SECTION 5. Nonstatutory provisions.

auto ref B (to eff date)

of corrections

10 (1) The department of health and family services shall apply to the center for  
 11 substance abuse treatment of the substance abuse and mental health services  
 12 administration in the federal department of health and human services or any other  
 13 appropriate agency for a grant to fund the drug use intervention services ordered  
 14 under section 302.11 (7) (ag), 302.113 (9m) (a), or 973.105 of the statutes, as created  
 15 by this act, from the effective date of this subsection ... [revisor inserts date] ... to  
 16 the first day of the 37th month after the effective date of this subsection [revisor

17 inserts date]

beginning

auto ref A (to Ins 4-7)

18  
 19 Insert 12-24:

20 (2) The treatment of section 20.410 (1) (a) (by SECTION 2) of the statutes takes  
 21 effect on the first day of the 67th month after the effective date of this subsection.

22  
 beginning

## Ryan, Robin

---

**From:** Ryan, Robin  
**Sent:** March 04, 2002 10:32 AM  
**To:** Rossmiller, Dan  
**Subject:** Drug treatment bill

The bill is currently in editing and typing, so you will likely receive it sometime this afternoon.

As I was working on the analysis I reconsidered how the bill will effect current treatment diversion programs like the Dane County drug court program. Under current law a court may allow a defendant to go into treatment voluntarily as provided under s. 961.475. Rather than having the defendants arrange and pay for treatment, it seems that Dane County arranges and pays for the treatment under s. 961.475. The bill repeals s. 961.475 and requires that all defendants be placed on probation. The bill actually prevents the county from running the drug court programs, because it requires that all persons be placed on probation under the probation and treatment program created in the bill.

There are two options for maintaining the county drug court program:

1. Implement the option suggested by the drug court -- requiring DOC to contract with the county. Under proposed s. 973.105, instead of simply allowing DOC to contract with a county the bill could provide as follows:  
If a county was providing drug treatment services under s. 961.475, 1999 stats., on the effective date of this bill, and the county agrees to provide drug use intervention services under this section in accordance with the requirements of this subsection, DOC shall contract with the county to provide drug use intervention services.

This option keeps the counties in the process, but also requires that they abide by the treatment provider qualification requirements if they want to participate.

or

2. Retain s. 961.475 and make an exception in the new probation and treatment requirement for persons who participate in treatment under s. 961.475.

The downside to this approach is that a person who fails to comply with treatment under s. 961.475 would be treated differently from a person who is on probation under the probation and treatment provision created in the bill. For example, the bill prohibits revoking probation unless the person is found unamenable to treatment or found to be dangerous. Under s. 961.475, a judge may sentence the person to jail regardless of amenability to treatment or dangerousness. Also, a person who receives treatment from a county under s. 961.475 is not eligible to have his or her record of conviction expunged.

Neither of these options addresses who provides assessments. Option 1 could be modified so that it also requires DOC to contract with the county for assessments as well, if the county agrees to use certified providers.

I also have a second possible change. The bill currently requires that assessments and drug treatment be provided by an "approved treatment facility." This mirrors the requirement in ss. 961.472 and 961.475 that providers be approved treatment facilities. In our phone call last week Keith Lang suggested that provider's who have individual certification rather than certification as a facility could provide services. Keith thought this might make it easier for the drug court program to meet the bill's provider requirements. I e-mailed Keith this morning to find out what statutory individual certification requirement could be cited as an alternative to treatment facility certification.

I will read the full bill through when I receive it this afternoon. I made a lot of inserts in the bill, so I want to make sure it all makes sense when put together. If you decide not make changes, please let me know when you are going to introduce it so that I have time to correct any mistakes I might find in my review.

thanks

Phone call 3/4  
Dan: may put changes in a sub.  
for ex. allow treatment for persons w/ dual  
mental health and drug dependency diagnosis

## Ryan, Robin

---

**From:** Ryan, Robin  
**Sent:** March 04, 2002 10:42 AM  
**To:** Lang, Keith  
**Subject:** RE: Provider certification for drug assessments and treatment

Dan, here is Keith's answer.

-----Original Message-----

**From:** Lang, Keith  
**Sent:** March 04, 2002 10:30 AM  
**To:** Ryan, Robin  
**Subject:** Re: Provider certification for drug assessments and treatment

The person should be certified as a substance abuse counselor as defined in HFS 75.02 (84). The counselor can conduct an assessment, determine the appropriate level of care for treatment and advise the court of their professional opinion regarding disposition. We believe it essential that only HFS 75 certified programs be used to provide services. Failure to do so could compromise the quality of treatment not to mention the fact that it could create a parallel system of treatment in the community.

>>> Ryan, Robin 03/04/02 09:54AM >>>

Last week you mentioned that the drug treatment bill could require that an assessor or treatment provider be individually certified rather than requiring that assessments and services be provided by an "approved treatment facility."

What statutory certification should a provider have to conduct assessments or to provide outpatient services? thanks



## Ryan, Robin

---

**From:** Rossmiller, Dan  
**Sent:** March 05, 2002 10:08 AM  
**To:** Ryan, Robin  
**Subject:** RE: Drug treatment bill correction

fine.

-----Original Message-----

**From:** Ryan, Robin  
**Sent:** Tuesday, March 05, 2002 8:33 AM  
**To:** Rossmiller, Dan  
**Subject:** Drug treatment bill correction

I did find a mistake I need to correct in the analysis. The last paragraph in the analysis says DOC must issue reports instead of DHFS. I want to correct that, and should probably also add that DOC must fund the study.

I will go ahead and do the redraft for this correction this morning unless you want to make any changes.



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4037/2

RLR:jld:z

Wanted Today 3/5

2001 BILL

RMR

Regen

1. **AN ACT to repeal** 46.03 (18) (fm), 961.47, 961.472 and 961.475; **to amend** 20.410  
2 (1) (a), 20.410 (1) (a), 20.410 (1) (b) and 961.438; and **to create** 51.42 (7) (b) 12.,  
3 301.03 (3j), 302.11 (7) (ag), (am) and (ar), 302.113 (9m) and 973.105 of the  
4 statutes; **relating to:** probation and treatment for persons convicted of  
5 possession of certain controlled substances or certain other crimes; treatment  
6 for persons on parole who violate conditions of parole relating to possession of  
7 certain controlled substances or to drug treatment requirements; treatment for  
8 persons on extended supervision who violate conditions of extended  
9 supervision relating to possession of certain controlled substances or to drug  
10 treatment; granting rule-making authority; and making an appropriation.

**Analysis by the Legislative Reference Bureau**

**Penalties for drug possession offenses**

1. *Current law penalties for drug possession offenses.* Current law prohibits possession of various controlled substances. The maximum penalties for possession of these controlled substances vary from a fine not to exceed \$500 or imprisonment for not more than 30 days or both to a fine not to exceed \$5,000 or imprisonment for

**BILL**

not more than two years or both. The greater penalties are for possession of narcotic drugs or certain nonnarcotic drugs including, methamphetamine, ketamine, and flunitrazepam. For possession of many controlled substances, the maximum penalty is greater for a second or subsequent conviction.

Current law provides that a court may allow a person who is convicted for possession of a controlled substance to participate in treatment for drug dependency as an alternative to sentencing if the offender volunteers to participate in treatment and if a treatment facility agrees to provide treatment. The treatment is for the period of time deemed necessary by the treatment facility, but may not exceed the maximum possible sentence length for the possession offense unless the offender consents to a longer term. At the end of the treatment period, the court may waive sentencing for the drug possession offense. However, if treatment is ineffective or if the offender does not comply with treatment, the court may sentence the person for the drug possession offense.

If a person is convicted for possession of heroin, cocaine, or certain hallucinogens or stimulants, including lysergic acid diethylamide (LSD), phencyclidine (PCP), or methamphetamine, the sentencing court must order that the offender submit to an assessment of the offender's drug dependence to determine whether the offender is appropriate for treatment. The county department that is responsible for providing drug treatment services is responsible for providing the assessment, though the offender is required to pay a fee for the assessment.

Conditional discharge is another alternative to sentencing for conviction of a drug possession offense. 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.

This bill repeals both the voluntary treatment alternative to sentencing and the conditional discharge alternative.

*2. Eligibility for probation and drug treatment for nonviolent drug possession offenses.* This bill requires that, if a person is convicted of a nonviolent drug possession offense, the person be placed on probation and ordered to participate in drug use intervention services as a condition of that probation, unless certain exceptions apply. The bill defines a "nonviolent drug possession offense" as possession or attempted possession of a controlled substance, except a so-called "date-rape drug," or possession or attempted possession of drug paraphernalia that is used for taking drugs (drug paraphernalia for personal use). If any of the following exceptions applies, the sentencing court is not required to place a nonviolent drug possession offender on probation or order drug use intervention services for that offender:

a. The person has been convicted of, or served a sentence for, a serious felony (the so-called "three strikes" felonies) at any time during the five years prior to committing the nonviolent drug possession offense.

b. The person is convicted in the same proceeding of a crime other than a nonviolent drug possession offense, or is found to have violated a prohibition against

**BILL**

drunk driving for the same act or incident that led to conviction for the nonviolent drug possession offense.

c. The person was incarcerated at the time he or she committed the nonviolent drug possession offense.

d. The person has previously been provided drug use intervention services in connection with a conviction for a nonviolent drug possession offense or while on parole or extended supervision and the court finds by clear and convincing evidence that the person is unamenable to treatment.

c. The person refuses to participate in drug use intervention services.

In addition, if a person is convicted in the same proceeding of a misdemeanor that is not a crime against life or bodily security, a crime against children, or a crime involving a firearm and the court finds that the person's drug dependence significantly contributed to the commission of that misdemeanor, the court must place the person on probation for that misdemeanor as well. However, if the court does not find that drug dependence significantly contributed to commission of the misdemeanor, the court may sentence the person for the misdemeanor and order that the person serve probation for the nonviolent drug possession offense either concurrently with the sentence for the misdemeanor, or after serving the sentence for the misdemeanor.

