



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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

Date Added To File: 01/13/2003 (Per: RPN)



☞ 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.

☞ The attached 2001 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the complete drafting file were 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.

**2001 DRAFTING REQUEST**

**Bill**

Received: **05/10/2001**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Shari**

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

Drafter: **rryan**

May Contact:

Addl. Drafters:

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

Extra Copies: **MGD**

Submit via email: **NO**

**Pre Topic:**

No specific pre topic given

**Topic:**

Permit the death penalty for first-degree intentional homicide of a child

**Instructions:**

Redraft 1999 SB-153

**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>
/?	mdsida 07/17/2001						State
/1	rryan 08/22/2001	gilfokm 09/28/2001	pgreensl 10/01/2001		lrb_docadmin 10/01/2001		

FE Sent For:

<END>

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

Extra Copies: **Mr MGD**

Submit via email: **NO**

Requester's email:

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*Permit the death penalty for*  
Penalty for first-degree intentional homicide of a child

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**Instructions:**

Redraft 1999 SB-153

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1?	mdsida	<i>1-9/28 King</i>	<i>10/28 PS</i>	<i>10/1 PS JK</i>			

FE Sent For:

<END>

## 1999 SENATE BILL 153

May 13, 1999 - Introduced by Senators A. LASEE, DRZEWIECKI, FITZGERALD and ZIEN, cosponsored by Representatives F. LASEE, MUSSER, HANDRICK, GUNDERSON, AINSWORTH, HOVEN, HUNDERTMARK, KREIBICH and KAUFERT. Referred to Committee on Judiciary and Consumer Affairs.

1     **AN ACT** *to renumber* 939.50 (1) (a), 939.50 (3) (a) and 973.015; *to renumber and*  
2           *amend* 940.01 (1) (a) and 940.01 (1) (b); *to amend* 301.048 (2) (b), 302.11 (1m),  
3           302.114 (1), 302.114 (2), 302.114 (3) (a) (intro.), 302.114 (3) (b), 302.114 (3) (c),  
4           303.065 (1) (b), 304.02 (5), 304.06 (1) (b), 304.071 (2), 939.30 (2), 939.31, 939.32  
5           (1) (a), 939.50 (2), 939.60, 939.624 (2), 939.625 (1) (b) 2., 939.63 (1) (a) 2., 961.335  
6           (1), 971.17 (1), 972.03, 972.13 (6), 973.013 (1) (b), 973.0135 (3), 973.032 (2) (b),  
7           973.09 (1) (c) and 978.07 (1) (c) 1.; and *to create* 301.046 (3) (cm), 303.065 (1)  
8           (b) 3., 304.06 (1t), 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1) (a) 2., 3.  
9           and 4., 940.01 (1) (b) 2. and 3., 961.335 (1m), 967.02 (1m), 973.01 (3d), 973.015,  
10          973.016 and 973.017 of the statutes; **relating to:** providing a penalty of either  
11          death or life imprisonment for the first-degree intentional homicide of a child

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1 younger than 16 years old, affecting parole and extended supervision eligibility  
2 and granting rule-making authority.

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

Under current law, no state crime is punishable by the death penalty. This bill provides for either a death penalty (by lethal injection) or life imprisonment (with or without parole eligibility restrictions) for any first-degree intentional homicide committed by a person who is 16 years old or older against a child who is younger than 16 years old. Other first-degree homicides remain punishable by life imprisonment.

The procedure for determining whether or not the death penalty would be imposed is the subject of a proceeding that is separate from the regular trial. After a conviction finding that a first-degree homicide of a child younger than 16 years old had occurred, the court reconvenes the trial jury, or, if there was no jury trial or the trial jury is unable to continue, a new jury is summoned. The defendant may waive the right to a jury. Evidence is then presented regarding various aggravating or mitigating circumstances relating to the crime and the defendant.

The jury hears the evidence and then gives an advisory sentence to the court of either life imprisonment or death. If the jury recommends life imprisonment, it may further recommend a complete or substantial restriction of the defendant's parole or extended supervision eligibility. The court, not bound by the advisory sentence, then weighs the aggravating and mitigating circumstances and enters the sentence of either life imprisonment or death. If life imprisonment is imposed, the court may completely or substantially restrict the defendant's parole or extended supervision eligibility. If the court chooses the death sentence it must set forth its findings in writing. 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. Twelve citizen witnesses must be present at the execution.

This bill applies only to those offenses committed on or after its effective date (the day after publication).

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

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

- 3 ✓ SECTION 1. 301.046 (3) (cm) of the statutes is created to read:  
4 301.046 (3) (cm) The prisoner is not awaiting imposition of a death sentence.  
5 — SECTION 2. 301.048 (2) (b) of the statutes is amended to read:

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1           301.048 (2) (b) He or she is a prisoner serving a ~~felony~~ sentence for a felony not  
2 punishable by death or life imprisonment and the department directs him or her to  
3 participate in the program. This paragraph does not apply to a prisoner serving a  
4 bifurcated sentence imposed under s. 973.01.

5           **SECTION 3.** 302.11 (1m) of the statutes is amended to read:

6           302.11 (1m) An inmate serving a life term is not entitled to mandatory release.  
7 Except as provided in ss. 304.06 (1t), 939.62 (2m) (c) and 973.014, the parole  
8 commission may parole the inmate as specified in s. 304.06 (1). An inmate awaiting  
9 imposition of a death sentence is not eligible for parole.

10          ✓ **SECTION 4.** 302.114 (1) of the statutes is amended to read:

11           302.114 (1) An inmate is subject to this section if he or she is serving a life  
12 sentence imposed under s. 973.014 (1g) (a) 1. or 2. or if he or she is serving a life  
13 sentence imposed under s. 973.015 and the sentencing court has authorized release  
14 to extended supervision under s. 973.015 (3) (c). An inmate serving a life sentence  
15 under s. 939.62 (2m) or 973.014 (1g) (a) 3. is not eligible for release to extended  
16 supervision under this section.

17          ✓ **SECTION 5.** 302.114 (2) of the statutes is amended to read:

18           302.114 (2) Except as provided in subs. (3) and (9), an inmate subject to this  
19 section may petition the sentencing court for release to extended supervision after  
20 he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a)  
21 1., or after he or she has reached the extended supervision eligibility date set by the  
22 court, if the inmate was sentenced under s. 973.014 (1g) (a) 2. or 973.015 (3) (c).

23          ✓ **SECTION 6.** 302.114 (3) (a) (intro.) of the statutes is amended to read:

24           302.114 (3) (a) (intro.) The warden or superintendent shall keep a record of the  
25 conduct of each inmate subject to this section, specifying each infraction of the rules.

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1 If any inmate subject to this section violates any regulation of the prison or refuses  
2 or neglects to perform required or assigned duties, the department may extend the  
3 extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2. or 973.015  
4 (3) (c), whichever is applicable, as follows:

5 ✓ **SECTION 7.** 302.114 (3) (b) of the statutes is amended to read:

6 302.114 (3) (b) In addition to the sanctions under par. (a), if an inmate subject  
7 to this section is placed in adjustment, program or controlled segregation status, the  
8 department may extend the extended supervision eligibility date set under s.  
9 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c), whichever is applicable, by a number of days  
10 equal to 50% of the number of days spent in segregation status. In administering this  
11 paragraph, the department shall use the definition of adjustment, program or  
12 controlled segregation status under departmental rules in effect at the time an  
13 inmate is placed in that status.

