

**2003 DRAFTING REQUEST**

**Bill**

Received: **11/11/2002**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Shari Lord**

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

Drafter: **rnelson2**

May Contact:

Addl. Drafters: **gmalaise  
rryan**

Subject: **Criminal Law - homicide  
Criminal Law - sentencing**

Extra Copies: **MGD**

Submit via email: **YES**

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

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Death penalty

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 11/18/2002 mdsida 11/20/2002			_____			State Crime
/P1	rnelson2	kgilfoy	pgreensl	_____			State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	11/26/2002 gmalaise 12/03/2002	12/02/2002	12/02/2002	_____			Crime
/P2	rnelson2 12/03/2002	kgilfoy 12/12/2002	jfrantze 12/12/2002	_____	mbarman 12/12/2002		State Crime
/1	rnelson2 01/03/2003	kgilfoy 01/03/2003	chaskett 01/03/2003	_____	sbasford 01/03/2003	sbasford 01/03/2003	

FE Sent For:

→ At  
Intro.

<END>

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Requester's email: Sen.Lasee@legis.state.wi.us ✓

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**Pre Topic:**

No specific pre topic given

**Topic:**

*12/18 Lasee wants all persons convicted*

Death penalty

*of 1st degree murder & a class AA felony  
to have DNA testing, but 163.67 already requires that.*

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>
1?	rryan 11/18/2002 mdsida 11/20/2002		gh 1 1/3	self 1/3
/P1	rnelson2	kgilfoy	pgreensl	

*1-1/3/03  
Kmg*

*Please jacket  
& send to Sen  
Lasee today 1/3.*



**STATE OF WISCONSIN  
LEGISLATIVE REFERENCE BUREAU**

Legal - Phone: 608/266-3561 Fax: 608/264-8522  
Research - Phone: 608/266-0341 Fax: 608/266-5648  
Website - www.legis.state.wi.us/lrb/

*Pub*

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Criminal Law - sentencing

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See Attached

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	mdsida 11/20/2002			_____			Crime
/P1	rnelson2	kgilfoy	pgreensl	_____			State

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	11/26/2002 gmalaise 12/03/2002	12/02/2002	12/02/2002 _____ _____ _____				Crime
/P2	rnelson2 12/03/2002	kgilfoy 12/12/2002	jfrantze 12/12/2002 _____ _____		mbarman 12/12/2002		State Crime
/1	rnelson2 01/03/2003	kgilfoy 01/03/2003	chaskett 01/03/2003 _____ _____		sbasford 01/03/2003	sbasford 01/03/2003	

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→ At  
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<END>

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rryan

Subject: Criminal Law - homicide  
Criminal Law - sentencing

Extra Copies: MGD

Submit via email: YES

Requester's email: Sen.Lasec@legis.state.wi.us ✓

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic: 12/18 Lasec  
Death penalty of 1st deg  
to 6th level

*Please jacket  
& send to Sen  
Lasec today 1/3*

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	T
/?	rryan 11/18/2002 mdsida 11/20/2002		T G 1 1/3
/P1	rnelson2 kgilfoy		pgreensl



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Website - www.legis.state.wi.us/lrb/

Crime

State

*1 - 1/3/03  
KMG*

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	11/26/2002 gmalaise 12/03/2002	12/02/2002	12/02/2002 _____ _____ _____				Crime
/P2	rnelson2 12/03/2002	kgilfoy 12/12/2002	jfrantze 12/12/2002 _____ _____		mbarman 12/12/2002		

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<END>





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FE Sent For:

		1/11-11/26 King	12/2 PS	1/2 <END> PS / CDH			
--	--	--------------------	------------	--------------------------	--	--	--

**Nelson, Robert P.**

---

**From:** Dsida, Michael  
**Sent:** Wednesday, November 20, 2002 10:36 AM  
**To:** Coakley, Allison  
**Cc:** Nelson, Robert P.  
**Subject:** RE: death penalty legislation

Bob Nelson will be working on your draft in Robin's absence, so I am forwarding your e-mail to him.

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
michael.dsida@state.legis.wi.us

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

**From:** Coakley, Allison  
**Sent:** Wednesday, November 20, 2002 10:25 AM  
**To:** Dsida, Michael  
**Subject:** death penalty legislation

Michael:

I don't know if this was automatically bumped over to you since Robin is on leave until February. Senator Lasee wants to add a provision to his death penalty bill to require DNA testing when applicable.

Thanks,

Allison/Sen. Lasee's office

---

**Ryan, Robin**

---

**From:** Lord, Shari  
**Sent:** November 11, 2002 11:00 AM  
**To:** Ryan, Robin  
**Subject:** death penalty bill

Robin:

Senator Lasee wants to redraft SB 1 from '96 (death penalty bill). Please include the amendment to give doctors immunity from liability.

Thanks,

Shari/Sen. Lasee's office

Sen. Lasee's office  
p/c 11/11/02

(1) Can use latest redraft of '95 SB-1  
(most recently introduced as 99-SB 153)  
I did draft for '01 session that was  
not introduced (01-3279/1)

(2) Change prior year versions so that  
jury makes recommendation on sentence  
If jury recommends death judge may  
agree or disagree  
If jury does not recommend death  
judge may not impose death penalty  
⇒ avoids difficulty that Ariz. faces  
and that FL may be facing

(3) Do include provisions for determining  
whether a person who is sentenced  
to death is mentally retarded

→ make sure draft incl. immunity for  
docs. - was added as an amendment  
to one of prior session drafts - maybe to  
'95 SB-1

1995 SB - 1      95-0207/1  
0270/1

01-3279/1 for A. Lasee -

01-2131/1 for Suder

01-2533/? for F. Lasee

99-0452 = 1999 S.B. 153

↓ Mike, I did  
put a mental  
retardation procedure  
in one of last  
year's death  
penalty bills -  
perhaps Suder's -  
that can be used  
in this bill

flsenate.gov

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## The 2002 Florida Statutes

[Title XLVII](#)  
CRIMINAL PROCEDURE AND CORRECTIONS

[Chapter 921](#)  
SENTENCE

[View Entire Chapter](#)

### **921.137 Imposition of the death sentence upon a mentally retarded defendant prohibited.--**

(1) As used in this section, the term "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Department of Children and Family Services. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Department of Children and Family Services shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

(2) A sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined in accordance with this section that the defendant has mental retardation.