The bill provides that a sentencing court may order an offender to undergo an assessment of his or her drug dependence before determining a disposition or sentence for the offender. Any assessments ordered by the court must be completed by a provider who is certified by the department of health and family services (DHFS) to conduct assessments of drug dependence.

3. *Treatment services.* Under the bill, the department of corrections (DOC) must arrange for the provision of any drug use intervention services ordered by the court. Drug use intervention services ordered by the court may consist of drug treatment (including hospitalization, inpatient or outpatient treatment, detoxification, narcotic replacement therapy, transitional residential treatment, or day treatment), drug education, or any other service intended to address a person's drug dependence or drug use. The bill requires that drug treatment services be provided by a certified treatment provider, and requires that DHFS promulgate rules prescribing the standards for drug education ordered as a component of drug use intervention services. If the nonviolent drug possession offender is a medical assistance (MA) or badger care recipient, DOC is required to arrange for a certified MA provider to furnish any court-ordered service that is covered by MA or badger care, as long as such a provider is available. The bill permits DOC to contract with counties to provide the required drug use intervention services.

A court may order drug use intervention services for up to 12 months, or for the length of the probation period, whichever is less. Thirty days before the expiration of a probationer's drug use intervention services, the provider of the services must submit a report to the court recommending whether the person should receive aftercare services. The court may modify the person's probation to require up to six months of aftercare.

1  
Drug use intervention ✓

**BILL**

4. *Violation of a condition of probation.* <sup>Under the bill,</sup> If a person on probation for a nonviolent drug possession offense violates a condition of probation that is related to drug use intervention services or if the person commits another nonviolent drug 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 or DOC, if the person waives a hearing, finds by clear and convincing evidence that the person is a danger to himself, herself, or others or that the person is unamenable to treatment. ~~Under~~ <sup>Under the bill,</sup> a person is unamenable to treatment if the person has repeatedly committed serious violations of service program rules that inhibit the person's ability to function in services; the person has continually refused to participate in services; or the person has asked to be removed from services. If a person violates a condition of probation that is not related to drug use intervention services or a nonviolent drug possession offense, the probation may be revoked.

5. *Expunging the record of a nonviolent drug possession offense.* The bill provides that, if a person successfully completes probation for a nonviolent drug possession offense or a misdemeanor for which the offender's drug dependence was a significant contributing factor, without revocation, the record of the conviction is expunged and the 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.

6. *Discretionary treatment.* The bill also grants courts discretion to order DOC to provide drug use intervention services to a person who is convicted of any crime other than a crime against life or bodily security, a crime against children, or a crime involving a firearm, if the sentencing court finds that the person is drug dependent. The court may require that DOC provide drug use intervention services to such a person while he or she is in prison, jail, or otherwise confined, or while the person is on extended supervision or probation.

7. *Payment for services.* Under the bill, a court must order a recipient of an assessment or drug use intervention services to pay, to the extent of his or her ability, for those services that are not covered by private insurance or MA or badger care. DOC must pay for those services that are not covered by insurance, MA, or badger care or paid for by the recipient.

***Parole and extended supervision***

Under current law, a person on parole must comply with a standard set of conditions of parole, including that the person may not commit any crimes. (A person released from prison to supervision under a sentence for a crime committed before December 31, 1999 is placed on parole.) If a parolee violates a condition of parole, for example by committing a crime, the person's parole may be revoked and the person may be returned to prison.

Similarly, a person on extended supervision must comply with conditions of extended supervision. (A person released from prison to supervision under a sentence for a crime committed on or after December 31, 1999, is released to extended supervision.) Conditions of extended supervision are set by the sentencing court and DOC, and may include individualized requirements, such as participation in drug

**BILL**

treatment. If a person violates a condition of extended supervision, the person's extended supervision may be revoked and the person may be returned to prison.

The bill provides that, if a person on parole or extended supervision commits a nonviolent drug possession offense, or if a person on extended supervision commits a violation of a condition related to drug treatment, the person's parole or extended supervision, whichever is applicable, may not be revoked for the violation unless one of the following circumstances apply:

a. In the five years prior to the violation, the person either committed or was serving a sentence for a so-called three-strikes offense.

b. The person is serving a sentence for a firearms offense or a drunk driving offense.

c. The person has previously been provided drug use intervention services in connection with a nonviolent drug possession offense or as a condition of parole or extended supervision, and the administrative law judge, or DOC, if the person waives a revocation hearing, finds by clear and convincing evidence that the person is unamenable to treatment.

d. The person refuses to participate in drug use intervention services.

Instead of revoking parole or extended supervision, the administrative law judge, or DOC, if the person waives a revocation hearing, may require that the person participate in drug use intervention services, or if the person is already required to participate in such services, may modify the requirements for participation in drug use intervention services. Before modifying conditions of parole or extended supervision, an administrative law judge, or DOC, if a revocation hearing is waived, may require that the person on parole or extended supervision submit to an assessment of the person's drug use or drug dependence.

Under the bill, DOC must arrange for the provision of drug use intervention services ordered as a condition of parole or extended supervision. *Under the bill*  
The drug use intervention services for parolees and for persons on extended supervision are the same services as those available under the bill for persons placed on probation for a nonviolent drug possession offense. The requirements related to treatment providers and the responsibilities for paying for services are also the same as those provided under the bill for probation.

**Study of drug use intervention services** *after consultation*

The bill requires that DHFS, *in cooperation* with DOC, commission a study of the effects of providing drug use intervention services to nonviolent drug possession offenders and other offenders who are drug dependent. *DOC* must issue an interim report two and one-half years after the use intervention services provisions of this bill, if enacted as an act, are instituted, and must issue a final report five and one-half years after the provisions are instituted.

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

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

*drug*

*NO # The bill requires that DOC pay for the study.*

**BILL**

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

2           20.410 (1) (a) *General program operations.* The amounts in the schedule to  
3 operate institutions ~~and, to provide field services and administrative services, to~~  
4 provide drug use intervention services under s. 973.105 to persons who are  
5 incarcerated, and for a study of the effects of drug use intervention services provided  
6 under ss. 302.11 (7) (ag), 302.113 (9m), and 973.105. No payments may be made  
7 under this paragraph for payments in accordance with other states party to the  
8 interstate corrections compact under s. 302.25.

9           **SECTION 2.** 20.410 (1) (a) of the statutes, as affected by 2001 Wisconsin Act ....  
10 (this act), is amended to read:

11           20.410 (1) (a) *General program operations.* The amounts in the schedule to  
12 operate institutions, to provide field services and administrative services, and to  
13 provide drug use intervention services under s. 973.105 to persons who are  
14 incarcerated, ~~and for a study of the effects of drug use intervention services provided~~  
15 ~~under ss. 302.11 (7) (ag), 302.113 (9m), and 973.105.~~ No payments may be made  
16 under this paragraph for payments in accordance with other states party to the  
17 interstate corrections compact under s. 302.25.

18           **SECTION 3.** 20.410 (1) (b) of the statutes is amended to read:

19           20.410 (1) (b) *Services for community corrections.* The amounts in the schedule  
20 to provide services related to probation, extended supervision and parole, the  
21 intensive sanctions program under s. 301.048, the community residential  
22 confinement program under s. 301.046, programs of intensive supervision of adult  
23 offenders ~~and, minimum security correctional institutions established under s.~~  
24 301.13, and drug assessments under s. 302.11 (7) (am), 302.113 (9m) (b), or 973.105

**BILL**

1 (4). No payments may be made under this paragraph for payments in accordance  
2 with other states party to the interstate corrections compact under s. 302.25.

3 **SECTION 4.** 46.03 (18) (fm) of the statutes is repealed.

4 **SECTION 5.** 51.42 (7) (b) 12. of the statutes is created to read:

5 51.42 (7) (b) 12. Prescribe standards for drug education programs that serve  
6 persons who are ordered to participate in drug education as a condition of parole  
7 under s. 302.11 (7) (ag), as a condition of extended supervision under s. 302.113 (9m),  
8 or as a condition of probation under s. 973.105.

9 **SECTION 6.** 301.03 (3j) of the statutes is created to read:

10 301.03 (3j) Provide drug assessments and drug use intervention services for  
11 persons convicted of drug-related offenses as provided under s. 973.105, for parolees  
12 who violate conditions of parole that are related to drug possession offenses or drug  
13 treatment, as provided under s. 302.11 (7) (ag), and for persons on extended  
14 supervision who violate conditions of extended supervision that are related to drug  
15 possession offenses or drug treatment, as provided under s. 302.113 (9m).

16 **SECTION 7.** 302.11 (7) (ag), (am) and (ar) of the statutes are created to read:

17 302.11 (7) (ag) Notwithstanding par. (a), if a parolee commits a nonviolent drug  
18 possession offense, as defined in s. 973.105 (1) (g), or violates a condition of parole  
19 concerning drug use intervention services, as defined in s. 973.105 (1) (e), the division  
20 of hearing and appeals, or the department, if the parolee waives a hearing, may not  
21 revoke parole for that violation but may require that the parolee participate in drug  
22 use intervention services as a condition of parole or, if participation in drug use  
23 intervention services is already a condition of parole, may modify the requirements  
24 for participation in drug use intervention services, unless any of the following  
25 applies:



**BILL**

1           1. At any time during the 5 years prior to the date on which the parolee  
2 committed the nonviolent drug possession offense or the violation of a condition of  
3 parole concerning drug use intervention services, the parolee committed or was  
4 serving a sentence for a felony identified under s. 939.62 (2m) (a) 2m. b.

5           2. The parolee is serving a sentence for a firearms offense, as defined in s.  
6 973.105 (1) (f), or for a crime under s. 346.63.

7           3. The parolee has previously been provided drug use intervention services  
8 under this paragraph or s. 302.113 (9m) (a) or 973.105 and the division of hearings  
9 and appeals or the department, whichever is applicable, finds by clear and  
10 convincing evidence that the parolee is unamenable to treatment in accordance with  
11 s. 973.105 (9) or that the person is a danger to himself or herself or others.

12           4. The parolee refuses to participate in drug use intervention services as a  
13 condition of parole.

14           (am) Before making a determination regarding revocation or conditions of  
15 parole under par. (ag), the division of hearings and appeals or the department may  
16 require that a parolee submit to an assessment of his or her use of controlled  
17 substances.