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

15 302.114 (3) (c) An inmate subject to this section who files an action or special  
16 proceeding, including a petition for a common law writ of certiorari, to which s.  
17 807.15 applies shall have his or her extended supervision eligibility date set under  
18 s. 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c), whichever is applicable, extended by the  
19 number of days specified in the court order prepared under s. 807.15 (3). Upon  
20 receiving a court order issued under s. 807.15, the department shall recalculate the  
21 date on which the inmate to whom the order applies will be entitled to petition for  
22 release to extended supervision and shall inform the inmate of that date.

23 ✓ **SECTION 9.** 303.065 (1) (b) of the statutes is amended to read:

24 303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence  
25 specified in subd. 2., may be considered for work release only after he or she has

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1 reached parole eligibility under s. 304.06 (1) (b) or (1t) or 973.014 (1) (a) or (b),  
2 whichever is applicable, or he or she has reached his or her extended supervision  
3 eligibility date under s. 302.114 (9) (b) ~~or~~ 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c),  
4 whichever is applicable.

5 2. A person serving a life sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) or  
6 (1g) (a) 3. may not be considered for work release. A person serving a life sentence  
7 imposed under s. 973.015 may not be considered for work release if the sentencing  
8 court has determined under s. 973.015 (3) (c) that the person is not eligible for release  
9 to extended supervision.

10 ✓ **SECTION 10.** 303.065 (1) (b) 3. of the statutes is created to read:

11 303.065 (1) (b) 3. A person awaiting imposition of a death sentence may not be  
12 considered for work release.

13 ✓ **SECTION 11.** 304.02 (5) of the statutes is amended to read:

14 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life  
15 sentence under s. 939.62 (2m) (c) ~~or~~ 973.014 (1) (c) or (1g) or 973.015 or who is  
16 awaiting imposition of a death sentence is not eligible for release to parole  
17 supervision under this section.

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

19 304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2),  
20 973.01 (6) or 973.0135, the parole commission may parole an inmate of the Wisconsin  
21 state prisons or any felon or any person serving at least one year or more in a county  
22 house of correction or a county reforestation camp organized under s. 303.07, when  
23 he or she has served 25% of the sentence imposed for the offense, or 6 months,  
24 whichever is greater. Except as provided in sub. (1t) or s. 939.62 (2m) (c) or 973.014  
25 (1) (b) or (c), (1g) or (2), the parole commission may parole an inmate serving a life



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1 term when he or she has served 20 years, as modified by the formula under s. 302.11  
2 (1) and subject to extension under s. 302.11 (1q) and (2), if applicable. The person  
3 serving the life term shall be given credit for time served prior to sentencing under  
4 s. 973.155, including good time under s. 973.155 (4). The secretary may grant special  
5 action parole releases under s. 304.02. The department or the parole commission  
6 shall not provide any convicted offender or other person sentenced to the  
7 department's custody any parole eligibility or evaluation until the person has been  
8 confined at least 60 days following sentencing. The parole commission may not  
9 parole an inmate who is awaiting imposition of a death sentence.

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

11 **304.06 (1t)** If the prisoner is serving a life term imposed under s. 973.015, the  
12 prisoner is eligible for parole only when authorized by the sentencing court under s.  
13 973.015 (3) (c).

14 **SECTION 14.** 304.071 (2) of the statutes is amended to read:

15 **304.071 (2)** If a prisoner is not eligible for parole under s. 304.06 (1) (b) or (1t).  
16 939.62 (2m) (c), 961.49 (2), 973.01 (6), 973.014 (1) (c) or (1g) or 973.032 (5), he or she  
17 is not eligible for parole under this section.

18 **SECTION 15.** 939.22 (7) of the statutes is created to read:

19 **939.22 (7)** "Crime punishable by death or life imprisonment" means a crime for  
20 which one or more of the possible penalties is death or life imprisonment.

21 **SECTION 16.** 939.30 (2) of the statutes is amended to read:

22 **939.30 (2)** For a solicitation to commit a crime ~~for which the penalty is~~  
23 punishable by death or life imprisonment, the actor is guilty of a Class C felony. For  
24 a solicitation to commit a Class E felony, the actor is guilty of a Class E felony.

25 **SECTION 17.** 939.31 of the statutes is amended to read:

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1 ✓ **939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4) and 961.41  
2 (1x), whoever, with intent that a crime be committed, agrees or combines with  
3 another for the purpose of committing that crime may, if one or more of the parties  
4 to the conspiracy does an act to effect its object, be fined or imprisoned or both not  
5 to exceed the maximum provided for the completed crime; except that for a  
6 conspiracy to commit a crime ~~for which the penalty is punishable by death or life~~  
7 imprisonment, the actor is guilty of a Class B felony.

8 ✓ **SECTION 18.** 939.32 (1) (a) of the statutes is amended to read:  
9 939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is~~  
10 punishable by death or life imprisonment is guilty of a Class B felony.

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

12 ✓ **SECTION 20.** 939.50 (1) (ag) of the statutes is created to read:  
13 939.50 (1) (ag) Class AA felony.

14 **SECTION 21.** 939.50 (2) of the statutes is amended to read:  
15 ✓ 939.50 (2) A felony is a Class AA, A, B, BC, C, D or E felony when it is so  
16 specified in chs. 939 to 951.

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

18 **SECTION 23.** 939.50 (3) (ag) of the statutes is created to read:  
19 ✓ 939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined  
20 under s. 973.015.

21 **SECTION 24.** 939.60 of the statutes is amended to read:

22 ✓ **939.60 Felony and misdemeanor defined.** A crime punishable by death or  
23 imprisonment in the Wisconsin state prisons is a felony. Every other crime is a  
24 misdemeanor.

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

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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  
6 probation.

7           **SECTION 26.** 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 27.** 939.63 (1) (a) 2. of the statutes is amended to read:

12           939.63 (1) (a) 2. 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 28.** 940.01 (1) (a) of the statutes is renumbered 940.01 (1) (a) 1. and  
16 amended to read:

17           940.01 (1) (a) 1. Except as provided in subd. 2. and sub. (2), whoever causes the  
18 death of another human being with intent to kill that person or another is guilty of  
19 a Class A felony.

20           **SECTION 29.** 940.01 (1) (a) 2., 3. and 4. of the statutes are created to read:

21           940.01 (1) (a) 2. Except as provided in subds. 3. and 4. and sub. (2), whoever  
22 causes the death of another human being with intent to kill that person or another  
23 is guilty of a Class AA felony if the victim has not attained the age of 16 years.

24           3. Notwithstanding s. 939.05, a person is subject to subd. 2. as a party to a crime  
25 only if that person had intended that a person be killed.

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1           4. A person is subject to subd. 2. only if the person is 16 years old or older when  
2 he or she commits the offense.

3           **SECTION 30.** 940.01 (1) (b) of the statutes is renumbered 940.01 (1) (b) 1. and  
4 amended to read:

5           940.01 (1) (b) 1. Except as provided in subds. 2. and 3. and sub. (2), whoever  
6 causes the death of an unborn child with intent to kill that unborn child, kill the  
7 woman who is pregnant with that unborn child or kill another is guilty of a Class  
8 ~~A~~ AA felony.

9           **SECTION 31.** 940.01 (1) (b) 2. and 3. of the statutes are created to read:

10           940.01 (1) (b) 2. Notwithstanding s. 939.05, a person charged under subd. 1.  
11 as a party to a crime is guilty of a Class AA felony only if that person had intended  
12 that a person or an unborn child be killed. If a person charged as a party to a crime  
13 under subd. 1. did not intend that a person or an unborn child be killed, he or she is  
14 guilty of a Class A felony.