(3) A defendant charged with a capital felony who intends to raise mental retardation as a bar to the death sentence must give notice of such intention in accordance with the rules of court governing notices of intent to offer expert testimony regarding mental health mitigation during the penalty phase of a capital trial.

(4) After a defendant who has given notice of his or her intention to raise mental retardation as a bar to the death sentence is convicted of a capital felony and an advisory jury has returned a recommended sentence of death, the defendant may file a motion to determine whether the defendant has mental retardation. Upon receipt of the motion, the court shall appoint two experts in the field of mental retardation who shall evaluate the defendant and report their findings to the court and all interested parties prior to the final sentencing hearing. Notwithstanding s. [921.141](#) or s. [921.142](#), the final sentencing hearing shall be held without a jury. At the final sentencing hearing, the court shall consider the findings of the court-appointed experts and consider the findings of any other expert which is offered by the state or the defense on the issue of whether the defendant has mental retardation. If the court finds, by clear and convincing evidence, that the defendant has mental retardation as defined in subsection (1), the court may not impose a sentence of death and shall enter a written order that sets forth with specificity the findings in support of the determination.

(5) If a defendant waives his or her right to a recommended sentence by an advisory jury following a plea of guilt or nolo contendere to a capital felony and adjudication of guilt by the court, or following a jury finding of guilt of a capital felony, upon acceptance of the waiver by the court, a defendant who has given notice as required in subsection (3) may file a motion for a determination of mental retardation. Upon granting the motion, the court shall proceed as provided in subsection (4).

(6) If, following a recommendation by an advisory jury that the defendant be sentenced to life imprisonment, the state intends to request the court to order that the defendant be sentenced to death, the state must inform the defendant of such request if the defendant has notified the court

of his or her intent to raise mental retardation as a bar to the death sentence. After receipt of the notice from the state, the defendant may file a motion requesting a determination by the court of whether the defendant has mental retardation. Upon granting the motion, the court shall proceed as provided in subsection (4).

(7) The state may appeal, pursuant to s. 924.07, a determination of mental retardation made under subsection (4).

(8) This section does not apply to a defendant who was sentenced to death prior to the effective date of this act.

**History.**--s. 1, ch. 2001-202.

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[Privacy Statement](#)

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

LRB-3279/ldn  
RLR:....pg

October 1, 2001

add to DN  
H Atkins v Virginia  
case

Senator Lasee:

This is a redraft of 1999 SB-153. There are a couple of recent developments in death penalty law that you may wish to consider incorporating into this bill.

1. The U.S. Supreme Court agreed to hear arguments in the case of Ernest McCarver regarding the question of whether execution of a mentally retarded person constitutes a violation of the Eighth Amendment prohibition against cruel and unusual punishment. The case arises from North Carolina. This month, North Carolina adopted legislation that prohibits executing mentally retarded persons, so the Supreme Court will likely drop McCarver's case from its schedule, because his case is now moot. However, the Supreme Court may accept a similar case from another state. The court's determination of whether a punishment constitutes cruel and unusual punishment is often based on an analysis of evolving standards of decency, measured primarily by legislative action of the states. In 1989, the U.S. Supreme Court held that execution of a mentally retarded person does *not* violate the Eighth Amendment, *Penry v. Lynaugh*, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989). At the time of the court's ruling in *Penry*, only two death penalty states, Georgia and Maryland, prohibited execution of mentally retarded persons. Now 18 of the 38 death penalty states, plus the U.S. government, prohibit the execution of mentally retarded persons. (However, one of those states, New York, does permit execution of a mentally retarded person for murder by a prisoner.) You may wish to monitor whether the Supreme Court's takes another case regarding execution of the mentally retarded and amend this bill if the court determines that execution of mentally retarded persons is unconstitutional.

2. The U.S. Supreme Court recently clarified a 1994 holding regarding jury instructions in cases in which the only alternative to a sentence of death is a sentence of life imprisonment without the possibility of parole. In *Simmons v. South Carolina*, the court held that if the future dangerousness of the defendant is at issue in sentencing, and if the only sentencing alternatives for a particular defendant are death or life imprisonment without the possibility of parole, then the trial court must either instruct the jury or permit defense counsel to inform the jury that, if the jury does not recommend death, the defendant will be imprisoned for life without the possibility of parole. *Simmons v. South Carolina*, 512 U.S. 154, 114 S.Ct. 2187, 129 L.Ed.2d 133 (1994). This year, the Supreme Court clarified that the prosecution need not actually



argue that the defendant will be a danger in the future in order for future dangerousness to be at issue in sentencing. *Shafer v. South Carolina*, \_\_ U.S. \_\_, 121 S.Ct. 1263, \_\_ L.Ed.2d. \_\_ (2001). The court did not specify what constitutes putting future dangerousness at issue, but did find in *Shafer* that the state put future dangerousness at issue when it presented evidence of an assault committed by the defendant after he was arrested for capital murder. The court further noted that South Carolina is one of only two states that has a life-without-parole sentencing alternative to capital punishment for some or all convicted murderers, but does not require that courts inform sentencing juries if a defendant is ineligible for parole. *Shafer* at 1271, n. 4.

This issue is relevant to Wisconsin because current law requires that courts impose a sentence of life without parole or extended supervision for certain persistent repeat offenders. Under the bill, a person who has been convicted of two serious felonies and is convicted of capital murder must be sentenced either to death or life imprisonment without the possibility of parole or extended supervision. I therefore added a provision, under s. 973.0145 (2) (b), stats., as created by this bill, that directs the sentencing court to inform the jury if the defendant is ineligible for release to extended supervision if either the defense or the state requests such instruction.