18           (ar) Any assessment required under par. (am) shall meet the conditions for  
19 assessments under s. 973.105 (4). Any drug use intervention services required under  
20 par. (ag) shall meet the conditions for services under s. 973.105 (5).

21           **SECTION 8.** 302.113 (9m) of the statutes is created to read:

22           302.113 (9m) (a) Notwithstanding sub. (9) and except as provided under par.  
23 (d), if a person released to extended supervision under this section commits a  
24 nonviolent drug possession offense, as defined in s. 973.105 (1) (g), or violates a  
25 condition of extended supervision concerning drug use intervention services, as

**BILL**

1 defined in s. 973.105 (1) (e), the division of hearing and appeals, or the department,  
2 if the person on extended supervision waives a hearing, may not revoke extended  
3 supervision for that violation but may require that the person participate in drug use  
4 intervention services as a condition of extended supervision or, if participation in  
5 drug use intervention services is already a condition of extended supervision, may  
6 modify the requirements for participation in drug use intervention services, unless  
7 any of the following applies:

8 1. At any time during the 5 years prior to the date on which the person  
9 committed the nonviolent drug possession offense or the violation of a condition of  
10 extended supervision concerning drug use intervention services, the person  
11 committed or was serving a sentence for a felony identified under s. 939.62 (2m) (a)  
12 2m. b.

13 2. The person is serving a sentence for a firearms offense, as defined in s.  
14 973.105 (1) (f), or for a crime under s. 346.63.

15 3. The person has previously been provided drug use intervention services  
16 under this subsection or s. 302.11 (7) (ag) or 973.105 and the division of hearings and  
17 appeals or the department, whichever is applicable, finds by clear and convincing  
18 evidence that the person is unamenable to treatment in accordance with s. 973.105  
19 (9) or that the person is a danger to himself or herself or others.

20 4. The person refuses to participate in drug use intervention services as a  
21 condition of extended supervision.

22 (b) Before making a determination regarding revocation or conditions of  
23 extended supervision under par. (a), the division of hearings and appeals or the  
24 department may require that a person on extended supervision submit to an  
25 assessment of his or her use of controlled substances.

**BILL**

1 (c) Any assessment required under par. (b) shall meet the conditions for  
2 assessments under s. 973.105 (4). Any drug use intervention services required under  
3 par. (a) shall meet the conditions for services under s. 973.105 (5).

4 (d) The division of hearings and appeals or the department may not modify a  
5 condition of extended supervision under par. (a) if the modification conflicts with a  
6 condition of extended supervision set by a court under s. 973.01 (5).

7 **SECTION 9.** 961.438 of the statutes is amended to read:

8 **961.438 Minimum sentence.** Any minimum sentence under this chapter is  
9 a presumptive minimum sentence. Except as provided in s. 973.09 (1) (d) or 973.105  
10 (2) or (3), the court may impose a sentence that is less than the presumptive  
11 minimum sentence or may place the person on probation only if it finds that the best  
12 interests of the community will be served and the public will not be harmed and if  
13 it places its reasons on the record.

14 **SECTION 10.** 961.47 of the statutes is repealed.

15 **SECTION 11.** 961.472 of the statutes is repealed.

16 **SECTION 12.** 961.475 of the statutes is repealed.

17 **SECTION 13.** 973.105 of the statutes is created to read:

18 **973.105 Probation and treatment for nonviolent drug possession**  
19 **offenders.** (1) In this section:

20 (a) "Approved treatment facility" has the meaning given under s. 51.01 (2).

21 (b) "Drug dependent" has the meaning given in s. 51.01 (8).

22 (c) "Drug paraphernalia for personal use" means any equipment, product, or  
23 material of any kind that is used, designed for use, or primarily intended for use by  
24 a person to inject, ingest, inhale, or otherwise introduce into the person's body a

**BILL**

1 controlled substance or controlled substance analog in violation of ch. 961, but does  
2 not include items under s. 961.571 (1) (b).

3 (d) “Drug treatment” means inpatient residential drug treatment, outpatient  
4 treatment, day treatment, transitional residential treatment, detoxification, or  
5 narcotic replacement therapy.

6 (e) “Drug use intervention services” means drug treatment, drug education,  
7 vocational assistance, or any other service intended to address a person’s drug  
8 dependence or drug use.

9 (f) “Firearms offense” means an offense under s. 941.20, 941.21, 941.23,  
10 941.235, 941.237, 941.26, 941.28, 941.29, or 941.296.

11 (g) “Nonviolent drug possession offense” means an offense, or attempt to  
12 commit an offense, under s. 961.573 (1) that involves drug paraphernalia for  
13 personal use, or an offense, or attempt to commit an offense, under s. 961.41 (3g) (a)  
14 to (e).

15 (2) (a) If a person is convicted of a nonviolent drug possession offense, the  
16 sentencing court shall withhold sentence for the offense or impose sentence for the  
17 offense and stay its execution, and shall place the person on probation under s.  
18 973.09 and require that the person participate in drug use intervention services as  
19 a condition of probation for the offense, unless any of the following applies:

20 1. At any time during the 5 years prior to the date on which the person  
21 committed the offense for which he or she is being sentenced, the person committed  
22 or was serving a sentence for a felony identified under s. 939.62 (2m) (a) 2m. b.

23 2. The person is convicted of another crime other than a nonviolent drug  
24 possession offense in the same proceeding.

**BILL**

1           3. The person is found to have violated s. 346.63 or an ordinance that is in  
2 conformity with s. 346.63 for the same act or incident or series of acts or incidents  
3 that resulted in conviction for the nonviolent drug possession offense.

4           4. The person was incarcerated under a sentence for another crime when he or  
5 she committed the nonviolent drug possession offense.

6           5. The person has previously been provided drug use intervention services  
7 under this section or s. 302.11 (7) (ag) or 302.113 (9m) and the court finds by clear  
8 and convincing evidence that the person is unamenable to treatment in accordance  
9 with sub. (9).

10          6. The person refuses to participate in drug use intervention services as a  
11 condition of probation.

12          (b) Notwithstanding par. (a) 2., if the other crime under par. (a) 2. is a  
13 misdemeanor other than a misdemeanor under ch. 940 or 948 or s. 346.63, or a  
14 misdemeanor firearms offense, the sentencing court shall withhold sentence for the  
15 nonviolent drug possession offense, or impose sentence for the nonviolent drug  
16 possession offense and stay its execution, place the person on probation under s.  
17 973.09 for the nonviolent drug possession offense, and order that the person  
18 participate in drug use intervention services as a condition of probation for the  
19 nonviolent drug possession offense. If the court finds that the person is drug  
20 dependent and that the person's drug dependence significantly contributed to the  
21 commission of the misdemeanor, the court shall place the person on probation under  
22 s. 973.09 for that misdemeanor and require that the person participate in drug use  
23 intervention services as a condition of probation for the misdemeanor. If the court  
24 determines that the person is not drug dependent, or that the person is drug  
25 dependent but the drug dependence did not significantly contribute to the

**BILL**

1 commission of the misdemeanor, the court may place the person on probation for the  
2 misdemeanor as provided under sub. (3). If the court does not place the person on  
3 probation for the misdemeanor, the court shall determine whether the person shall  
4 serve probation for the nonviolent drug possession offense concurrently with the  
5 sentence for the misdemeanor or consecutively to the sentence for the misdemeanor.

6 (3) If a person is convicted of a crime, other than felony under ch. 940 or 948  
7 or s. 346.63, or a felony firearms offense, is not eligible for mandatory probation and  
8 drug use intervention services under sub. (2), and is found by the sentencing court  
9 to be drug dependent, the sentencing court may order that the department provide  
10 the person drug use intervention services. The court may order that the department  
11 provide the services to the person while he or she is on probation, while the person  
12 is incarcerated in prison or in a county jail, while the person is otherwise confined,  
13 or while the person is on extended supervision.

14 (4) (a) Before determining a disposition under sub. (2) or (3), a court may order  
15 an offender to submit to an assessment of his or her use of controlled substances. The  
16 court shall designate an approved treatment facility that is certified by the  
17 department of health and family services to provide assessment services to conduct  
18 any assessment ordered under this paragraph. The court may order that the  
19 treatment facility provide a proposed plan for drug use intervention services. The  
20 treatment facility shall submit an assessment report to the court within 14 days of  
21 the order for an assessment. Upon receipt of the report, the court shall provide a copy  
22 to the offender or his or her attorney. At the request of the treatment facility, the  
23 court may extend the time for submitting a report by not more than 20 additional  
24 workdays.

**BILL**

1 (b) If the court orders an assessment under par. (a) for an offender who is a  
2 medical assistance or badger care recipient, the court shall order that the assessment  
3 be provided by a provider who is certified as a medical assistance provider, if a  
4 certified provider is available. If the medical assistance or badger care recipient is  
5 enrolled in a health care maintenance organization, the court shall order that the  
6 assessment be provided by a provider who is an employee of the health maintenance  
7 organization or with whom the health care maintenance organization contracts for  
8 services, if such a provider is available.

9 (5) (a) The department is responsible for providing, or securing the provision  
10 of, any drug use intervention services ordered under this section. Drug treatment  
11 ordered under this section must be provided by an approved treatment facility.

12 (b) If the department is required under this section to provide a health service  
13 or benefit specified under s. 49.46 (2) to an offender who is a medical assistance or  
14 badger care recipient, the department shall arrange for that health service or benefit  
15 to be provided by a provider who is certified as a medical assistance provider, if a  
16 certified provider is available. If the medical assistance or badger care recipient is  
17 enrolled in a health care maintenance organization, the department shall arrange  
18 for the health service or benefit to be provided by a provider who is an employee of  
19 the health maintenance organization or with whom the health care maintenance  
20 organization contracts for services, if such a provider is available.

21 (c) Subject to the requirements under par. (a) and (b), the department may  
22 contract with an appropriate county department under s. 51.42 to provide drug use  
23 intervention services under this section.