15           3. A person charged under subd. 1. is guilty of a Class AA felony only if the  
16 person is 16 years old or older when he or she commits the offense. If a person  
17 charged under subd. 1. is not 16 years old or older when he or she commits the offense,  
18 he or she is guilty of a Class A felony.

19           **SECTION 32.** 961.335 (1) of the statutes is amended to read:

20           961.335 (1) ~~Upon~~ Except as provided in sub. (1m), upon application, the  
21 controlled substances board may issue a permit authorizing a person to  
22 manufacture, obtain, possess, use, administer or dispense a controlled substance for  
23 purposes of scientific research, instructional activities, chemical analysis or other  
24 special uses, without restriction because of enumeration. No person ~~shall~~ may  
25 engage in any such activity without a permit issued under this section, except that

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1 an individual may be designated and authorized to receive the permit for a college  
2 or university department, research unit or similar administrative organizational  
3 unit and students, laboratory technicians, research specialists or chemical analysts  
4 under his or her supervision may be permitted possession and use of controlled  
5 substances for these purposes without obtaining an individual permit.

6 **SECTION 33.** 961.335 (1m) of the statutes is created to read:

7 961.335 (1m) Upon application of the secretary of corrections for a permit to  
8 obtain a controlled substance for purposes of an execution under s. 973.017, the  
9 controlled substances board shall issue a permit under this section.

10 ✓ **SECTION 34.** 967.02 (1m) of the statutes is created to read:

11 967.02 (1m) "Crime punishable by death or life imprisonment" has the  
12 meaning given in s. 939.22 (7).

13 ✓ **SECTION 35.** 971.17 (1) of the statutes is amended to read:

14 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason  
15 of mental disease or mental defect, the court shall commit the person to the  
16 department of health and family services for a specified period not exceeding  
17 two-thirds of the maximum term of imprisonment that could be imposed under s.  
18 973.15 (2) (a) against an offender convicted of the same crime or crimes, including  
19 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621,  
20 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b) and 961.48 and  
21 other penalty enhancement statutes, as applicable, subject to the credit provisions  
22 of s. 973.155. If the ~~maximum term of imprisonment is~~ crime is punishable by death  
23 or life imprisonment, the commitment period specified by the court may be life,  
24 subject to termination under sub. (5).

25 ✓ **SECTION 36.** 972.03 of the statutes is amended to read:

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1           **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory  
2 challenges except as otherwise provided in this section. When the crime charged is  
3 punishable by death or life imprisonment, the state is entitled to 6 peremptory  
4 challenges and the defendant is entitled to 6 peremptory challenges. If there is more  
5 than one defendant, the court shall divide the challenges as equally as practicable  
6 among them; and if their defenses are adverse and the court is satisfied that the  
7 protection of their rights so requires, the court may allow the defendants additional  
8 challenges. If the crime is punishable by death or life imprisonment, the total  
9 peremptory challenges allowed the defense shall not exceed 12 if there are only 2  
10 defendants and 18 if there are more than 2 defendants; in other felony cases 6  
11 challenges if there are only 2 defendants and 9 challenges if there are more than 2.  
12 In misdemeanor cases, the state is entitled to 3 peremptory challenges and the  
13 defendant is entitled to 3 peremptory challenges, except that if there are 2  
14 defendants, the court shall allow the defense 4 peremptory challenges, and if there  
15 are more than 2 defendants, the court shall allow the defense 6 peremptory  
16 challenges. Each side shall be allowed one additional peremptory challenge if  
17 additional jurors are to be selected under s. 972.04 (1).

18           **SECTION 37.** 972.13 (6) of the statutes is amended to read:

19           972.13 (6) The following forms may be used for judgments:

20           STATE OF WISCONSIN

21           .... County

22           In.... Court

23           The State of Wisconsin

24           vs.

25           ....(Name of defendant)

**SENATE BILL 153****SECTION 37**

1 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

2 IT IS ADJUDGED That the defendant has been convicted upon the defendant's  
3 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)  
4 (no contest) on the.... day of...., .... (year), of the crime of.... in violation of s.....; and  
5 the court having asked the defendant whether the defendant has anything to state  
6 why sentence should not be pronounced, and no sufficient grounds to the contrary  
7 being shown or appearing to the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 BY THE COURT....

9 Date of Offense....,

10 District Attorney....,

11 Defense Attorney....

12 \*Strike inapplicable paragraphs.

13 STATE OF WISCONSIN

14 .... County

15 In.... Court

16 The State of Wisconsin

17 vs.

18 ....(Name of defendant)

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

21 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

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

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

25 BY THE COURT....



**SENATE BILL 153**

**SECTION 38**

1           **SECTION 38.** 973.01 (3d) of the statutes is created to read:

2           **973.01 (3d)** NOT APPLICABLE TO DEATH SENTENCES. If a person is being sentenced  
3 for a felony that is punishable by death, he or she is not subject to this section but  
4 shall be sentenced under s. 973.015.

5           **SECTION 39.** 973.013 (1) (b) of the statutes is amended to read:

6           **973.013 (1) (b)** Except as provided in s. 973.01, the sentence shall have the  
7 effect of a sentence at hard labor for the maximum term fixed by the court, subject  
8 to the power of actual release from confinement by parole by the department or by  
9 pardon as provided by law. If a person is sentenced for a definite time for an offense  
10 for which the person may be sentenced under this section, the person is in legal effect  
11 sentenced as required by this section, said definite time being the maximum period.  
12 ~~A~~ Except as provided in s. 973.015, a defendant convicted of a crime for which the  
13 minimum penalty is life shall be sentenced for life.

14           **SECTION 40.** 973.0135 (3) of the statutes is amended to read:

15           **973.0135 (3)** A person is not subject to this section if the current serious felony  
16 is punishable by death or life imprisonment.

17           **SECTION 41.** 973.015 of the statutes is renumbered 973.019.

18           **SECTION 42.** 973.015 of the statutes is created to read:

19           **973.015 Sentence of death or life imprisonment for Class AA felony. (1)**

20           (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct a  
21 separate sentencing proceeding to determine whether the defendant should be  
22 sentenced to death or life imprisonment. The trial judge shall conduct the proceeding  
23 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury  
24 is unable to reconvene for a hearing on the issue of the penalty, the trial judge may  
25 summon a new jury to determine the issue of the imposition of the penalty. If the trial

**SENATE BILL 153**

1 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the  
2 sentencing proceeding before a jury summoned for that purpose unless the  
3 defendant waives a jury.

4 (b) In a sentencing proceeding under par. (a), the court shall admit any evidence  
5 that may be relevant to the sentence regarding any mitigating circumstance. The  
6 court shall admit any other evidence according to the rules of evidence applicable at  
7 a criminal trial. The court shall provide the defendant with a fair opportunity to  
8 rebut any hearsay statements. This paragraph does not authorize the introduction  
9 of any evidence secured in violation of the state or federal constitution. The state has  
10 the burden of proof, beyond a reasonable doubt, regarding the existence of  
11 aggravating circumstances. The defendant has the burden of proof, by a  
12 preponderance of the evidence, regarding mitigating circumstances. The court shall  
13 permit the state and the defendant or his or her counsel to present arguments for or  
14 against a sentence of death.

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

- 19 1. The existence of aggravating circumstances under sub. (5).
- 20 2. The existence of mitigating circumstances under sub. (6).

21 (b) If the jury recommends life imprisonment, it may further recommend  
22 restrictions on the defendant's eligibility for parole or extended supervision or  
23 recommend that the defendant not be eligible for parole or extended supervision.