3. It appears that 1999 SB-153 has been redrafted over multiple sessions and that the original model for 1999 SB-153 was the Florida death penalty statute. The Florida statute has been upheld by the U.S. Supreme Court, so it is a workable model, but you may wish to consider alternative state models, either now or if you request a redraft of this bill in the future, for the following two reasons:

a. The Florida model is changed little since the mid-1970s and does not codify much federal jurisprudence on the death penalty. This simply means that courts will have to interpret the bill in accordance with decades of case law. You may, however, prefer a bill that is more complete. The more recently enacted death penalty statutes, such as the New York state statute and the federal statute, are more complete because they include more precise aggravating factors, provide more guidance on how to weigh aggravating versus mitigating factors, and provide more guidance regarding jury instructions. (I have not reviewed all of the state statutes so I do not know if other long-time death penalty states have updated their statutes.)

b. In 28 of the 38 states that have the death penalty, the jury makes the determination as to whether a person is sentenced to death, and generally the jury decision is effective only if it is unanimous or requires at least 10 out of 12 votes. Under the Florida statute and this bill, the jury's decision is only a recommendation to the judge and it need be reached only by a simple majority vote.

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



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 1/13/03 (Per RPM)



The drafting file for **2001 LRB** 3279 has been  
transferred to the drafting file for **2003 LRB** 0644

This cover sheet, the final request sheet, and the final version of the 2001 draft were copied on yellow paper, and returned to the original 2001 drafting file.

For research purposes, because the attached 2001 draft was incorporated into a new 2003 draft, this cover sheet and the complete drafting file was transferred, as a separate appendix, to the 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

---

The drafting file for **2003 LRB** \_\_\_\_\_ has been  
copied/added to the drafting file for **2003 LRB** \_\_\_\_\_

For research purposes, because the attached 2003 draft was incorporated into another 2003 draft, the attached drafting file was copied on yellow paper (marked/auto centered/reduced to 90%), and added, as a appendix to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

This cover sheet was copied on yellow paper and added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

*Done  
JMB*



State of Wisconsin  
200~~3~~ - 200~~4~~ LEGISLATURE

0644/p1  
LRB-321941  
RLR:kmg:pg  
↑

<sup>3</sup>  
~~2001~~ BILL

Preliminary - Not  
Ready for Introduction

LPS: Prof amended stats.  
W/Folio regen

Ⓟ NOTE

1 AN ACT *to renumber* 939.50 (1) (a) and 939.50 (3) (a); *to renumber and amend*  
2 940.01 (1) (b); *to amend* 301.048 (2) (am) 2., 302.11 (1), 302.114 (1), 302.114 (2),  
3 302.114 (3) (a) (intro.), 302.114 (3) (b), 302.114 (3) (c), 303.065 (1) (b), 304.02 (5),  
4 304.06 (1) (b), 304.671 (2), 939.30 (2), 939.31, 939.32 (1) (a), 939.50 (2), 939.60,  
5 939.62 (2m) (a) 2m. c., 939.62 (2m) (c), 939.624 (2), 939.625 (1) (b) 2., 939.63 (1)  
6 (a) 2., 939.632 (1) (e) 2., 940.01 (1) (a), 940.01 (2) (intro.), 948.35 (1) (b), 971.17  
7 (1), 972.03, 972.13 (6), 973.01 (3), 973.014 (1g) (a) (intro.), 973.032 (2) (b), 973.09  
8 (1) (c) and 978.07 (1) (c) 1.; and *to create* 301.046 (3) (cm), 302.11 (1w), 304.06  
9 (1t), 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1) (am), 940.01 (1) (b) 1.  
10 and 2., 961.335 (1m), 967.02 (1m), 973.0145, 973.016 and 973.017 of the  
11 statutes; relating to: providing a penalty of either death or life imprisonment

**BILL**

1 for first-degree intentional homicide, affecting eligibility for supervised  
2 release, and granting rule-making authority.

---

***Analysis by the Legislative Reference Bureau***

Under current law, no state crime is punishable by a sentence of death. First degree homicide (causing the death of another human being or an unborn child with the intent to kill that human being, unborn child, or another, except in the case of a legal abortion) is a Class A felony, punishable by life imprisonment. A court imposing a life sentence has the discretion to determine whether the defendant is eligible to petition for release on extended supervision after serving 20 years in prison or after some greater specified period, or whether the person is not eligible for release to extended supervision. (No person convicted for a crime committed on or after December 31, 1999, is eligible for parole under a sentence for that crime.)

This bill provides a penalty of either death or life imprisonment for certain first degree homicides. The death penalty is applicable to a first degree intentional homicide if the victim is under age 16 or is an unborn child, the offender is at least 16 years of age at the time of the offense, and the offender is convicted for directly committing the homicide as opposed to being convicted as a party to the crime.

If a person is convicted for a crime that is punishable by death, the trial court must convene a separate sentencing proceeding. The defendant has a right to a jury at the sentencing proceeding. Generally, the trial jury will serve at the sentencing proceeding. However, if there was no trial jury or if the trial jury cannot continue to serve, a new jury is selected.

At the sentencing proceeding, the prosecution and defense present evidence of aggravating and mitigating circumstances concerning the offense or the defendant. In order for a judge to sentence a person to death, the judge must find that at least one of the following six aggravating circumstances applies to the offense or defendant:

1. The defendant was on parole or extended supervision or was confined in prison when he or she committed the offense.
2. The offense was committed for the purpose of avoiding or preventing arrest or for the purpose of effecting an escape from custody.
3. The defendant knowingly created a great risk to many persons.
4. The offense was committed to disrupt or hinder the exercise of government or the enforcement of law.
5. The defendant intentionally caused the victim bodily harm or mental anguish before the victim died.
6. The defendant enjoyed or was utterly indifferent to the victim's suffering.