24 (6) If a person is placed on probation under sub. (2) or (3) and ordered to  
25 participate in drug use intervention services as a condition of probation, the services

**BILL**

1 may not be for longer than 12 months or the length of the probation, whichever is  
2 shorter. By 30 days before the expiration of the services, the service provider shall  
3 submit a report to the sentencing court recommending whether the person receiving  
4 drug use intervention services should participate in aftercare services. Prior to the  
5 completion of a person's probation, the sentencing court may modify the conditions  
6 of a person's probation to require that the person participate in up to 6 months of  
7 aftercare services upon completion of drug use intervention services.

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

11 (8) (a) Notwithstanding s. 973.10 (2), if a person placed on probation under sub.  
12 (2) or (3) commits a nonviolent drug possession offense or violates a condition of  
13 probation concerning drug use intervention services, the division of hearings and  
14 appeals or, if the probationer waived his or her right to a hearing, the department  
15 may modify the conditions of probation, but may not revoke probation unless a  
16 hearing examiner or the department, whichever is applicable, finds by clear and  
17 convincing evidence that the person is unamenable to treatment as provided under  
18 sub. (9) or is a danger to himself or herself or to others. If the probationer violates  
19 a condition of probation that is not related to drug use intervention services, the  
20 department or the division of hearings and appeals may revoke probation as  
21 provided under s. 973.10 (2).

22 (b) Upon the request of a person who is the subject of a determination  
23 concerning amenability to treatment under par. (a), the treatment provider  
24 responsible for providing the person treatment under this section shall submit a  
25 report to the department or the division of hearings and appeals, whichever is



**BILL**

1 applicable, regarding the person's amenability to treatment. The treatment provider  
2 may testify regarding the person's amenability to treatment at any revocation  
3 proceeding under par. (a).

4 **(9)** (a) A person is unamenable to treatment if any of the following applies:

5 1. The person has repeatedly committed serious violations of drug use  
6 intervention service rules that inhibit the person's ability to participate in the  
7 services.

8 2. The person has continually refused to participate in drug use intervention  
9 services ordered under this section or s. 302.11 (7) (ag) or 302.113 (9m) (a).

10 3. The person has asked to be removed from drug use intervention services  
11 ordered under this section or s. 302.11 (7) (ag) or 302.113 (9m) (a).

12 (b) The department of health and family services may promulgate rules for  
13 determining whether a person is unamenable to treatment under this subsection.

14 **(10)** When a court orders probation under sub. (2) for a nonviolent drug  
15 possession offense or a misdemeanor, other than a misdemeanor under ch. 940 or 948  
16 or s. 346.63, or a misdemeanor firearms offense, the court shall order that the record  
17 of conviction for that offense be expunged upon successful completion of the  
18 probation, including satisfaction of any restitution ordered under s. 973.20. A person  
19 successfully completes probation if the person completes the term of probation  
20 without revocation of the probation. Upon successful completion of probation, the  
21 department shall issue a certificate of discharge and shall forward the certificate to  
22 the court of record, which shall expunge the record of conviction. Disqualifications  
23 or disabilities imposed by law upon conviction of a crime, including the additional  
24 penalties imposed for 2nd or subsequent convictions under s. 961.48, do not apply to  
25 a conviction that has been expunged under this subsection.

**BILL**

1           (11) (a) If a person who is ordered under this section to submit to an assessment  
2 or participate in drug use intervention services is enrolled in a private insurance  
3 plan that is required under s. 632.89 to cover such services, or otherwise covers such  
4 services, the insurer shall pay for any assessment or drug use intervention service  
5 ordered under this section that is covered by the insurance plan.

6           (b) If a medical assistance or badger care recipient is ordered under this section  
7 to submit to an assessment or participate in drug use intervention service that is a  
8 health care service or other benefit described under s. 49.46 (2), the department of  
9 health and family services shall pay for the assessment service as provided under s.  
10 49.46 (2).

11           (c) The court shall order any person who receives an assessment or drug use  
12 intervention service under this section to pay, to the extent of the person's ability, for  
13 the cost of the assessment or service that is not covered under par. (a) or (b).

14           (d) From the appropriation under s. 20.410 (1) (b), the department shall pay for  
15 assessments ordered under sub. (4) that are not paid for under par. (a), (b), or (c), and  
16 shall pay for drug use intervention services ordered under this section for persons  
17 on probation that are not paid for under par. (a), (b), or (c). From the appropriation  
18 under s. 20.410 (1) (a), the department shall pay for drug use intervention services  
19 ordered under this section for persons who are incarcerated that are not paid for  
20 under par. (a), (b), or (c).

21           (12) The department of health and family services, after consultation with the  
22 department of corrections, shall commission a study of the results of drug use  
23 intervention services provided under this section and under ss. 302.11 (7) (ag) and  
24 302.113 (9m) (a). By the first day of the 31st month after the effective date of this  
25 subsection .... [revisor inserts date], the department of health and family services

**BILL**

1 shall issue an interim report on results from the first 2 years of drug use intervention  
2 services. By the first day of the 67th month after the effective date of this subsection  
3 .... [revisor inserts date], the department of health and family services shall issue a  
4 final report on results from the first 5 years of drug use intervention services. The  
5 department of health and family services shall submit the reports required under  
6 this subsection to the governor, the majority leader of the senate, the speaker of the  
7 assembly, and the cochairpersons of the joint committee on finance.  
8 Notwithstanding the purposes for which money is appropriated under s. 20.410 (1)  
9 (a), all costs incurred in commissioning the study and issuing the reports required  
10 under this subsection shall be paid from the appropriation to the department of  
11 corrections under s. 20.410 (1) (a).

**SECTION 14. Nonstatutory provisions.**

12  
13 (1) The department of health and family services shall apply to the center for  
14 substance abuse treatment of the substance abuse and mental health services  
15 administration in the federal department of health and human services or any other  
16 appropriate agency for a grant to fund the drug use intervention services ordered  
17 under section 302.11 (7) (ag), 302.113 (9m) (a), or 973.105 of the statutes, as created  
18 by this act, from the effective date of this subsection to the first day of the 37th month  
19 beginning after the effective date of this subsection.

**SECTION 15. Initial applicability.**

20  
21 (1) The treatment of sections 46.03 (18) (fm), 961.47, 961.472, 961.475, and  
22 973.105 of the statutes first applies to offenses committed on the effective date of this  
23 subsection, but persons sentenced on or after the effective date of this subsection for  
24 offenses committed before the effective date of this subsection may choose to be  
25 sentenced in accordance with section 973.105 of the statutes.

**BILL**

SI. 42(7)(b) 12. and

1 **SECTION 16. Effective date.** This act takes effect on the first day of the 6th  
2 month beginning after publication except as follows:

3 (1) The treatment of section <sup>S</sup>973.105 (9) (b) of the statutes and SECTION 14 of  
4 this act take effect on the day after publication.

5 (2) The treatment of section 20.410 (1) (a) (by SECTION 2) of the statutes takes  
6 effect on the first day of the 67th month beginning after the effective date of this  
7 subsection.

8

(END)

**Barman, Mike**

---

**From:** Ryan, Robin  
**Sent:** Tuesday, March 05, 2002 1:11 PM  
**To:** Barman, Mike; Beam, Laura; Emery, Lynn; Basford, Sarah  
**Subject:** Jacketing 4037/2

Will you please jacket 4037/2 when you receive it from the LPSs. thanks



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4037/F1

RLR:jld:jf

P2

By Monday, 11/21/02 late afternoon

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Regem

or drug education

1 AN ACT to repeal 46.03 (18) (fm), 961.47, 961.472 and 961.475; to amend 20.410  
2 (1) (b); and to create 301.03 (3j), 302.113 (9) (am) and 961.476 of the statutes;  
relating to: drug treatment for persons convicted of possession of controlled  
substances, granting rule-making authority, and making an appropriation.

or certain  
other  
crimes

These Analysis by the Legislative Reference Bureau or certain

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.

The greater  
penalties are  
for

period

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.

INS 1

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 or education.

a non-violent drug offense

non-violent drug offense or drug education

INS 2

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.

or education

DHFS

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 or that the person is unamenable to treatment. The bill directs the department of corrections (DOC) 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.

Any ordered non-violent drug

or education a non-violent drug offense

INS 4

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.

a non-violent drug offense

or the department of corrections (DOC), if the person waives a hearing, finds by clear and convincing

INS 4 from top of p 3, then INS 5

DOC or the department of corrections, if the person waives a hearing, finds by clear and convincing or education drug

a non-violent drug offense or a misdemeanor for which the offender's drug dependence was a significant contributing factor

move to p. 2 before INS 5

INSA

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. DOC 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, DOC 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, DOC is responsible for the cost of the treatment that is not covered by the recipient or insurance.

INS 6

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

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

INS 3-1

under s. 973.105 (4)

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. 961.470. 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.

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

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



SECTION 3

*and drug education*

1 301.03 (3j) Provide drug assessments, ~~and~~ drug treatment for persons  
2 convicted of offenses under s. 961.41 (3g) as provided under s. ~~961.476~~ 973.105 ✓

*drug-related*

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

4 302.113 (9) (am) Notwithstanding par. (a), if the violation under par. (a) is a  
5 *nonviolent drug* commission of an offense *as defined under 973.105(1)(e)* or a violation of a condition of extended  
6 supervision concerning drug treatment, *or drug education* the division of hearings and appeals or the  
7 department may modify the conditions of extended supervision, but may not revoke  
8 extended supervision unless a hearing examiner for the division of hearings and  
9 appeals *finds by a preponderance of the evidence* that the person is a danger to  
10 himself or herself or to others, or that the probationer is unamenable to treatment  
11 as *provided under s. 973.105(9)* determined in accordance with the rules promulgated under s. 961.476 (6) (b)

*if the person on extended supervision waives a hearing*

*or the department, whichever is applicable, finds by clear and convincing*

*JNS 4-11*

12 SECTION 5. 961.47 of the statutes is repealed.

13 SECTION 6. 961.472 of the statutes is repealed.

14 SECTION 7. 961.475 of the statutes is repealed.

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

*nonviolent drug offenders*

*JNS 4-16*

16 ~~961.476~~ Probation and ~~drug~~ treatment for possession. (1) In this section

17 (d) "drug treatment" includes outpatient treatment, treatment at a halfway house,

18 or narcotic replacement therapy, *drug education or prevention courses*, or inpatient

19 residential drug treatment *as if* needed to address special detoxification or relapse

20 situations or severe dependence.