24 (c) Upon the request of the defendant or the state, the court shall explain to the  
25 jury the court's options under sub. (3) (c) to sentence the defendant to life without the

**SENATE BILL 153**

1 possibility of parole or extended supervision or with delayed eligibility for parole or  
2 extended supervision.

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

- 8 1. That sufficient aggravating circumstances exist under sub. (5); and
- 9 2. That there are insufficient mitigating circumstances under sub. (6) to  
10 outweigh the aggravating circumstances.

11 (b) In each case in which the court imposes the death sentence, the court must  
12 support its determination by specific written findings of fact based upon the  
13 circumstances in subs. (5) and (6) and upon the records of the trial and the sentencing  
14 proceedings.

15 (c) If the court does not make the findings requiring the death sentence, the  
16 court shall impose a sentence of life imprisonment and shall make a parole eligibility  
17 determination regarding the person if he or she is being sentenced for a crime  
18 committed before December 31, 1999, or an extended supervision eligibility  
19 determination regarding the person if he or she is being sentenced for a crime  
20 committed on or after December 31, 1999. The court shall make a parole eligibility  
21 determination under this paragraph by choosing one of the options specified in s.  
22 973.014 (1). The court shall make an extended supervision eligibility determination  
23 under this paragraph by choosing one of the options specified in s. 973.014 (1g) (a).

24 (4) If a death sentence is imposed, the judgment of conviction and sentence of  
25 death is subject to automatic review by the supreme court within 60 days after

**SENATE BILL 153**

1 certification by the sentencing court of the entire record, unless the supreme court,  
2 for good cause shown, extends the time for an additional period not to exceed 30 days.  
3 The review by the supreme court has priority over all other cases and shall be heard  
4 in accordance with rules promulgated by the supreme court.

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

7 ✓ (a) The Class AA felony was committed by a person under a sentence of  
8 imprisonment.

9 ✓ (b) The defendant knowingly created a great risk of death to many persons.

10 ✓ (c) The Class AA felony was committed for the purpose of avoiding or  
11 preventing a lawful arrest or effecting an escape from custody.

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

14 ✓ (e) The defendant intentionally caused bodily harm or mental anguish to the  
15 victim or another before the victim died.

16 ✓ (f) During the commission of the offense, the defendant enjoyed or was utterly  
17 indifferent to the suffering of another.

18 (6) The court and jury shall consider as a mitigating factor any aspect of the  
19 defendant's character, background or record or any of the circumstances of the  
20 offense that the defendant offers as a basis for a sentence other than death.  
21 Mitigating circumstances may include, but are not limited to, any of the following:

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

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

**SENATE BILL 153**

1 ✓ added (c) The victim was a participant in the defendant's conduct or consented to the  
2 act.

3 ✓ (d) The defendant was an accomplice in the Class AA felony committed by  
4 another person and the defendant's participation was relatively minor.

5 ✓ (e) The defendant acted under extreme duress or under the substantial  
6 domination of another person.

7 ✓ (f) The capacity of the defendant to appreciate the criminality of his or her  
8 conduct or to conform his or her conduct to the requirements of law was substantially  
9 impaired.

10 ✓ (g) The age of the defendant at the time of the crime.

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

14 (7m) A person sentenced to death under this section for a crime committed on  
15 or after December 31, 1999, is not eligible for release to extended supervision under  
16 s. 302.113 or 302.114.

17 (8) The execution of a death sentence shall be by lethal injection.

18 SECTION 43. 973.016 of the statutes is created to read:

19 ✓ 973.016 Stay of execution of death sentence. The execution of a death  
20 sentence may be stayed only by the governor or incident to an appeal.

21 SECTION 44. 973.017 of the statutes is created to read:

22 ✓ 973.017 Execution of death sentence. The secretary of corrections shall  
23 designate the executioner who shall provide a person subject to a death sentence with  
24 an intravenous injection of one or more substances in a lethal quantity. A person is  
25 immune from civil or criminal liability for his or her acts or omissions, in good faith,



In 8/22/01

Due 10/1 or 2

2001 BILL

D-Note

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~~AN ACT to renumber 939.50 (1) (a) and 939.50 (3) (a); to renumber and amend 940.01 (1) (a) and 940.01 (1) (b); to amend 301.048 (2) (am) 2., 302.11 (1g) (a) 3., 302.11 (1m), 302.114 (1), 303.065 (1) (b) 2., 304.02 (5), 304.06 (1) (b), 304.071 (2), 939.30 (2), 939.31, 939.32 (1) (a), 939.50 (2), 939.60, 939.62 (2m) (a) 2m. c., 939.62 (2m) (c), 939.624 (2), 939.625 (1) (b) 2., 939.63 (1) (a) 2., 939.632 (1) (e) 2., 939.75 (1), 939.75 (2) (b) (intro.), 939.75 (3), 940.01 (2) (intro.), 940.01 (3), 948.35 (1) (b), 971.17 (1), 972.03, 972.13 (6), 973.01 (3), 973.0135 (1) (b) 3., 973.014 (1g) (a) (intro.), 973.032 (2) (b), 973.09 (1) (c) and 978.07 (1) (c) 1.; and to create 301.046 (3) (cm), 303.065 (1) (b) 3., 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1) (am), 940.01 (1) (bm), 961.335 (1m), 967.02 (1m), 973.0145, 973.016 and 973.017 of the statutes relating to: providing a penalty of either~~

**BILL**

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

Insert 1

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

Under current law, no state crime is punishable by a sentence of death. First-degree intentional homicide (causing the death of a human being with intent to kill that person or another) is punishable by life imprisonment. If a person convicted of first-degree intentional homicide is sentenced to life imprisonment, the sentencing judge must specify whether the person will be eligible for release to extended supervision. If the judge makes the person eligible for release to extended supervision, the judge must set a date, no earlier than 20 years, at which the person may first apply for release to extended supervision. However, for some repeat offenders the sentencing judge must provide that a sentence of life imprisonment is without the possibility of release to extended supervision. (Parole is not available under any sentence for a crime committed on or after December 31, 1999.)

This bill provides that, if a person 16 years of age or older commits first-degree intentional homicide, the penalty is either death or life imprisonment without the possibility of release on extended supervision. Under the bill, if a person 16 years of age or older is convicted of first-degree homicide, 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 ~~are~~ 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 defendant was previously convicted of a homicide punishable by death.~~
- 2 ~~3~~ The offense was committed for the purpose of avoiding or preventing arrest or for the purpose of effecting an escape from custody.
- 3 ~~4~~ The defendant knowingly created a great risk to many persons.
- 4 ~~5~~ The offense was committed to disrupt or hinder the exercise of government or the enforcement of law.
- 5 ~~6~~ The defendant intentionally caused the victim bodily harm or mental anguish before the victim died.
- 6 ~~7~~ The defendant enjoyed or was utterly indifferent to the victim's suffering.
- ~~8. The offense was committed in a cold, calculated, and premeditated manner.~~
- ~~9. The defendant does not show remorse.~~

The judge and jury must consider and weigh the existence of the specified aggravating circumstances against the existence of any mitigating factors such as



**BILL**

*whether the victim participated in the defendant's conduct or consented to the defendant's acts*

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 defendant has a prior criminal history, ~~whether the defendant cooperated with law enforcement,~~ 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 ~~five~~ <sup>SW</sup> aggravating circumstances applies, the judge must sentence the defendant to life imprisonment ~~without the possibility of 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 ~~without the possibility of release to extended supervision.~~ 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. ~~One physician and 12 citizen witnesses must be present at the execution.~~ 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 effective date (the day after publication).