The judge and jury must consider and weigh the existence of the specified aggravating circumstances against the existence of any mitigating factors such as whether the defendant acted under extreme mental or emotional duress, the defendant's capacity to appreciate the criminality of his or her conduct, whether the

**BILL**

*insert act, p. 3*

defendant has a prior criminal history, whether the victim participated in the defendant's conduct or consented to the defendant's act, and the defendant's age.

The jury makes a recommendation to the judge by majority vote as to whether the defendant should be sentenced to death or be sentenced to imprisonment for life. The jury's recommendation is only advisory. If the judge does not find that one of the six aggravating circumstances applies, the judge must sentence the defendant to life imprisonment and make a determination as to whether and when the defendant is eligible to petition for release to extended supervision. If the judge does find that an aggravating circumstance applies, the judge must weigh the aggravating and mitigating circumstances and sentence the person either to death or to life imprisonment. If the judge imposes a death sentence, the judge must specify on the record his or her findings with regard to the existence of aggravating and mitigating circumstances. Any death sentence is subject to automatic appellate review by the supreme court.

The court that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner and at least 12 witnesses. The execution is by lethal injection. A death sentence may be stayed only by the governor or an appellate court.

This bill applies only to those offenses committed on or after ~~its~~ <sup>the</sup> effective date <sup>of the bill.</sup>

~~the day after publication.~~  
For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*"CRIME" component ← Add Insert*

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

- 1 ✓ SECTION 1. 301.046 (3) (cm) of the statutes is created to read:
- 2 301.046 (3) (cm) The prisoner is not awaiting imposition of a death sentence.
- 3 ✓ SECTION 2. 301.048 (2) (am) 2. of the statutes is amended to read:
- 4 301.048 (2) (am) 2. He or she is a prisoner serving a ~~felony~~ sentence for a felony
- 5 that is not punishable by death or life imprisonment and the department directs him
- 6 or her to participate in the program. This subdivision does not apply to a prisoner
- 7 serving a bifurcated sentence imposed under s. 973.01.
- 8 ✓ SECTION 3. 302.11 (1) of the statutes is amended to read:
- 9 302.11 (1) The warden or superintendent shall keep a record of the conduct of
- 10 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),

## BILL

1 (1m), (1q), (1w), (1z), (7), and (10), each inmate is entitled to mandatory release on  
2 parole by the department. The mandatory release date is established at two-thirds  
3 of the sentence. Any calculations under this subsection or sub. (1q) (b) or (2) (b)  
4 resulting in fractions of a day shall be rounded in the inmate's favor to a whole day.

5 ✓ SECTION 4. 302.11 (1w) of the statutes is created to read:

6 302.11 (1w) An inmate serving a sentence of life imprisonment imposed under  
7 s. 973.0145 <sup>4</sup>(~~3~~) (c) or awaiting imposition of a death sentence is not entitled to  
8 mandatory release on parole under this section.

9 ✓ SECTION 5. 302.114 (1) of the statutes is amended to read:

10 302.114 (1) An inmate is subject to this section if he or she is serving a life  
11 sentence imposed under s. 973.014 (1g) (a) 1. or 2. or <sup>4</sup>973.0145 <sup>4</sup>(~~3~~) (c) 1. or 2. An  
12 inmate serving a life sentence under s. 939.62 (2m) or, 973.014 (1g) (a) 3., or 973.0145  
13 <sup>4</sup>(~~3~~) (c) 3. is not eligible for release to extended supervision under this section.

14 ✓ SECTION 6. 302.114 (2) of the statutes is amended to read:

15 302.114 (2) Except as provided in subs. (3) and (9), an inmate subject to this  
16 section may petition the sentencing court for release to extended supervision after  
17 he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a)  
18 1. or <sup>4</sup>973.0145 <sup>4</sup>(~~3~~) (c) 1., or after he or she has reached the extended supervision  
19 eligibility date set by the court, if the inmate was sentenced under s. 973.014 (1g) (a)  
20 2. or <sup>4</sup>973.0145 <sup>4</sup>(~~3~~) (c) 2.

21 ✓ SECTION 7. 302.114 (3) (a) (intro.) of the statutes is amended to read:

22 302.114 (3) (a) (intro.) The warden or superintendent shall keep a record of the  
23 conduct of each inmate subject to this section, specifying each infraction of the rules.  
24 If any inmate subject to this section violates any regulation of the prison or refuses  
25 or neglects to perform required or assigned duties, the department may extend the

**BILL**

1 extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2. or 973.0145  
2 ~~(b)~~ (c) 1. or 2., whichever is applicable, as follows:

3 ✓ SECTION 8. 302.114 (3) (b) of the statutes is amended to read:

4 302.114 (3) (b) In addition to the sanctions under par. (a), if an inmate subject  
5 to this section is placed in adjustment, program, or controlled segregation status, the  
6 department may extend the extended supervision eligibility date set under s.  
7 973.014 (1g) (a) 1. or 2. or 973.0145 ~~(b)~~ (c) 1. or 2., whichever is applicable, by a  
8 number of days equal to 50% of the number of days spent in segregation status. In  
9 administering this paragraph, the department shall use the definition of  
10 adjustment, program, or controlled segregation status under departmental rules in  
11 effect at the time that an inmate is placed in that status.

12 ✓ SECTION 9. 302.114 (3) (c) of the statutes is amended to read:

13 302.114 (3) (c) An inmate subject to this section who files an action or special  
14 proceeding, including a petition for a common law writ of certiorari, to which s.  
15 807.15 applies shall have his or her extended supervision eligibility date set under  
16 s. 973.014 (1g) (a) 1. or 2. or 973.0145 ~~(b)~~ (c) 1. or 2., whichever is applicable, extended  
17 by the number of days specified in the court order prepared under s. 807.15 (3). Upon  
18 receiving a court order issued under s. 807.15, the department shall recalculate the  
19 date on which the inmate to whom the order applies will be entitled to petition for  
20 release to extended supervision and shall inform the inmate of that date.