*JNS 4-20*

21 (2)(a) If a person is convicted of *a nonviolent drug offense* possession of or attempted possession of a

22 controlled substance or a controlled substance analog under s. 961.41 (3g), the

23 sentencing court shall *for the offense* withhold sentence, *for the offense* or impose sentence and stay its execution,

24 and place the person on probation under s. 973.09 unless any of the following applies: ✓

*and require that the person participate in drug treatment or drug education as a condition of probation for the offense,*

INS 5-1 ✓

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

(2m) (a) 2m. b.

2. (a) The person is convicted of another crime in the same proceeding. *other than a non-violent drug offense*

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

3. (a) The person was incarcerated under a sentence for another crime *when he or she committed* ~~at the time~~ *non-violent drug* of the offense for which he or she is being sentenced.

INS 5-9

4. (a) 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 *drug*, has been provided treatment for drug use in connection with any such prior conviction *under this section* and has been found unamenable to treatment.

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

INS 5-14 ✓

4. (4) (a) Before *determining a disposition under sub. (2) or (3)* 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 *an offender* the person to comply with an assessment of his or her use of controlled

substances. The court shall designate an approved treatment facility, *or drug education* as defined

under s. 51.01 (2), that is certified by the department of health and family services

to provide assessment services to conduct *any assessment ordered under this subsection* the assessment. The court may order that

the treatment facility provide a proposed treatment *or education* 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.

*sub (2)(b)*

*Handwritten signature/initials*

~~(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 <sup>or education</sup> 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.~~

*INS 6-5*

(7)(5) <sup>(3)</sup> Notwithstanding s. 973.09 (4) (a), a person placed on probation under sub. (2) ~~may~~ may not be confined in a county jail, Huber facility, work camp, or tribal jail as a condition of probation. *a non-violent drug*

(8) <sup>(3)</sup> (a) Notwithstanding s. 973.10 (2), if a person <sup>placed</sup> on probation under sub. (2) commits ~~an~~ offense <sup>or drug education</sup> 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 <sup>of corrections</sup> may modify the conditions of probation, but may not revoke probation unless a hearing examiner finds by <sup>clear and convincing</sup> a preponderance of the evidence that the person is a danger to himself or herself or to others <sup>or that the probationer is unamenable to treatment</sup>. If the probationer violates a condition of probation that is not related to drug treatment <sup>or drug education</sup>, the department <sup>of corrections</sup> or the division of hearings and appeals may revoke probation as provided under s. 973.10 (2).

*unamenable to treatment as provided under sub. (9) or is*

*of the department whichever is applicable*

*INS 6-18*

(9) <sup>(b)</sup> The department <sup>of corrections</sup> shall promulgate rules <sup>health and family services</sup> regarding the standards for determining whether a person is unamenable to treatment.

(10) <sup>(2)</sup> When a court orders probation under sub. (2) for <sup>for that offense</sup> 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 <sup>of corrections</sup>

*a non-violent drug offense or a misdemeanor other than a misdemeanor under ch. 940 or 948*

1 shall issue a certificate of discharge and shall forward the certificate to the court of  
2 record, which shall expunge the record of conviction. Disqualifications or disabilities  
3 imposed by law upon conviction of a crime, including the additional penalties  
4 imposed for 2nd or subsequent convictions under s. 961.48, do not apply to a  
5 conviction that has been expunged under this subsection.

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

13 ~~(f) (a) The court shall order any person who receives a drug assessment or drug  
14 treatment ~~under this section~~ <sup>or drug education</sup> to pay for that assessment ~~or treatment~~ <sup>or education</sup> to the extent  
15 that the person is able to pay.~~

16 ~~(b) From the appropriation under s. 20.410 (1) (b), the department of  
17 corrections shall pay for the cost of any assessments ~~or treatment~~ <sup>or education</sup> ordered under this  
18 section, including drug treatment <sup>or education</sup> provided to a person while he or she is incarcerated  
19 in jail, that is not paid for by the person receiving the assessment or treatment or that  
20 person's insurance. ~~under par. (a), (b), or (c).~~~~

21 **SECTION 9. Initial applicability.**

22 (1) The treatment of section ~~961.47~~ <sup>(5)</sup> of the statutes first applies to offenses  
23 committed on the effective date of this subsection, but persons sentenced on or after  
24 the effective date of this subsection for offenses committed before the effective date

46.03(18)(fm), 961.47, 961.472, 961.475, and 973.105

INS 7-20  
21

973.105  
^

1 of this subsection may choose to be sentenced in accordance with section ~~961.476~~ of  
2 the statutes.

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

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

973.105 (9) (b) ✓

7 (END)

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

LRB-4037/P2dn

RLR:.....

↑  
Jld

Dan Rossmiller:

1. The bill does not designate funding or a funding source for commissioning a study of the effects of probation and treatment for non-violent drug offenders. The bill sets the due dates for the interim and final reports on the effects of probation and treatment at two and one-half and five and one-half years respectively rather than at 2 and 3 years to allow researchers time to complete the reports. two five

2. I removed drunk driving ordinance violations as a bar to probation and treatment under proposed s. 973.105 (2) (a), because a person would not be convicted of an ordinance violation in a circuit court proceeding.

3. The bill requires that the department of health and family services pay for assessments and treatment for recipients of medical assistance and badger care if the type of assessment or treatment ordered by a court is covered by those programs. However, in order for a service to be covered by medical assistance or badger care it generally must be provided by a medical assistance certified provider. Do you want to require that courts select medical assistance certified providers to provide services to medical assistance and badger care recipients?

\* 4. The bill provides that if a person who is on extended supervision commits a non-violent drug offense or violates a condition of extended supervision concerning drug treatment or education, the person's extended supervision may not be revoked unless the person is a danger to himself, herself, or others or is found to be unamenable to treatment or education. The bill does not limit applicability of this provision to persons sentenced after the effective date of the bill, but the bill also does not provide a similar provision for persons on parole. In order to make the bill consistent, should the bill limit the provision regarding revocation of extended supervision to those persons sentenced on or after the effective date, or should the bill apply a similar restriction on revoking parole?

5. The bill grants courts authority to order drug assessments of offenders, but does not require assessments in any cases. At one point I think we discussed requiring that a court order an assessment before granting treatment if an offender requests treatment. Do you want to include this requirement? If so, must the court order the assessment only if it intends to order treatment, or anytime an offender requests treatment?

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4037/P2ins  
RLR:.....

**Insert 1:**

This bill requires that, if a person is convicted of a non-violent drug offense, the person be placed on probation and ordered to participate in drug treatment or drug education as a condition of that probation, unless certain exceptions apply. The bill defines a "non-violent drug offense" as possession or attempted possession of a controlled substance or possession or attempted possession of drug paraphernalia that is used for taking drugs (drug paraphernalia for personal use). If any of the following exceptions applies, the sentencing court is not required to place a non-violent drug offender on probation or order drug treatment or education for that offender:

1. The person has been convicted of, or served a sentence for, a serious felony (the so-called "three strikes" felonies) at any time during the five years prior to committing the non-violent drug offense.
2. The person is convicted of a misdemeanor that is a crime against life or bodily security or a crime against children, or is convicted of any felony other than a non-violent drug offense, in the same proceeding.

**Insert 2:**

If a person is convicted of a separate misdemeanor that is not a crime against life or bodily security or against children in the same proceeding as the non-violent drug offense and the court finds that the person's drug dependence significantly contributed to the commission of that misdemeanor, the court must place the person on probation for that misdemeanor as well. However, if the court does not find that drug dependence significantly contributed to commission of the misdemeanor, the court may sentence the person for the misdemeanor and order that the person serve probation for the non-violent drug offense either concurrently with the sentence for the misdemeanor, or after serving the sentence for the misdemeanor.

The bill provides that a sentencing court may order an offender to undergo an assessment of ~~the~~ his or her drug dependence before determining a disposition or sentence for the offender. Any assessments ordered by the court must be completed by a provider who is certified by the department of health and family services to conduct assessments of drug dependence.

(DHFS)

**Insert 3:**

*NO #* Thirty days before the expiration of a probationer's drug treatment or education, the provider of the treatment or education must submit a report to the court recommending whether the person should receive aftercare services. The court may modify the person's probation to require up to six months of aftercare.

**Insert 4:**



*drug*

INS 4

NO # Under the bill, a person is unamenable to treatment if the person has repeatedly committed serious violations of drug treatment ~~of~~ drug education rules that inhibit the person's ability to function in treatment or education; the person has continually refused to participate in drug treatment or education; or the person has asked to be removed from drug treatment or education.

**Insert 5:**

The bill grants courts discretion to order the state to provide drug treatment or drug education to a person who is convicted of any crime other than a crime against life or bodily security or a crime against children, if the sentencing court finds that the person is drug dependent. The court may require that the state provide drug treatment or education to such a person while he or she is in prison, jail, or otherwise confined, or while the person is on extended supervision or probation.

The bill also provides that if a person on extended supervision for any offense commits a non-violent drug offense or

**Insert 6:**

Under the bill, a court must order a recipient of an assessment, drug treatment or drug education to pay, to the extent of his or her ability, for those services that are not covered by private insurance or state medical assistance or other state health care programs. ~~The department of corrections~~ must pay for those services that are not covered by insurance or state health programs or paid for by the recipient.

The bill requires that ~~the department of corrections~~, in cooperation with ~~the department of health and family services~~, commission a study of the effects of providing drug treatment and education to non-violent drug offenders and other offenders who are drug dependent. ~~The department of corrections~~ must issue an interim report two and a half years after the drug treatment and education provisions of this act are instituted, and must issue a final report five and one-half years after the provisions are instituted.

**Insert 3-1:**

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

20.410 (1) (a) *General program operations.* The amounts in the schedule to operate institutions and provide field services and administrative services and to provide drug treatment and drug education under 973.105 to persons who are incarcerated. No payments may be made under this paragraph for payments in

- 1
- 2
- 3
- 4
- 5
- 6

DHFS

DOC

drug

or



1 accordance with other states party to the interstate corrections compact under s.  
2 302.25.