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

*and make a determination as to whether and when the defendant is eligible to petition for release to extended supervision*

*and at least 12 witnesses. The execution is by lethal injection*

***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 (1g) (a) 3. of the statutes is amended to read:  
9           302.11 (1g) (a) 3. The solicitation, conspiracy, or attempt, under s. 939.30,  
10     939.31, or 939.32, to commit a Class AA felony or a Class A felony.

**BILL**

**SECTION 4.** 302.11 (1m) of the statutes is amended to read:

302.11 (1m) An inmate serving a life term is not entitled to mandatory release. Except as provided in ss. 939.62 (2m) (c) and, 973.014, and 973.0145 (3) (b), the parole commission may parole the inmate as specified in s. 304.06 (1). An inmate awaiting imposition of a death sentence is not eligible for parole.

~~**SECTION 5.** 302.114 (1) of the statutes is amended to read:~~

~~302.114 (1) An inmate is subject to this section if he or she is serving a life sentence imposed under s. 973.014 (1g) (a) 1. or 2. An inmate serving a life sentence under s. 939.62 (2m) or, 973.014 (1g) (a) 3., or 973.0145 (3) (b) or awaiting imposition of a death sentence is not eligible for release to extended supervision under this section.~~

~~**SECTION 6.** 303.065 (1) (b) 2. of the statutes is amended to read:~~

~~303.065 (1) (b) 2. A person serving a life sentence under s. 939.62 (2m) (c) or, 973.014 (1) (c) or (1g) (a) 3., or 973.0145 (3) (b) may not be considered for work release.~~

~~**SECTION 7.** 303.065 (1) (b) 3. of the statutes is created to read:~~

~~303.065 (1) (b) 3. A person awaiting imposition of a death sentence may not be considered for work release.~~

Insert  
4-1718

**SECTION 8.** 304.02 (5) of the statutes is amended to read:

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

**SECTION 9.** 304.06 (1) (b) of the statutes is amended to read:

304.06 (1) (b) Except as provided in sub. (1m) <sup>or (1e) ✓</sup> or s. 302.045 (3), 961.49 (2), 973.01 (6), or 973.0135, the parole commission may parole an inmate of the

**BILL**

1 Wisconsin state prisons or any felon or any person serving at least one year or more  
 2 in a county house of correction or a county reforestation camp organized under s.  
 3 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6  
 4 months, whichever is greater. Except as provided in s. 939.62 (2m) (c) ~~or~~ 973.014 (1)  
 5 (b) or (c), (1g), or (2), ~~or 973.014 (3)(b)~~ the parole commission may parole an inmate  
 6 serving a life term when he or she has served 20 years, as modified by the formula  
 7 under s. 302.11 (1) and subject to extension under s. 302.11 (1q) and (2), if applicable.  
 8 The person serving the life term shall be given credit for time served prior to  
 9 sentencing under s. 973.155, including good time under s. 973.155 (4). The secretary  
 10 may grant special action parole releases under s. 304.02. The department or the  
 11 parole commission shall not provide any convicted offender or other person  
 12 sentenced to the department's custody any parole eligibility or evaluation until the  
 13 person has been confined at least 60 days following sentencing. ~~The parole~~  
 14 ~~commission may not parole an inmate who is awaiting imposition of a death~~  
 15 ~~sentence.~~

Insert 5-15

16 **SECTION 10.** 304.071 (2) of the statutes is amended to read:  
 17 ✓ 304.071 (2) If a prisoner is ~~not eligible~~ ineligible for parole under s. <sup>304.06(1E)</sup> 939.62 (2m)  
 18 (c), 961.49 (2), 973.01 (6), 973.014 (1) (c) or (1g), ~~973.014 (3)(b)~~ or 973.032 (5), he  
 19 or she is not eligible for parole under this section.

20 ✓ **SECTION 11.** 939.22 (7) of the statutes is created to read:  
 21 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for  
 22 which one or more of the possible penalties is death or life imprisonment.

23 ✓ **SECTION 12.** 939.30 (2) of the statutes is amended to read:

## BILL

1           939.30 (2) For a solicitation to commit a crime ~~for which the penalty is that is~~  
2           punishable by death or life imprisonment, the actor is guilty of a Class C felony. For  
3           a solicitation to commit a Class E felony, the actor is guilty of a Class E felony.

4 ✓       **SECTION 13.** 939.31 of the statutes is amended to read:

5           **939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4), and 961.41  
6           (1x), whoever, with intent that a crime be committed, agrees or combines with  
7           another for the purpose of committing that crime may, if one or more of the parties  
8           to the conspiracy ~~does~~ <sup>do</sup> an act to effect its object, be fined or imprisoned or both not  
9           to exceed the maximum provided for the completed crime; except that ~~for a~~  
10          conspiracy to commit a crime ~~for which the penalty is that is punishable by death or~~  
11          life imprisonment, <sup>strike</sup> the actor is guilty of a Class B felony.

12 ✓       **SECTION 14.** 939.32 (1) (a) of the statutes is amended to read:

13           939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is that~~  
14           is punishable by death or life imprisonment is guilty of a Class B felony.

15 ✓       **SECTION 15.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

16 ✓       **SECTION 16.** 939.50 (1) (ag) of the statutes is created to read:

17           939.50 (1) (ag) Class AA felony.

18 ✓       **SECTION 17.** 939.50 (2) of the statutes is amended to read:

19           939.50 (2) A felony is a Class AA, A, B, BC, C, D, or E felony when it is so  
20           specified in chs. 939 to 951.

21 ✓       **SECTION 18.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

22           **SECTION 19.** 939.50 (3) (ag) of the statutes is created to read:

23 ✓       939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined  
24           under s. 973.0145.

25 ✓       **SECTION 20.** 939.60 of the statutes is amended to read:

**BILL**

1           **939.60 Felony and misdemeanor defined.** A crime that is punishable by  
2           death or imprisonment in the Wisconsin state prisons is a felony. Every other crime  
3           is a misdemeanor.

4           ✓ **SECTION 21.** 939.62 (2m) (a) 2m. c. of the statutes is amended to read:

5           939.62 (2m) (a) 2m. c. The solicitation, conspiracy, or attempt, under s. 939.30,  
6           939.31, or 939.32, to commit a Class AA felony or a Class A felony.

7           **SECTION 22.** 939.62 (2m) (c) of the statutes is amended to read:

8           939.62 (2m) (c) If the actor is a persistent repeater and the actor is not  
9           sentenced to death under s. 973.0145, the term of imprisonment for the felony for  
10          which the persistent repeater presently is being sentenced under ch. 973 is life  
11          imprisonment without the possibility of parole or extended supervision.

12          **SECTION 23.** 939.624 (2) of the statutes is amended to read:

13          939.624 (2) If a person has one or more prior convictions for a serious violent  
14          crime or a crime punishable by death or life imprisonment and subsequently  
15          commits a serious violent crime, the court shall sentence the person to not less than  
16          5 years' imprisonment, but otherwise the penaltics for the crime apply, subject to any  
17          applicable penalty enhancement. The court shall not place the defendant on  
18          probation.

19          **SECTION 24.** 939.625 (1) (b) 2. of the statutes is amended to read:

20          939.625 (1) (b) 2. If the maximum term of imprisonment for a felony is more  
21          than 5 years or is a life term <sup>plain space</sup> or the felony is punishable by death, the maximum term  
22          of imprisonment for the felony may be increased by not more than 5 years.