21 SECTION 10. 303.065 (1) (b) of the statutes is amended to read:

22 303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence  
23 specified in subd. 2., may be considered for work release only after he or she has  
24 reached parole eligibility under s. 304.06 (1) (b) or 973.014 (1) (a) or (b), whichever  
25 is applicable, or he or she has reached his or her extended supervision eligibility date

~~BILL~~ *strike*

*ext 6 -*  
*(a) → (am)*

1 under s. 302.114 (9) ~~(a)~~ <sup>(a)</sup> or, 973.014 (1g) (a) 1. or 2., or 973.0145 ~~(b)~~ <sup>(c)</sup> 1. or 2.,  
2 whichever is applicable.

3 2. A person serving a life sentence under s. 939.62 (2m) (c) or, 973.014 (1) (c)  
4 or (1g) (a) 3., or 973.0145 ~~(b)~~ <sup>(c)</sup> 3., or awaiting imposition of a death sentence, may  
5 not be considered for work release.

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

7 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life  
8 sentence under s. 939.62 (2m) (c) or, 973.014 (1) (c) or (1g), or 973.0145 ~~(b)~~ <sup>(c)</sup>, or who  
9 is awaiting imposition of a death sentence, is not eligible for release to parole  
10 supervision under this section.

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

12 304.06 (1) (b) Except as provided in sub. (1m) or (1t) or s. 302.045 (3), ~~901.12~~

13 ~~(2)~~ 973.01 (6), or 973.0135, the parole commission may parole an inmate of the  
14 Wisconsin state prisons or any felon or any person serving at least one year or more  
15 in a county house of correction or a county reforestation camp organized under s.  
16 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6  
17 months, whichever is greater. Except as provided in s. 939.62 (2m) (c) or 973.014 (1)  
18 (b) or (c), (1g), or (2), the parole commission may parole an inmate serving a life term  
19 when he or she has served 20 years, as modified by the formula under s. 302.11 (1)  
20 and subject to extension under s. 302.11 (1q) and (2), if applicable. The person  
21 serving the life term shall be given credit for time served prior to sentencing under  
22 s. 973.155, including good time under s. 973.155 (4). The secretary may grant special  
23 action parole releases under s. 304.02. The department or the parole commission  
24 shall not provide any convicted offender or other person sentenced to the

*as affected by 2001 Wisconsin Act 109*  
*s. 961.49(2), 1999 stats.*



**BILL**

1 department's custody any parole eligibility or evaluation until the person has been  
2 confined at least 60 days following sentencing.

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

4 304.06 (1t) The parole commission may not parole an inmate who is sentenced  
5 to life imprisonment or death under s. 973.0145.

6 *as affected by 2001 Wisconsin Act 109,*  
7 SECTION 14. 304.071 (2) of the statutes is amended to read:  
8 *s. 901.49(2), 1999 stats. or*

9 304.071 (2) If a prisoner is ~~not eligible~~ ineligible for parole under s. 304.06 (1t),  
10 939.62 (2m) (c), ~~973.01 (6), 973.014 (1) (c) or (1g), or 973.032 (5),~~ he or she  
11 is not eligible for parole under this section.

12 ✓ SECTION 15. 939.22 (7) of the statutes is created to read:

13 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for  
14 which one or more of the possible penalties is death or life imprisonment.

15 *insert 7-12* → SECTION 16. 939.30 (2) *as affected by 2001 Wisconsin Act 109,*  
16 of the statutes is amended to read:

17 939.30 (2) For a solicitation to commit a crime ~~for which the penalty is that is~~  
18 punishable by death or life imprisonment, the actor is guilty of a Class ~~B~~ <sup>F</sup> felony. For  
19 a solicitation to commit a Class ~~B~~ <sup>F</sup> felony, the actor is guilty of a Class ~~B~~ <sup>F</sup> felony.

20 ✓ SECTION 17. 939.31 of the statutes is amended to read:

21 939.31 Conspiracy. Except as provided in ss. 940.43 (4), 940.45 (4), and  
22 961.41 (1x), whoever, with intent that a crime be committed, agrees or combines with  
23 another for the purpose of committing that crime may, if one or more of the parties  
24 to the conspiracy ~~does~~ do an act to effect its object, be fined or imprisoned or both not  
25 to exceed the maximum provided for the completed crime; except that for a  
conspiracy to commit a crime ~~for which the penalty is that is punishable by death or~~  
life imprisonment, the actor is guilty of a Class B felony.

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

**BILL**

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

3 ✓ SECTION 19. 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

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

5 939.50 (1) (ag) Class AA felony.

6 ✓ SECTION 21. 939.50 (2) of the statutes is amended to read:  
*as affected by 2001 Wisconsin Act 109,*

7 939.50 (2) A felony is a Class AA, A, B, C, D, or E felony when it is so  
8 specified in ~~ch. 939.50~~ the statutes. *F, G, H, or I*  
*plain*

9 ✓ SECTION 22. 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

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

11 939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined  
12 under s. 973.0145.

13 ✓ SECTION 24. 939.60 of the statutes is amended to read:

14 **939.60 Felony and misdemeanor defined.** A crime that is punishable by  
15 death or imprisonment in the Wisconsin state prisons is a felony. Every other crime  
16 is a misdemeanor.

17 ✓ SECTION 25. 939.62 (2m) (a) 2m. c. of the statutes is amended to read:

18 939.62 (2m) (a) 2m. c. The solicitation, conspiracy, or attempt, under s. 939.30,  
19 939.31, or 939.32, to commit a Class AA felony or a Class A felony.

20 ✓ SECTION 26. 939.62 (2m) (c) of the statutes is amended to read:

21 939.62 (2m) (c) If the actor is a persistent repeater and the actor is not  
22 sentenced to death under s. 973.0145, the term of imprisonment for the felony for  
23 which the persistent repeater presently is being sentenced under ch. 973 is life  
24 imprisonment without the possibility of parole or extended supervision.