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; 2001 a. 16.

3 **Insert 4-11:**

4 **SECTION 2.** 961.438<sup>✓</sup> of the statutes is amended to read:

5 **961.438 Minimum sentence.** Any minimum sentence under this chapter is  
6 a presumptive minimum sentence. Except as provided in s. 973.09 (1) (d) or 973.105  
7 (2) or (3),<sup>✓</sup> the court may impose a sentence that is less than the presumptive  
8 minimum sentence or may place the person on probation only if it finds that the best  
9 interests of the community will be served and the public will not be harmed and if  
10 it places its reasons on the record.

History: 1989 a. 121; 1995 a. 448 s. 270; Stats. 1995 s. 961.438.

11  
12 **Insert 4-16:**

13 (a) "Approved treatment facility" has the meaning given under s. 51.01 (2).<sup>✓</sup>

14 (b) "Drug dependent" has the meaning given in s. 51.01 (8).<sup>✓</sup>

15 (c) "Drug paraphernalia for personal use" means drug paraphernalia, as  
16 defined under s. 961.571 (1) (a),<sup>✓</sup> that is primarily used by a person to inject, ingest,  
17 inhale, or otherwise introduce into the person's body a controlled substance or  
18 controlled substance analog.

19  
20 **Insert 4-20:**

21 (e) "Non<sup>o</sup>violent drug offense" means an offense, or attempt to commit an  
22 offense, under s. 961.573 (1)<sup>✓</sup> that involves drug paraphernalia for personal use, or an  
23 offense, or attempt to commit an offense, under s. 961.41 (3g).<sup>✓</sup>

24

**Insert 5-1:**

1  
2 1. At any time during the 5 years prior to the date on which the person  
3 committed the offense for which he or she is being sentenced, the person committed,  
4 or was serving a sentence for a felony identified under s. 939.62 (2m) (a) 2m. b. ✓  
5

**Insert 5-9:**

6  
7 4. The person has previously been provided drug treatment under this ✓  
8 and the court finds that the person is unamenable to treatment in accordance with  
9 sub. (9). ✓  
10

**Insert 5-14:**

11  
12 (b) Notwithstanding par. (a) 2., ✓ if the other crime under par. (a) 2. ✓ is a  
13 misdemeanor other than a misdemeanor under ch. 940 or 948, the sentencing court  
14 shall withhold sentence for the non-violent drug offense, or impose sentence for the  
15 non-violent drug offense and stay its execution, place the person on probation under  
16 s. 973.09 for the non-violent drug offense, and order that the person participate in  
17 drug treatment or <sup>drug</sup> education as a condition of probation for the non-violent drug  
18 offense. If the court finds that the person is drug dependent and that the person's  
19 drug dependence significantly contributed to the commission of the misdemeanor,  
20 the court shall place the person on probation under s. 973.09 for that misdemeanor ✓  
21 and require that the person participate in drug treatment or <sup>drug</sup> education as a condition  
22 of probation for the misdemeanor. If the court determines that the person is not drug  
23 dependent, or that the person is drug dependent but the drug dependence did not  
24 significantly contribute to the commission of the misdemeanor, the court may place  
25 the person on probation for the misdemeanor as provided under sub. (3). ✓ If the court

1 does not place the person on probation for the misdemeanor, the court shall  
2 determine whether the person shall serve probation for the nonviolent drug offense  
3 concurrently with the sentence for the misdemeanor or consecutively to the sentence  
4 for the misdemeanor.

5 (3) If a person is convicted of a crime other than felony under ch. 940 or 948,  
6 is not eligible for mandatory probation and drug treatment or education under sub.  
7 (2), and is found by the sentencing court to be drug dependent, the sentencing court  
8 may order that the department provide the person drug treatment or education. The  
9 court may order that the department provide the treatment or education to the  
10 person while he or she is on probation, while the person is incarcerated in prison or  
11 in a county jail, while the person is otherwise confined, or while the person is on  
12 extended supervision.

13  
14 **Insert 6-5:**

15 (5) The department is responsible for providing, or securing the provision of,  
16 any drug treatment or drug education services ordered under this section. Drug  
17 treatment ordered under this section must be provided by an approved treatment  
18 facility.

19 (6) If a person is placed on probation under sub. (2) or (3) and ordered to  
20 participate in drug treatment or drug education as a condition or probation, the  
21 period of drug treatment or drug education may not be longer than 12 months or the  
22 length of the probation, whichever is shorter. By ~~thirty~~<sup>30</sup> days before the expiration  
23 of the period of drug treatment or drug education, the treatment provider shall  
24 submit a report to the sentencing court recommending whether the person receiving  
25 treatment or education should participate in aftercare services. Prior to the



1 completion of a person's probation, the sentencing court may modify the conditions  
2 of a person's probation to require that the person participate in up to 6 months of  
3 aftercare services upon completion of drug treatment or drug education.

4  
5 **Insert 6-18:**

6 (b) Upon the request of a person who is the subject of a determination  
7 concerning amenability to treatment under par. (a),<sup>✓</sup> the treatment provider  
8 responsible for providing the person treatment under this section shall submit a  
9 report to the department or the division of hearings and appeals, whichever is  
10 applicable, regarding the person's amenability to treatment. The treatment provider  
11 may testify regarding the person's amenability to treatment at any revocation  
12 proceeding under par. (a).<sup>✓</sup>

13 (9) (a) A person is unamenable to treatment if any of the following applies:

14 1. The person has repeatedly committed serious violations of drug treatment  
15 or drug education rules that inhibit the person's ability to function in treatment or  
16 education.

17 2. The person has continually refused to participate in drug treatment or drug  
18 education ordered under this section.<sup>✓</sup>

19 3. The person has asked to be removed from drug treatment or drug education  
20 ordered under this section.<sup>✓</sup>

21 (b) The department of health and family services may promulgate rules for  
22 determining whether a person is unamenable to treatment under this<sup>✓</sup> subsection.



**Insert 7-20:**

1  
2 (11) (a) If a person who is ordered under this section to participate in an  
3 assessment, drug treatment, or drug education <sup>y</sup> is enrolled in a private insurance  
4 plan that is required under s. 632.89<sup>✓</sup> to cover such services, or otherwise covers such  
5 services, the insurer shall pay for any assessment, drug treatment, or drug education  
6 ordered under this section that is covered by the insurance plan.

7 (b) If a recipient of medical assistance or a recipient of health care coverage  
8 under s. 49.665<sup>✓</sup> is ordered under this section to participate in an assessment, drug  
9 treatment, or drug education that is a health care service or other benefit described  
10 under s. 49.46 (2)<sup>✓</sup>, the department of health and family services shall pay for the  
11 assessment, treatment, or education as provided under s. 49.46 (2).<sup>✓</sup>

12 (c) The court shall order any person who receives an assessment, drug  
13 treatment, or drug education under this section to pay, to the extent of the person's  
14 ability, for the cost of the assessment, treatment, or education that is not covered  
15 under par. (a) or (b).<sup>✓</sup>

16 (d) From the appropriation under s. 20.410 (1) (b)<sup>✓</sup>, the department shall pay for  
17 assessments ordered under sub. (b)<sup>4</sup> that are not paid for under par. (a), (b), or (c), and  
18 shall pay for drug treatment or drug education ordered under this section for persons  
19 on probation that is not paid for under par. (a), (b), or (c). From the appropriation  
20 under s. 20.410 (1) (a)<sup>✓</sup>, the department shall pay for drug treatment or drug  
21 education ordered under this section for persons who are incarcerated that is not  
22 paid for under par. (a), (b), or (c).

23 (12) The department <sup>of corrections</sup> in cooperation with the department of health and family  
24 services, shall commission a study of the results of drug treatment and drug  
25 education services provided under this section.<sup>✓</sup> The study shall measure the results



1 of drug treatment and drug education provided under this section over the 5<sup>1</sup> year  
2 period that begins on the effective date of this subsection .... [revisor inserts date].  
3 The department<sup>of corrections</sup> shall issue an interim report by the date that is 30 months after the  
4 effective date of this<sup>sub</sup> section .... [revisor inserts date] and shall issue a final report  
5 by the date that is 66 months after the effective date of this subsection ✓ .... [revisor  
6 inserts date] <sup>of corrections</sup>. The department shall submit the reports required under this  
7 subsection to the governor, the majority leader of the senate, the speaker of the  
8 assembly, and the cochairpersons of the joint committee on finance.

(end ins)

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

LRB-4037/P2dn  
RLR:jld:jf

January 21, 2002

Dan Rossmiller:

1. The bill does not designate funding or a funding source for commissioning a study of the effects of probation and treatment for nonviolent drug offenders. The bill sets the due dates for the interim and final reports on the effects of probation and treatment at two and one-half and five and one-half years respectively rather than at two and five years to allow researchers time to complete the reports.
2. I removed drunk driving ordinance violations as a bar to probation and treatment under proposed s. 973.105 (2) (a), because a person would not be convicted of an ordinance violation in a circuit court proceeding.
3. The bill requires that the department of health and family services pay for assessments and treatment for recipients of medical assistance and badger care if the type of assessment or treatment ordered by a court is covered by those programs. However, in order for a service to be covered by medical assistance or badger care it generally must be provided by a medical assistance certified provider. Do you want to require that courts select medical assistance certified providers to provide services to medical assistance and badger care recipients?
4. The bill provides that, if a person who is on extended supervision commits a nonviolent drug offense or violates a condition of extended supervision concerning drug treatment or education, the person's extended supervision may not be revoked unless the person is a danger to himself, herself, or others or is found to be unamenable to treatment or education. The bill does not limit applicability of this provision to persons sentenced after the effective date of the bill, but the bill also does not provide a similar provision for persons on parole. In order to make the bill consistent, should the bill limit the provision regarding revocation of extended supervision to those persons sentenced on or after the effective date, or should the bill apply a similar restriction on revoking parole?
5. The bill grants courts authority to order drug assessments of offenders, but does not require assessments in any cases. At one point I think we discussed requiring that a court order an assessment before granting treatment if an offender requests treatment. Do you want to include this requirement? If so, must the court order the assessment only if it intends to order treatment, or anytime an offender requests treatment?