23          **SECTION 25.** 939.63 (1) (a) 2. of the statutes is amended to read:

**BILL**

1           939.63 (1) (a) 2. If the maximum term of imprisonment for a felony is more than  
2           5 years or is a life term or the felony is punishable by death, the maximum term of  
3           imprisonment for the felony may be increased by not more than 5 years.

4           ✓ **SECTION 26.** 939.632 (1) (e) 2. of the statutes is amended to read:

5           939.632 (1) (e) 2. The solicitation, conspiracy, or attempt, under s. 939.30,  
6           939.31, or 939.32, to commit a Class AA felony or a Class A felony.

7           **SECTION 27.** 939.75 (1) of the statutes is amended to read:

8           ~~939.75 (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b) (1m),  
9           940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e), (1b), and  
10           (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2), and 940.25  
11           (1) (c) to (e) and (1b), "unborn child" means any individual of the human species from  
12           fertilization until birth that is gestating inside a woman.~~

13           **SECTION 28.** 939.75 (2) (b) (intro.) of the statutes is amended to read:

14           ~~939.75 (2) (b) (intro.) Sections 940.01 (1) (b) (1m), 940.02 (1m), 940.05 (2g) and  
15           (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c) and (d), 940.10 (2), 940.195,  
16           940.23 (1) (b) and (2) (b), 940.24 (2), and 940.25 (1) (c) to (e) do not apply to any of the  
17           following:~~

18           **SECTION 29.** 939.75 (3) of the statutes is amended to read:

19           939.75 (3) When the existence of an exception under sub. (2) has been placed  
20           in issue by the trial evidence, the state must prove beyond a reasonable doubt that  
21           the facts constituting the exception do not exist in order to sustain a finding of guilt  
22           under s. 940.01 (1) (b) (1m), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09  
23           (1) (e) to (e) or (1g) (c) or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24 (2),  
24           or 940.25 (1) (c) to (e).

**BILL**

1 **SECTION 30.** 940.01 (1) (a) of the statutes is renumbered 940.01 (1) (intro.) and  
2 amended to read:

3 940.01 (1) OFFENSES. (intro.) ~~Except as provided in sub. (2), whoever~~ Whoever  
4 causes the death of another human being with intent to kill that person or another  
5 is guilty of a Class ~~A felony.~~ AA felony unless one of the following applies:

6 **SECTION 31.** 940.01 (1) (am) of the statutes is created to read:

7 940.01 (1) (am) If the actor is under 16 years of age, he or she is guilty of a Class  
8 A felony.

9 **SECTION 32.** 940.01 (1) (b) of the statutes is renumbered 940.01 (1m) and  
10 amended to read:

11 940.01 (1m) OFFENSE AGAINST UNBORN CHILDREN. ~~Except as provided in sub. (2),~~  
12 ~~whoever~~ Whoever causes the death of an unborn child with intent to kill that unborn  
13 child, kill the woman who is pregnant with that unborn child, or kill another is guilty  
14 of a Class A felony.

15 **SECTION 33.** 940.01 (1) (bm) of the statutes is created to read:

16 940.01 (1) (bm) If a person is subject to this subsection as a party as provided  
17 under s. 939.05 and that person did not intend that a person be killed, that person  
18 is guilty of a Class A felony.

✓  
Insert  
9-18

19 **SECTION 34.** 940.01 (2) (intro.) of the statutes is amended to read:

20 940.01 (2) MITIGATING CIRCUMSTANCES. (intro.) ~~The Notwithstanding subs. (1)~~  
21 ~~and (1m),~~ the following are affirmative defenses to prosecution under this section  
22 ~~which~~ <sup>that</sup> mitigate the offense ~~offenses under subs. (1) and (1m)~~ to 2nd-degree  
23 intentional homicide under s. 940.05:

24 **SECTION 35.** 940.01 (3) of the statutes is amended to read:

## BILL

1 ~~940.01 (3) BURDEN OF PROOF. When the existence of an affirmative defense~~  
2 ~~under sub. (2) has been placed in issue by the trial evidence, the state must prove~~  
3 ~~beyond a reasonable doubt that the facts constituting the defense did not exist in~~  
4 ~~order to sustain a finding of guilt under sub. (1) or (1m).~~

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

6 948.35 (1) (b) For a solicitation to commit a Class AA felony or a Class A felony  
7 under the circumstances described under par. (a), the person may be imprisoned not  
8 to exceed the maximum period of imprisonment for a Class B felony.

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

10 961.335 (1m) Notwithstanding sub. (1), upon the application of the secretary  
11 of corrections for a permit to obtain a controlled substance for purposes of an  
12 execution under s. 973.017, the controlled substances board shall issue a permit  
13 under this section.

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

15 967.02 (1m) "Crime punishable by death or life imprisonment" has the  
16 meaning given in s. 939.22 (7). ✓

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

18 ✓ 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason  
19 of mental disease or mental defect, the court shall commit the person to the  
20 department of health and family services for a specified period not exceeding  
21 two-thirds of the maximum term of imprisonment that could be imposed under s.  
22 973.15 (2) (a) against an offender convicted of the same crime or crimes, including  
23 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d), or (3m), 939.62, 939.621,  
24 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b), and 961.48 and  
25 other penalty enhancement statutes, as applicable, subject to the credit provisions



**BILL**

1 of s. 973.155. If the ~~maximum term of imprisonment is~~ crime is punishable by death  
2 or life imprisonment, the commitment period specified by the court may be life,  
3 subject to termination under sub. (5).

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

5 **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory  
6 challenges except as otherwise provided in this section. When the crime charged is  
7 punishable by death or life imprisonment, the state is entitled to 6 peremptory  
8 challenges and the defendant is entitled to 6 peremptory challenges. If there is more  
9 than one defendant, the court shall divide the challenges as equally as practicable  
10 among them; and if their defenses are adverse and the court is satisfied that the  
11 protection of their rights so requires, the court may allow the defendants additional  
12 challenges. If the crime is punishable by death or life imprisonment, the total  
13 peremptory challenges allowed the defense shall not exceed 12 if there are only 2  
14 defendants and 18 if there are more than 2 defendants; in other felony cases 6  
15 challenges if there are only 2 defendants and 9 challenges if there are more than 2.  
16 In misdemeanor cases, the state is entitled to 3 peremptory challenges and the  
17 defendant is entitled to 3 peremptory challenges, except that if there are 2  
18 ✓ defendants, the court shall allow the defense 4 peremptory challenges, and, ✓ if there  
19 ✓ are more than 2 defendants, the court shall allow the defense 6 peremptory  
20 challenges. Each side shall be allowed one additional peremptory challenge if  
21 additional jurors are to be selected under s. 972.04 (1).

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

23 972.13 (6) The following forms may be used for judgments:

24 STATE OF WISCONSIN

25 .... County

*plain*

**BILL**

1 In.... Court  
2 The State of Wisconsin  
3 vs.  
4 ....(Name of defendant)

5 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

6 IT IS ADJUDGED That the defendant has been convicted upon the defendant's  
7 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)  
8 (no contest) on the.... day of...., ... (year), of the crime of.... in violation of s.....; and  
9 the court having asked the defendant whether the defendant has anything to state  
10 why sentence should not be pronounced, and no sufficient grounds to the contrary  
11 being shown or appearing to the court.

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

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

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

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

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

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

**BILL**

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

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

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

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

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

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

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

13 BY THE COURT....

14 Date of Offense....,

15 District Attorney....,

16 Defense Attorney....

17 \*Strike inapplicable paragraphs.

18 STATE OF WISCONSIN

19 .... County

20 In.... Court

21 The State of Wisconsin

22 vs.