25 ✓ SECTION 27. 939.624 (2) of the statutes is amended to read:

**BILL**

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

Insert 6  
9-67

6 SECTION 28. 939.625 (1) (b) 2. of the statutes is amended to read:  
 8 939.625 (1) (b) 2. If the maximum term of imprisonment for a felony is more  
 9 than 5 years or is a life term or the felony is punishable by death, the maximum term  
 10 of imprisonment for the felony may be increased by not more than 5 years.

11 ✓ SECTION 29. 939.63 (1) <sup>(b)</sup> ~~(a)~~ of the statutes <sup>as affected by 2001 Wisconsin Act 109,</sup> is amended to read:

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

15 ✓ SECTION 30. 939.632 (1) (e) 2. of the statutes is amended to read:  
 16 939.632 (1) (e) 2. The solicitation, conspiracy, or attempt, under s. 939.30,  
 17 939.31, or 939.32, to commit a Class AA felony or a Class A felony.

18 ✓ SECTION 31. 940.01 (1) (a) of the statutes is amended to read:  
 19 940.01 (1) (a) Except as provided in sub. (2) <sup>(am)</sup> ~~par. (am)~~, whoever causes the death  
 20 of another human being with intent to kill that person or another is guilty of a Class  
 21 A felony.

22 ✓ SECTION 32. 940.01 (1) (am) of the statutes is created to read:  
 23 940.01 (1) (am) Whoever causes the death of another human being with intent  
 24 to kill that person or another is guilty of a Class AA felony if the victim has not  
 25 attained the age of 16 years, unless any of the following applies:

**BILL**

- 1 1. The actor is less than 16 years of age when he or she commits the offense.
- 2 2. Notwithstanding s. 939.05, the actor is not guilty of a Class AA felony as a
- 3 party to a crime if the actor did not intend that a person be killed.

4 ✓ SECTION 33. 940.01 (1) (b) of the statutes is renumbered 940.01 (1) (b) (intro.)  
5 and amended to read:

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

10 ✓ SECTION 34. 940.01 (1) (b) 1. and 2. of the statutes are created to read:

11 940.01 (1) (b) 1. If the actor is less than 16 years of age when he or she commits  
12 the offense, the actor is guilty of a Class A felony.

13 2. If the actor is a party to the offense as provided under s. 939.05 and did not  
14 intend that an unborn child, the woman who was pregnant with that unborn child,  
15 or another be killed, the actor is guilty of a Class A felony.

16 ✓ SECTION 35. 940.01 (2) (intro.) of the statutes is amended to read:

17 940.01 (2) MITIGATING CIRCUMSTANCES. (intro.) The Notwithstanding sub. (1),  
18 the following are affirmative defenses to prosecution under this section which that  
19 mitigate the offense offenses under sub. (1) to 2nd-degree intentional homicide  
20 under s. 940.05:

21 SECTION 36. 948.35 (1) (b) of the statutes is amended to read:

22 948.35 (1) (b) ~~For a solicitation to commit a Class AA felony or a Class A felony~~  
23 ~~under the circumstances described under par. (a), the person may be imprisoned not~~  
24 ~~to exceed the maximum period of imprisonment for a Class B felony.~~

25 ✓ SECTION 37. 961.335 (1m) of the statutes is created to read:

**BILL**

973.0165 ✓

1           961.335 (1m) Notwithstanding sub. (1), upon the application of the secretary  
2 of corrections for a permit to obtain a controlled substance for purposes of an  
3 execution under s. ~~970.017~~, the controlled substances board shall issue a permit  
4 under this section.

5           ✓ SECTION 38. 967.02 (1m) of the statutes is created to read:

6           967.02 (1m) "Crime punishable by death or life imprisonment" has the  
7 meaning given in s. 939.22 (7). ✓

8           SECTION 39. 971.17 (1) of the statutes is amended to read:

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

✓  
Insert  
11-19  
→

20           ✓ SECTION 40. 972.03 of the statutes is amended to read:

21           972.03 Peremptory challenges. Each side is entitled to only 4 peremptory  
22 challenges except as otherwise provided in this section. When the crime charged is  
23 punishable by death or life imprisonment, the state is entitled to 6 peremptory  
24 challenges and the defendant is entitled to 6 peremptory challenges. If there is more  
25 than one defendant, the court shall divide the challenges as equally as practicable

**BILL**

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

13 ✓ SECTION 41. 972.13 (6) of the statutes is amended to read:

14 972.13 (6) The following forms may be used for judgments:

15 STATE OF WISCONSIN

16 .... County

17 In.... Court

18 The State of Wisconsin

19 vs.

20 ....(Name of defendant)

21 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

22 IT IS ADJUDGED That the defendant has been convicted upon the defendant's  
 23 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)  
 24 (no contest) on the.... day of...., .... (year), of the crime of.... in violation of s.....; and  
 25 the court having asked the defendant whether the defendant has anything to state

**BILL**

1 why sentence should not be pronounced, and no sufficient grounds to the contrary  
2 being shown or appearing to the court.

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

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

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

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

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

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

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

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

20 \*IT IS ADJUDGED That the defendant pay restitution to....

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

23 \*The.... at.... is designated as the Reception Center to which the defendant shall  
24 be delivered by the sheriff.

**BILL**

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

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

4 BY THE COURT....

5 Date of Offense....,

6 District Attorney....,

7 Defense Attorney....

8 \*Strike inapplicable paragraphs.

9 STATE OF WISCONSIN

10 .... County

11 In.... Court

12 The State of Wisconsin

13 vs.

14 ....(Name of defendant)

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

17 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

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

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

21 BY THE COURT....

22 ✓ SECTION 42. 973.01 (3) of the statutes is amended to read:

23 973.01 (3) NOT APPLICABLE TO LIFE SENTENCES. If a person is being sentenced for  
24 a felony that is punishable by life imprisonment or by death, he or she is not subject



**BILL**

1 to this section but shall be sentenced under s. 973.014 (1g) or 973.0145, whichever  
2 is applicable.