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

Dan Rossmiller — Jennifer Strze

1. add time-frame for report  
2 yrs. & 5 yrs.

2. ask about incongruity - forfeitures vs. mads,  
how often are these prosecuted in muni ct.

3. Do require  
temp.

providers can apply for temp. mt cert.

for single

or require ct. seek temp. mt  
cert if no other  
providers available

If unavail ct. may refer person  
on prob. to provider but  
require

deal w/ HMOs

p. 11, line 16

**shall**

make sure ct. doesn't feel required  
to make person pay in all cases

41

~~is bearing on~~ ability of judge to  $\Delta$   
conditions of parole

Key question is does parole  
commission have ability to order  
treatment

who orders tr. - at what

stage - is there a circ. leg.  
look more into this



5. leave discretionary

sep. bill & fourth of sentencing

sub. to AB 3

next week at earliest

Dan Rossmiller

2/14/02

Probation & Treatment

have impact on treatment alternative - yes replace  
drug ct. -

Judge Schwartz in Dane Cty  
Clerk of Ct.

How get sentenced to county facility

Keith Lang Bur. of Substance Abuse Services  
Center for Substance Abuse Treatment

Direct DHS to apply grant  
to fund first 3 yrs

---

## Ryan, Robin

---

**From:** Rossmiller, Dan  
**Sent:** February 16, 2002 1:14 PM  
**To:** Ryan, Robin  
**Subject:** RE: drug treatment bill

Sure. Why not.

-----Original Message-----

**From:** Ryan, Robin  
**Sent:** Friday, February 15, 2002 3:42 PM  
**To:** Rossmiller, Dan  
**Subject:** drug treatment bill

On the last version of the drug treatment draft I asked in a d-note why the bill prohibits revoking extended supervision for a person who commits a drug possession crime or violates a condition of extended supervision concerning drug treatment, but does place a similar prohibition on revoking parole. You were concerned that the department of corrections or the administrative law judge does not have authority to modify the conditions of probation, or at least that there is no mechanism in place for modifying conditions or parole. However, nothing bars us from giving the department of corrections and the administrative law judges authority to change conditions of parole at a revocation hearing.

Even if you don't want to authorize DOC or the ALJs to modify conditions of parole, the bill could still prohibit revocation of parole for a drug possession offense. Instead the court would be required to place the offender on probation and order treatment for the offense. The probation would run concurrently to parole.

Do you want to apply the treatment requirement to persons on parole?

**John S. Celichowski**  
Attorney at Law  
1015 North 9th Street  
Milwaukee, Wisconsin 53233  
Phone (414) 271-0135, Ext. 15  
Fax (414) 271-0637  
jcgtnlaw@aol.com

**MEMORANDUM**

Date: February 20, 2002

To: WISDOM AODA Committee  
Office of Senator Gary George  
Legislative Reference Bureau, State of Wisconsin

From: John Celichowski, OFM Cap., Pastor  
St. Benedict the Moor Church, Milwaukee

Re: Proposed "Treatment Instead of Prison" (TIP) Legislation

---

The following are some suggested amendments to the current draft of the TIP bill:

**"Purposes" Section**—Insert the following section at the beginning of the bill:

*The purposes of the Legislature in amending the statutes are as follows:*

- (1) *To break the cycle of drug abuse, addiction and crime by guaranteeing treatment and rehabilitation to nonviolent drug abusers and addicts entering the criminal justice system.*
- (2) *To stop the wasteful spending of limited public resources on the incarceration of nonviolent offenders who would be better served by treatment and rehabilitation, and to promote medical and public health responses to the problem of drug abuse.*
- (3) *To provide substance treatment and rehabilitation to programs to nonviolent offenders who need such programs in order to improve their capacities to become contributing members of their families and communities.*
- (4) *To enhance public safety by reducing drug-related crime and by preserving limited public resources for the apprehension, prosecution and incarceration of serious and violent criminals.*

- (5) *To rest primary responsibility for the supervision of nonviolent drug addicted or abusing offenders 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 as a risk and often a part of the recovery process.*
- (6) *To expand the available capacity of substance abuse treatment and rehabilitation in the community.*

**Redefinition of “drug treatment”**—Change the definition of “drug treatment” [now Section 10(1)(d)] to read as follows:

(d) *“Drug treatment” means those psychological, educational, vocational, social, chemical, medical or somatic techniques and programs designed to bring about the rehabilitation of alcoholic or drug dependent persons, and includes inpatient residential treatment if needed to address detoxification or severe dependence, outpatient treatment, treatment at a half house, or narcotic replacement therapy.*

*partly from  
ch. 51  
~~51.01~~  
51.01(A)*

**Address the lacuna re: firearms**—Add the following phrase to all references in the bill that refer to “a crime other than a felony under ch. 940 or 948” to read as follows:

*“...a crime other than a felony under ch. 940 or 948 or an offense involving the possession or use of a firearm...”*

**Add a stay of proceedings provision that directs the court to stay all criminal proceedings related to the illegal possession or use of a controlled substance charge prior to conviction.**—The current draft has stay of proceedings provisions, but they are *post*-conviction. Is it possible to include *pre*-conviction stay provisions? These have the virtue of saving the resources of prosecutors, public defenders and courts by not requiring that a full trial be conducted before a person is referred to treatment. The stay could be lifted and that person’s case proceed to trial if he rejected or proved otherwise unamenable to treatment. The virtue of the post-conviction provisions proposed is to give an added “hard” incentive for a person to succeed in treatment (record of conviction is expunged).

COMMENTS/SUGGESTIONS RECEIVED AS OF 2/21/02

DA McCann:

1. Prison is relatively infrequent for persons convicted of misdemeanor drug offenses in Milwaukee County—probably not more than 50 per year—those who are repeat offenders or convicted of possession with intent to sell. Heroin and amphetamine possession are the only felonies the bill reaches. All others go to house of correction or jail which is a cost to the county, not to the state. Incarceration is a term that would mean both prison and jail.
2. The definition of “nonviolent crime” is too broad. It excepts only those crimes under Ch. 940/948 of the Wis. Statutes. Gun offenses are not in those chapters yet we probably would not want to exclude gun law violators from incarceration.
3. The draft does not consider victims and restitution. The mandatory expungement provision does not require proof of successful treatment or restitution to victims.
4. A substance user arrested only for a distinct crime like theft with no concurrent drug charge fares worse under this law than a non-user caught in possession of a controlled substance. The latter would be eligible for mandatory treatment and no incarceration while the former may be placed in treatment only at the judge’s discretion.
5. “Date rape” drugs should be excluded and recreational drugs like ecstasy should be included.

Dan Abrahamson:

6. Expand the definition of drug treatment in s.973.105 (1)(d) to include educational and vocational training and family counseling (as per California and Ohio initiatives). Such services are very important to successful rehabilitation.
7. Expand eligibility criteria to include low level drug sellers who are found by the court to be selling small amounts primarily to support their own drug habits and who are not selling to minors.

8. Create an Omsbudsperson or similar position to ensure that the treatment services recommended through the evaluation and ordered by the court are actually delivered by the treatment provider to the client. This person would, in effect, advocate on behalf of the client to make sure that the promised quality of treatment is carried out.

Peter Goldberg:

9. Concern about the term "nonviolent" drug offenses. If there is an obverse implication that all other drug offenses, e.g., delivery or intent to deliver, are violent, then this is too stigmatizing for those other offenses.
10. Concern that discretionary drug treatment option would still be available for offenses not considered "nonviolent drug offenses", including the five listed exceptions.
11. The court has the discretion to order the type of treatment. Since success of treatment is so dependent upon the patient's acceptance of treatment, there needs to be some sort of advance notification of the assessment and treatment recommendations before the judge's order and enough time for the defendant to react to it. [Analogy?—sometimes a presentence report isn't given to defense counsel until the day of sentencing.]
12. Would like to see a diversion program so that treatment is an option to defer charging and prosecution and if successful, no charges issued.

2/21/02

DHFS - stds. for community based programs  
require to est. by rule

offense

make firearms offense a bar - if convicted  
of a firearms offense in same proceeding  
- absolute bar

Victim Restitution - make sure bill doesn't  
elim. restitution obligation - make s-  
note that expungement doesn't alter  
rest. oblg.

Exclude date rape drugs

{ Rohypnol (GBB GBZ = date rape drugs  
1/4 BD)  
Ketamine

add vocational to def. of drug dr.

DOC commissions study - DHFS must  
approved - DHFS writes RTP doc prep  
- ask Rich for suggestions

non-violent <sup>✓ drug possession</sup> offense = instead of nonviolent  
drug offense.



(4) have ct. send copy of assessed  
plan to defense upon receipt

John Boquist 242-6488

Ryan, Robin

From: Rossmiller, Dan  
Sent: February 25, 2002 12:21 PM  
To: Ryan, Robin  
Subject: FW: LRB-4037/P2 - Recommendations

Robin:

Here are some recommendations I received from managers of the Dane County Drug Treatment Court Program, Treatment Alternatives Program (TAP), and County Substance Abuse Services Division:

1. Include language that would strongly encourage DOC to contract with counties for assessment and treatment services (quality services, local control).

2. Analysis by the Legislative Reference Bureau:  
Insert as a new sentence P. 3, above first P, after the words, "drug dependence"> "To ensure clinical integrity, assessment staff should not be employees of either DOC or local courts."

Insert P. 3, first P. after the words, "facility that is certified by DHFS">

"Because there is a strong need to provide for accountability, not just treatment, in counties having Drug Courts and federally funded Treatment Alternatives Programs (T.A.P.), treatment must/should be coordinated through those programs."

\* P.3, first P "> Any treatment ordered must be provided by a treatment facility that is certified by DHFS (should include reference to Chapter HFS

75 - Community Substance Abuse Service Standards)."

\* P. 4, first P. > DOC must pay for those services that are not covered by insurance or state health programs or paid by the recipient (clarify "state health programs" to protect county health and human services programs from coming under this payor definition)

Dan

- Ct oversees assessment

State that assessment can't be done by DOC

Plus abs.