23 ....(Name of defendant)

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

**BILL**

1 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

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

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

5 BY THE COURT....

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

7 973.01 (3) NOT APPLICABLE TO LIFE SENTENCES. If a person is being sentenced for  
8 a felony that is punishable by life imprisonment or by death, he or she is not subject  
9 to this section but shall be sentenced under s. 973.014 (1g) or 973.0145, whichever  
10 is applicable.

11 SECTION 43. 973.0135 (1) (b) 3. of the statutes is amended to read:

12 973.0135 (1) (b) 3. The solicitation, conspiracy, or attempt, under s. 939.30,  
13 939.31, or 939.32, to commit a Class AA felony or a Class A felony.

14 SECTION 44. 973.014 (1g) (a) (intro.) of the statutes is amended to read:

15 (15) 973.014 (1g) (a) (intro.) Except as provided in sub. (2) or s. 973.0145 (3) <sup>(c)</sup>,  
16 when a court sentences a person to life imprisonment for a crime committed on or

17 after December 31, 1999, the court shall make an extended supervision eligibility  
18 date determination regarding the person and choose one of the following options:

19 SECTION 45. 973.0145 of the statutes is created to read:

20 **973.0145 Sentence of death or life imprisonment for Class AA felony.**

21 (1) (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct  
22 a separate sentencing proceeding to determine whether the defendant should be  
23 sentenced to death or life imprisonment. The trial judge shall conduct the proceeding  
24 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury  
25 is unable to reconvene for a hearing on the issue of penalty, the trial judge may

## BILL

1 summon a new jury to determine the issue of the imposition of the penalty. If the trial  
2 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the  
3 sentencing proceeding before a jury summoned for that purpose unless the  
4 defendant waives the right to a jury.

5 (b) In the proceeding, the court shall admit any evidence that may be relevant  
6 to the sentence regarding any mitigating circumstance. The court shall admit any  
7 other evidence according to the rules of evidence applicable at a criminal trial. The  
8 court shall provide the defendant with a fair opportunity to rebut any hearsay  
9 statements. This paragraph does not authorize the introduction of any evidence  
10 secured in violation of the state or federal constitution. The state has the burden of  
11 proof, beyond a reasonable doubt, regarding the existence of aggravating  
12 circumstances. The defendant has the burden of proof, by a preponderance of the  
13 evidence, regarding mitigating circumstances. The court shall permit the state and  
14 the defendant or his or her counsel to present arguments for or against a sentence  
15 of death.

16 (2) <sup>(a)</sup> Unless the defendant waives the right to a jury, the jury shall deliberate  
17 after hearing all of the evidence and, by a majority vote, shall render an advisory  
18 sentence of life imprisonment or death to the court, based upon the following  
19 matters:

20 1. The existence of aggravating circumstances under sub. (5).

21 2. The existence of mitigating circumstances under sub. (6).

22 (3) (a) Notwithstanding the recommendation of a majority of the jury, the court,  
23 after weighing the aggravating and mitigating circumstances, shall enter a sentence  
24 of life imprisonment or death, but if the court imposes a sentence of death, it shall

Insert  
15-21

**BILL**

1 set forth in writing its findings upon which the sentence of death is based as to the  
2 facts:

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

4 2. That there are insufficient mitigating circumstances under sub. (6) to  
5 outweigh the aggravating circumstances.

6 (b) In each case in which the court imposes the death sentence, the court must  
7 support its determination by specific written findings of fact based upon the  
8 circumstances in subs. (5) and (6) and upon the records of the trial and the sentencing  
9 proceedings. ~~If the court does not make the findings requiring the death sentence,  
10 the court shall impose a sentence of life imprisonment. If the court imposes life  
11 imprisonment, it shall provide that the sentence is without the possibility of parole  
12 or release to extended supervision.~~

Insert  
16-213

13 (4) If a death sentence is imposed, the judgment of conviction and sentence of  
14 death is subject to automatic review by the supreme court within 60 days after  
15 certification by the sentencing court of the entire record, unless the supreme court,  
16 for good cause shown, extends the time for an additional period not to exceed 30 days.  
17 The review by the supreme court has priority over all other cases and shall be heard  
18 in accordance with rules promulgated by the supreme court.

19 (5) The court and jury shall consider one or more of the following as  
20 aggravating circumstances:

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

23 (b) The defendant has been previously convicted of a Class AA felony or any  
24 other crime for which the death sentence may be imposed.

**BILL**

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

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

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

6     ~~(e)~~ The defendant intentionally caused bodily harm or mental anguish to the  
7 victim or another before the victim died.

8     ~~(f)~~ During the commission of the offense, the defendant enjoyed or was utterly  
9 indifferent to the suffering of another.

10     ~~(h)~~ The Class AA felony was committed in a cold, calculated, and premeditated  
11 manner without any pretense of moral or legal justification.

12     ~~(i)~~ The defendant's attitude or behavior shows a lack of remorse.

13             (6) The court and jury shall consider as a mitigating factor any aspect of the  
14 defendant's character, background, or record or any of the circumstances of the  
15 offense that the defendant offers as a basis for a sentence other than death.  
16 Mitigating circumstances may include, but are not limited to, any of the following:

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

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

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

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

**BILL**

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

4 (f) The age of the defendant ~~impaired his or her judgment~~ at the time of the  
5 crime *affected his or her judgment*

Insert  
18-5<sup>6</sup>

6 (g) The defendant cooperated with authorities in apprehending or prosecuting  
7 other participants in the Class AA felony.

8 ~~(h) The attitude or behavior of the defendant shows remorse.~~

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

12 (8) The execution of a death sentence shall be by lethal injection.

13 SECTION 46. 973.016 of the statutes is created to read:

14 ✓ **973.016 Stay of execution of death sentence.** The execution of a death  
15 sentence may be stayed only by the governor or incident to an appeal.

16 SECTION 47. 973.017 of the statutes is created to read:

17 ✓ **973.017 Execution of death sentence.** The secretary of corrections shall  
18 designate the executioner who shall provide a person subject to a death sentence with  
19 an intravenous injection of one or more substances in a lethal quantity. ~~The~~

20 ~~executioner must be a physician or acting under the direction of a physician.~~ A  
21 person is immune from civil or criminal liability for his or her acts or omissions, in  
22 good faith, in regard to a lawful execution under this section. The secretary shall

23 designate 12 citizens to witness the execution. ~~The secretary shall~~ <sup>may not</sup> direct a physician  
24 <sup>or require a physician</sup> to be present ~~and~~ to announce when death has occurred. The convicted person may  
25 request that certain additional people be allowed to witness the execution. The

A physician may certify the death after a person, other than a physician, has determined or pronounced death.



**BILL**

1 secretary shall grant any such reasonable request. The secretary may allow  
2 representatives of the news media to witness the execution under rules of the  
3 department. No other persons may be allowed to witness the execution.

4 **SECTION 48.** 973.032 (2) (b) of the statutes is amended to read:

5 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person  
6 under sub. (1) if he or she is convicted of a felony punishable by death or life  
7 imprisonment or has at any time been convicted, adjudicated delinquent, or found  
8 not guilty or not responsible by reason of insanity or mental disease, defect, or illness  
9 for committing a violent offense, as defined in s. 301.048 (2) (bm).