3 ✓ SECTION 43. 973.014 (1g) (a) (intro.) of the statutes is amended to read:

4 973.014 (1g) (a) (intro.) Except as provided in sub. (2) or s. 973.0145 (2) (c),  
5 when a court sentences a person to life imprisonment for a crime committed on or  
6 after December 31, 1999, the court shall make an extended supervision eligibility  
7 date determination regarding the person and choose one of the following options:

8 ✓ SECTION 44. 973.0145 of the statutes is created to read:

9 **973.0145 Sentence of death or life imprisonment for Class AA felony.**

10 (1) (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct  
11 a separate sentencing proceeding to determine whether the defendant should be  
12 sentenced to death or life imprisonment. <sup>(insert 15-12)</sup> The trial judge shall conduct the <sup>sentencing</sup> proceeding  
13 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury  
14 is unable to reconvene for a hearing on the issue of penalty, the trial judge may  
15 summon a new jury to determine the issue of the imposition of the penalty. If the trial  
16 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the  
17 sentencing proceeding before a jury summoned for that purpose unless the  
18 defendant waives the right to a jury.

19 <sup>(c)</sup> In the <sup>sentencing</sup> proceeding, the court shall admit any evidence that may be relevant  
20 to the sentence regarding any mitigating circumstance. The court shall admit any  
21 other evidence according to the rules of evidence applicable at a criminal trial. The  
22 court shall provide the defendant with a fair opportunity to rebut any hearsay  
23 statements. This paragraph does not authorize the introduction of any evidence  
24 secured in violation of the state or federal constitution. The state has the burden of  
25 proof, beyond a reasonable doubt, regarding the existence of aggravating

**BILL**

1 circumstances. The defendant has the burden of proof, by a preponderance of the  
2 evidence, regarding mitigating circumstances. The court shall permit the state and  
3 the defendant or his or her counsel to present arguments for or against a sentence  
4 of death.

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

- 9 1. The existence of aggravating circumstances under sub. (5). *6 7*
- 10 2. The existence of mitigating circumstances under sub. (6).

11 (b) Upon the request of the defendant or the state, the court shall explain to the  
12 jury the court's options under sub. (3) (c) to sentence the defendant to life without the  
13 possibility of extended supervision or with delayed eligibility for extended  
14 supervision. If the defendant is not eligible for release to extended supervision, the  
15 court shall also, upon request of the defendant or the state, explain to the jury the  
16 defendant's ineligibility for extended supervision.

17 (c) If the jury recommends life imprisonment, it may further recommend  
18 restrictions on the defendant's eligibility for extended supervision or recommend  
19 that the defendant not be eligible for extended supervision.

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

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

*if it's made no determination under sub. (3) that the defendant has mental retardation and*

## BILL

1 2. That there are insufficient mitigating circumstances under sub. (6)<sup>7</sup> to  
2 outweigh the aggravating circumstances.

3 (b) In each case in which the court imposes the death sentence, the court must  
4 support its determination by specific written findings of fact based upon the  
5 circumstances in subs. (5)<sup>6</sup> and (6)<sup>7</sup> and upon the records of the trial and the sentencing  
6 proceedings.

7 (c) If the court does not make the findings required under par. (b) for a death  
8 sentence, *or if there is a finding under sub. (3) that the* *defendant has mental*  
9 extended supervision eligibility determination regarding the person and adopt one  
10 of the following options:

11 1. The person is eligible for release to extended supervision after serving 20  
12 years.

13 2. The person is eligible for release to extended supervision on a date set by the  
14 court. Under this subdivision, the court may set any later date than that provided  
15 in subd. 1., but may not set a date that occurs before the earliest possible date under  
16 subd. 1.

17 3. The person is not eligible for release to extended supervision.

18 (d) When imposing a sentence of life imprisonment in accordance with par. (c)  
19 1. or 2., the court shall inform the person of the provisions of s. 302.114 (3) and the  
20 procedure for petitioning under s. 302.114 (5) for release to extended supervision.

21 (4)<sup>5</sup> If a death sentence is imposed, the judgment of conviction and sentence of  
22 death is subject to automatic review by the supreme court within 60 days after  
23 certification by the sentencing court of the entire record, unless the supreme court,  
24 for good cause shown, extends the time for an additional period not to exceed 30 days.

**BILL**

1 The review by the supreme court has priority over all other cases and shall be heard  
2 in accordance with rules promulgated by the supreme court.

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

5 (a) The defendant was on parole or extended supervision under a sentence for  
6 a felony or was confined in prison when he or she committed the Class AA felony.

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

9 (c) The defendant knowingly created a great risk to many persons.

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

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

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

16 (7) The court and jury shall consider as a mitigating factor any aspect of the  
17 defendant's character, background, or record or any of the circumstances of the  
18 offense that the defendant offers as a basis for a sentence other than death.

19 Mitigating circumstances may include, but are not limited to, any of the following:

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

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

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

**BILL**

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

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

6 (f) The age of the defendant at the time of the crime affected his or her  
7 judgment.

8 (g) The victim was a participant in the defendant's conduct or consented to the  
9 act.

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

13 <sup>9</sup>  
(8) The execution of a death sentence shall be by lethal injection.

14 ✓ SECTION 45. 973.016 of the statutes is created to read:

15 973.016 Stay of execution of death sentence. The execution of a death  
16 sentence may be stayed only by the governor or incident to an appeal.