- not needed b/c cert. reqs. fall under 75

- just in annual not in bill

## Ryan, Robin

---

**From:** Ryan, Robin  
**Sent:** February 22, 2002 2:19 PM  
**To:** Rossmiller, Dan  
**Subject:** Questions on drug treatment bill

1. In the P2 draft, the provision regarding revocation of ES for a drug possession offense does not include all of the disqualifiers that are included under proposed s. 973.105 for probation and treatment. For example, the ES provision does not disqualify persons serving sentences for a 3-strikes offense, nor does it disqualify persons who refuse to participate in treatment. I will add these disqualifiers. If a person is on ES for a felony under ch. 940 or 948 or for an offense related to firearms, should DOC or an ALJ be able to revoke the person for a drug possession offense?

2. The draft prohibits revocation of ES for a drug possession offense, but doesn't require that DOC or an ALJ modify the conditions of ES to require that the person participate in treatment or that DOC provide treatment. Rather the bill allows DOC or the ALJ to impose treatment as a condition of ES. (I think the bill should at least require that if DOC or an ALJ orders treatment as an additional condition of ES then DOC must provide it.) Therefore, there are several possible consequences for committing a drug possession offense while on ES:

- a. DOC/ALJ may order treatment as an additional condition of ES.
- b. DOC/ALJ may not order treatment, but the person may be charged with a nonviolent drug possession offense and be ordered to treatment under proposed s. 973.105
- c. DOC/ALJ may not order treatment, and the person may not be charged with an offense, so there is no punishment and no treatment.
- d. DOC/ALJ may order treatment as an additional condition of ES, and the person may also be charged with the offense and be ordered to treatment under proposed s. 973.105 (presumably the prohibition against double jeopardy would require that treatment orders run concurrently).

Are you ok with all of these possible outcomes being options? (The same revocation provision would apply to parole.)

3. In the P2 draft, drunk driving is no longer an absolute bar to treatment. I don't think that this is what you intended. Should drunk driving be an absolute bar like a firearms offense? The bar would be for conviction in the same proceeding for an offense under s. 346.43, or for a finding that the person violated an ordinance that is in conformity with s. 346.43 in the same action that led to the drug possession conviction.

4. It is not currently a crime to possess 1,4 BD. Do you want me to add this drug to the controlled substances schedule and then exempt it from the probation and treatment provision because it is a date rape drug? If you do want me to add 1,4 BD, do you also want me to make the GHB fix in this draft?

5. The reason that the bill doesn't include education and vocational services in the definition of "drug treatment" is because any provider of "drug treatment" is required to be certified by DHFS and we didn't want to require that education providers be certified treatment providers. I can resolve the problems by:

- a. requiring that a judge order "drug treatment services" as a condition of probation,
- b. defining "drug treatment services" as drug treatment, drug education, vocational assistance, or any other service intended to address a person's drug dependence or drug use,
- c. keeping the definition of "drug treatment" as is, and
- d. still requiring that providers of "drug treatment" be certified providers.

Please call or e-mail with answers. I should be able to finish this up fairly quickly after these issues are resolved. Thanks

## Ryan, Robin

---

**From:** Rossmiller, Dan  
**Sent:** February 22, 2002 3:01 PM  
**To:** Ryan, Robin  
**Subject:** RE: Questions on drug treatment bill

-----Original Message-----

**From:** Ryan, Robin  
**Sent:** Friday, February 22, 2002 2:19 PM  
**To:** Rossmiller, Dan  
**Subject:** Questions on drug treatment bill

✓ 1. In the P2 draft, the provision regarding revocation of ES for a drug possession offense does not include all of the disqualifiers that are included under proposed s. 973.105 for probation and treatment. For example, the ES provision does not disqualify persons serving sentences for a 3-strikes offense, nor does it disqualify persons who refuse to participate in treatment. I will add these disqualifiers. If a person is on ES for a felony under ch. 940 or 948 or for an offense related to firearms, should DOC or an ALJ be able to revoke the person for a drug possession offense?

**[Rossmiller, Dan]** Yes

2. The draft prohibits revocation of ES for a drug possession offense, but doesn't require that DOC or an ALJ modify the conditions of ES to require that the person participate in treatment or that DOC provide treatment. Rather the bill allows DOC or the ALJ to impose treatment as a condition of ES. (I think the bill should at least require that if DOC or an ALJ orders treatment as an additional condition of ES then DOC must provide it.) Therefore, there are several possible consequences for committing a drug possession offense while on ES:

- OK
- DOC/ALJ may order treatment as an additional condition of ES.
  - DOC/ALJ may not order treatment, but the person may be charged with a nonviolent drug possession offense and be ordered to treatment under proposed s. 973.105
  - DOC/ALJ may not order treatment, and the person may not be charged with an offense, so there is no punishment and no treatment.
  - DOC/ALJ may order treatment as an additional condition of ES, and the person may also be charged with the offense and be ordered to treatment under proposed s. 973.105 (presumably the prohibition against double jeopardy would require that treatment orders run concurrently).

Are you ok with all of these possible outcomes being options? (The same revocation provision would apply to parole.)  
**[Rossmiller, Dan]** I will call you to talk about this one.

✓ 3. In the P2 draft, drunk driving is no longer an absolute bar to treatment. I don't think that this is what you intended. Should drunk driving be an absolute bar like a firearms offense? The bar would be for conviction in the same proceeding for an offense under s. 346.43, or for a finding that the person violated an ordinance that is in conformity with s. 346.43 in the same action that led to the drug possession conviction. **[Rossmiller, Dan]** The people who brought us the original proposal didn't want to mix the two. They wanted to deal specifically with drugs not drunk driving, even if drugs were involved. (It *may sound strange but that's what we were requested to do...*)

— 4. It is not currently a crime to possess 1,4 BD. Do you want me to add this drug to the controlled substances schedule and then exempt it from the probation and treatment provision because it is a date rape drug? If you do want me to add 1,4 BD, do you also want me to make the GHB fix in this draft? **[Rossmiller, Dan]** We could do that but I think it would be better to do that via amendment to AB 464.

5. The reason that the bill doesn't include education and vocational services in the definition of "drug treatment" is because any provider of "drug treatment" is required to be certified by DHFS and we didn't want to require that education providers be certified treatment providers. I can resolve the problems by:

- requiring that a judge order "drug treatment services" as a condition of probation,
- defining "drug treatment services" as drug treatment, drug education, vocational assistance, or any other service intended to address a person's drug dependence or drug use,
- keeping the definition of "drug treatment" as is, and
- still requiring that providers of "drug treatment" be certified providers. **[Rossmiller, Dan]** Sounds good.

**[Rossmiller, Dan]** Robin: I expect to be receiving some additional comments from Dan County treatment providers. I know that one of their concerns is that they don't want DOC doing the assessments. They want some separation between the agency paying for the assessments and the agency conducting the assessments. They also want a provision requiring DOC to contract with the counties in those counties where there are already programs to divert people into treatment rather than incarceration in existence. This makes sense since they have some ready-made experience and expertise in this area. When I get their e-mail I will forward their concerns to you.

Please call or e-mail with answers. I should be able to finish this up fairly quickly after these issues are resolved.  
Thanks

## Ryan, Robin

---

**From:** Ryan, Robin  
**Sent:** February 26, 2002 2:21 PM  
**To:** Rossmiller, Dan  
**Subject:** RE: LRB-4037/P2 - Recommendations

The bill already places some requirements on courts and DOC for selecting providers. (I think the court will generally select the assessor, but DOC will select the treatment provider unless the court designates a certain provider.) First, the provider of any assessment or of drug treatment must be an "approved treatment facility," (i.e. certified by DHFS). Second, the bill requires that if an offender is a Medicaid or Badger Care recipient that the court select an assessment provider that is a Medicaid certified provider and that DOC select a Medicaid certified treatment provider.

The third element is adding a requirement or preference for selecting a provider who is also a provider for the county.

What if the county provider is not a Medicaid certified provider (this may be unlikely)? Which requirement/preference has priority?

I am not sure how to "strongly encourage" DOC to select a certain provider except by requiring that DOC use that provider unless the provider is unavailable. Do you want such a requirement? Should the bill prohibit the courts and DOC from using their own employees to provide assessments or treatment?

I read a summary of the Dane County Drug Court Program. Dane county uses its AODA providers to provide services to persons in the drug court program. So I don't think I need to specifically address drug court programs. In other words, I think this is the same issue as above -- whether to require DOC to use county providers.

As far as I can tell "county providers" are a mix of county employees and private providers. If DOC is required to use county providers should DOC be required to subcontract with each county?

Please let me know if you have guidance on this -- maybe this will be easier to sort out over the phone than by e-mail. Thanks

-----Original Message-----

**From:** Rossmiller, Dan  
**Sent:** February 25, 2002 12:21 PM  
**To:** Ryan, Robin  
**Subject:** FW: LRB-4037/P2 - Recommendations

Robin:

Here are some recommendations I received from managers of the Dane County Drug Treatment Court Program, Treatment Alternatives Program (TAP), and County Substance Abuse Services Division:

1. Include language that would strongly encourage DOC to contract with counties for assessment and treatment services (quality services, local control).

2. Analysis by the Legislative Reference Bureau:

Insert as a new sentence P. 3, above first P, after the words, "drug dependence"> "To ensure clinical integrity, assessment staff should not be employees of either DOC or local courts."

Insert P. 3, first P. after the words, "facility that is certified by DHFS">

"Because there is a strong need to provide for accountability, not just treatment, in counties having Drug Courts and federally funded Treatment Alternatives Programs (T.A.P.), treatment must/should be coordinated through those programs."

\* P.3, first P "> Any treatment ordered must be provided by a treatment facility that is certified by DHFS (should include reference to Chapter HFS

75 - Community Substance Abuse Service Standards)."

\* P. 4, first P. > DOC must pay for those services that are not covered by

insurance or state health programs or paid by the recipient (clarify

"state

health programs" to protect county health and human services programs

from

coming under this payor definition)

Dan