10 **SECTION 49.** 973.09 (1) (c) of the statutes is amended to read:

11 973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable  
12 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

13 **SECTION 50.** 978.07 (1) (c) 1. of the statutes is amended to read:

14 978.07 (1) (c) 1. Any case record of a felony punishable by death or life  
15 imprisonment or a related case, after the defendant's parole eligibility date under s.  
16 304.06 (1) or 973.014 (1) or date of eligibility for release to extended supervision  
17 under s. 973.014 (1g) (a) 1. or 2. ~~whichever~~ whichever is applicable, or 50 years after the  
18 commencement of the action, whichever occurs later. If there is no parole eligibility  
19 date or no date for release to extended supervision, the district attorney may destroy  
20 the case record after the defendant's death.

21 **SECTION 51. Initial applicability.**

22 (1) This act first applies to offenses committed on the effective date of this  
23 subsection.

24 or 973.0145 (3) (c) 1. or 2. (END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3279/lins  
RLR:.....

Insert 1: ✓

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.

1

Insert 4-17: ✓

2

SECTION 1. 302.11 (1) of the statutes is amended to read:

3

302.11 (1) The warden or superintendent shall keep a record of the conduct of

4

each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),

5

(1m), (1q), (1w), (1z), (7), and (10), each inmate is entitled to mandatory release on

6

parole by the department. The mandatory release date is established at two-thirds

7

of the sentence. Any calculations under this subsection or sub. (1q) (b) or (2) (b)

8

resulting in fractions of a day shall be rounded in the inmate's favor to a whole day.

9

SECTION 2. 302.11 (1w) of the statutes is created to read:

History: 1977 c. 266, 353; 1979 c. 221; 1981 c. 266; 1983 a. 66, 528; 1985 a. 27; 1985 a. 332 s. 251 (1); 1987 a. 27, 412; 1989 a. 31 ss. 1629, 1630; Stats. s. 302.11; 1989 a. 107; 1991 a. 39; 1993 a. 79, 97, 194, 289, 483; 1995 a. 77, 448; 1997 a. 133, 275, 283, 284, 295, 326; 1999 a. 188.

1           302.11 (1w) An inmate serving a sentence of life imprisonment imposed under  
2 s. 973.0145 (3) (c) or awaiting imposition of a death sentence is not entitled to  
3 mandatory release on parole under this section.

4           **SECTION 3.** 302.114 (1) of the statutes is amended to read:

5           302.114 (1) An inmate is subject to this section if he or she is serving a life  
6 sentence imposed under s. 973.014 (1g) (a) 1. or 2. or 973.0145 (3) (c) 1. or 2. An  
7 inmate serving a life sentence under s. 939.62 (2m) or, 973.014 (1g) (a) 3., or 973.0145  
8 (3) (c) 3. is not eligible for release to extended supervision under this section.

History: 1997 a. 283.

9           **SECTION 4.** 302.114 (2) of the statutes is amended to read:

10           302.114 (2) Except as provided in subs. (3) and (9), an inmate subject to this  
11 section may petition the sentencing court for release to extended supervision after  
12 he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a)  
13 1. or 973.0145 (3) (c) 1., or after he or she has reached the extended supervision  
14 eligibility date set by the court, if the inmate was sentenced under s. 973.014 (1g) (a)  
15 2. or 973.0145 (3) (c) 2.

History: 1997 a. 283.

16           **SECTION 5.** 302.114 (3) (a) (intro.) of the statutes is amended to read:

17           302.114 (3) (a) (intro.) The warden or superintendent shall keep a record of the  
18 conduct of each inmate subject to this section, specifying each infraction of the rules.  
19 If any inmate subject to this section violates any regulation of the prison or refuses  
20 or neglects to perform required or assigned duties, the department may extend the  
21 extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2. or 973.0145  
22 (3) (c) 1. or 2., whichever is applicable, as follows:

History: 1997 a. 283.

23           **SECTION 6.** 302.114 (3) (b) of the statutes is amended to read:

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

History: 1997 a. 283.

9           **SECTION 7.** 302.114 (3) (c) of the statutes is amended to read:

10           302.114 (3) (c) An inmate subject to this section who files an action or special  
 11 proceeding, including a petition for a common law writ of certiorari, to which s.  
 12 807.15 applies shall have his or her extended supervision eligibility date set under  
 13 s. 973.014 (1g) (a) 1. or 2. or 973.0145 (3) (c) 1. or 2., whichever is applicable, extended  
 14 by the number of days specified in the court order prepared under s. 807.15 (3). Upon  
 15 receiving a court order issued under s. 807.15, the department shall recalculate the  
 16 date on which the inmate to whom the order applies will be entitled to petition for  
 17 release to extended supervision and shall inform the inmate of that date.

History: 1997 a. 283.

18           **SECTION 8.** 303.065 (1) (b) of the statutes is amended to read:

19           303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence  
 20 specified in subd. 2., may be considered for work release only after he or she has  
 21 reached parole eligibility under s. 304.06 (1) (b) or 973.014 (1) (a) or (b), whichever  
 22 is applicable, or he or she has reached his or her extended supervision eligibility date  
 23 under s. 302.114 (9) (b) or 973.014 (1g) (a) 1. or 2., or 973.0145 (3) (c) 1. or 2., whichever  
 24 is applicable.

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

History: 1981 c. 266 s. 5; 1983 a. 27; 1985 a. 332 s. 251 (3); 1987 a. 238; 1987 a. 244 s. 7; 1987 a. 412; 1989 a. 31 ss. 1686c, 1686m; Stats. 1989 s. 303.065; 1991 a. 39, 316; 1993 a. 16, 289; 1995 a. 27, 48; 1997 a. 283, 326; 1999 a. 32, 109.

4

5

6           **Insert 5-15:** ✓

7           **SECTION 9.** 304.06 (1t) of the statutes is created to read:

8           304.06 (1t) The parole commission may not parole an inmate who is sentenced  
 9 to life imprisonment or death under s. 973.0145. ✓

10

11           **Insert 9-18:** ✓

12           **SECTION 10.** 940.01 (1) (a) of the statutes is amended to read:

13           940.01 (1) (a) Except as provided in sub. (2) par. (am), whoever causes the death  
 14 of another human being with intent to kill that person or another is guilty of a Class  
 15 A felony.

History: 1987 a. 399; 1997 a. 295.

16           **SECTION 11.** 940.01 (1) (am) of the statutes is created to read:

17           940.01 (1) (am) Whoever causes the death of another human being with intent  
 18 to kill that person or another is guilty of a Class AA felony if the victim has not  
 19 attained the age of 16 years, unless any of the following applies:

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

23

**SECTION 12.** 940.01 (1) (b) of the statutes is amended to read:

renumbered 940.01 (1)  
(b) (intro.)  
and

(Intro.) - 5 -

5 ← strike  
whoever

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940.01 (1) (b) ~~Except as provided in sub. (2) sub. 1/2/3/4, whoever~~ causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child, or kill another is guilty of a Class A-AA felony.

except as follows

History: 1987 a. 399; 1997 a. 295.

**SECTION 13.** 940.01 (1) (b) 1. and 2. of the statutes are created to read:

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

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

**Insert 15-21:**

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

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

**Insert 16-12:**

1 (c) If the court does not make the findings required under par. (b) for a death  
2 sentence, the court shall impose a sentence of life imprisonment and shall make an  
3 extended supervision eligibility determination regarding the person and adopt one  
4 of the following options:

5 1. The person is eligible for release to extended supervision after serving 20  
6 years.

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

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

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

15

16

17 **Insert 18-5:**

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

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

LRB-3279/1dn

RLR:↑:....



August 22, 2001

↑  
current date

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 1997<sup>9</sup> SB-153 has been redrafted over multiple sessions and that the original model for 1997 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.

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