17 ~~SECTION 46. 973.017~~<sup>65</sup> of the statutes is created to read:

18 ~~973.017~~<sup>65</sup> Execution of death sentence. The secretary of corrections shall  
19 designate the executioner who shall provide a person subject to a death sentence with  
20 an intravenous injection of one or more substances in a lethal quantity. A person is  
21 immune from civil or criminal liability for his or her acts or omissions, in good faith,  
22 in regard to a lawful execution under this section. The secretary may not direct a  
23 physician to be present or require a physician to announce when death has occurred.  
24 A physician may certify the death after a person, other than a physician, has  
25 determined or pronounced death. The secretary shall designate 12 citizens to

**BILL**

1 witness the execution. The convicted person may request that certain additional  
2 people be allowed to witness the execution. The secretary shall grant any such  
3 reasonable request. The secretary may allow representatives of the news media to  
4 witness the execution under rules of the department. No other persons may be  
5 allowed to witness the execution.

6 ✓ **SECTION 47.** 973.032 (2) (b) of the statutes is amended to read:

7 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person  
8 under sub. (1) if he or she is convicted of a felony punishable by death or life  
9 imprisonment or has at any time been convicted, adjudicated delinquent, or found  
10 not guilty or not responsible by reason of insanity or mental disease, defect, or illness  
11 for committing a violent offense, as defined in s. 301.048 (2) (bm).

12 ✓ **SECTION 48.** 973.09 (1) (c) of the statutes is amended to read:

13 973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable  
14 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

15 ✓ **SECTION 49.** 978.07 (1) (c) 1. of the statutes is amended to read:

16 978.07 (1) (c) 1. Any case record of a felony punishable by death or life  
17 imprisonment or a related case, after the defendant's parole eligibility date under s.  
18 304.06 (1) or 973.014 (1) or date of eligibility for release to extended supervision  
19 under s. 973.014 (1g) (a) 1. or 2. ~~or 973.0145 (3) (c) 1. or 2.~~ <sup>4</sup> or 973.0145 (3) (c) 1. or 2., whichever is applicable,  
20 or 50 years after the commencement of the action, whichever occurs later. If there  
21 is no parole eligibility date or no date for release to extended supervision, the district  
22 attorney may destroy the case record after the defendant's death.

23 **SECTION 50. Initial applicability.**

**BILL**

*February 1, 2003 or on*

- ①
- ②
- 3

(1) This act first applies to offenses committed on the effective date of this subsection, *whichever is later*

(END)

*A SEC. #. Effective date:*

*# (1) This act takes effect on February 1, 2003, or on the day after publication, whichever is later.*

SECTION #

(Insert 9-12) ✓

CR; 939.22 (19m)

939.22 (19m) - ③

HFS 73.07(1)(b)



"Mental retardation" means significant subaverage general intellectual functioning usually defined as an intelligence quotient level of 70 or below accompanied by significant deficits or impairments in adaptive functioning with onset before the age of 18.

Handwritten scribble or signature



2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0644/P1ins  
RPN&RLR:.....

1

insert anl, p. 3:

~~NOT~~ If the defendant intends to raise the bar to execution of mental retardation, based on the U.S. Supreme Court decision in Atkins v. Virginia, he or she makes a motion to the court after the jury has made its recommendation. The court appoints two experts in mental illness who evaluate the defendant. The court then holds a hearing to determine if the defendant has mental retardation. At the hearing the defendant and <sup>the</sup> state may provide expert testimony as to the defendant's mental retardation. If the judge determines, by clear and convincing evidence, that the defendant has mental retardation, the judge may not impose a death sentence.

~~NOT~~ If the judge ~~does~~ determines that the defendant does not have mental retardation, the judge must review the aggravating and mitigating circumstances.

2

3

insert crime component:

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

4

5

6

insert 9-6:

*, as affected by 2001 Wisconsin Act 109,*  
SECTION 1. 939.624 (2) of the statutes is amended to read:

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939.624 (2) If a person has one or more prior convictions for a serious violent crime or a crime punishable by death or life imprisonment and subsequently commits a serious violent crime, the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of a bifurcated sentence imposed under this subsection may not be less than 3 years and 6 months, but otherwise the penalties for the crime apply, subject to any applicable penalty enhancement. The court may not place the defendant on probation.

NOTE: NOTE: Sub. (2) is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:NOTE:

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

History: 1993 a. 97; 2001 a. 109.

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death 02

insert 11-19:

SECTION 2. 971.17 (1) (c) of the statutes is amended to read:

971.17 (1) (c) *Felonies punishable by life imprisonment.* If a defendant is found not guilty by reason of mental disease or mental defect of a felony that is punishable by death or life imprisonment, the commitment period specified by the court may be life, subject to termination under sub. (5).

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109.

insert 15-12:

No 9 A defendant charged with a Class AA felony who intends to raise mental retardation as a bar to his or her death sentence shall give notice of that intention upon his or her conviction of a Class AA felony.

insert 16-19:

(3) After the defendant waives the right to a jury under sub. (2) (a), or after the jury renders its advisory opinion regarding a sentence of life imprisonment or death, a defendant who has given notice of the intention to raise mental retardation as a bar to his or her death sentence may file a motion to determine whether he or she is mentally retarded. Upon receipt of the motion, the court shall appoint two experts in the field of mental illness who shall evaluate the defendant and report their findings to the court. The court shall hold a hearing to consider the findings of the court-appointed experts and to consider the findings of any other expert that is offered by the state or the defense on the issue of whether the defendant has mental retardation. If the court finds, by clear and convincing evidence, that the defendant has mental

1 retardation, the court may not impose a sentence of death and shall enter a written  
2 order that sets forth with specificity the findings in support of the determination.

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

LRB-0644/P1dn

RPN&RLR:j:...

img

2001  
Please review this draft carefully to ensure that it is consistent with your intent.

This draft is based on LRB-3279, prepared for your office in the last session.

The U.S. Supreme Court, in *Atkins v. Virginia*, docket number 00-8452, decided June 20, 2002, held that it is cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution to ~~execution~~ execute persons who have mental retardation. The language in this draft barring the imposition of the death penalty on a person who has mental retardation is based on a Florida statute, section 921.137. The definition of mental retardation is taken from the Wisconsin Administrative Code, section HFS 73.07 (1) (b).

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→ RLR