



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3289
MGD: King

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Thurs
PM

Mem. Cat.

1 AN ACT *Mem. Cat.*; relating to: diversion of drug offenders and making an appropriation.

Analysis by the Legislative Reference Bureau

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

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

2 SECTION 1. 16.964 ⁽¹⁰⁾ of the statutes is created to read:

3 16.964 ⁽¹⁰⁾ (a) The office ^{of justice assistance} shall make grants to counties to enable them to
4 establish and operate programs providing alternatives to prosecution and
5 incarceration for criminal offenders who are dependent on alcohol or other drugs.
6 The office shall collaborate with the departments of corrections and health and
7 family services in establishing this grant program.

****NOTE: The bill does not address the needs of an offender in need of mental health treatment unless the offender also needs substance abuse treatment. Is that your intent?

8 (b) A county shall be eligible for a grant under ~~sub. (1)~~ if all of the following
9 apply:

par. (a)

1 1. The county's program is designed to meet the needs of a person who is
2 dependent on alcohol or other drugs and who is believed to have committed or has
3 been charged with or convicted of a crime related to the person's use of or dependence
4 on alcohol or other drugs.

****NOTE: How much detail do you want to include in this statute regarding the type of treatment that the person is to receive? For example, do you want to require that the treatment be holistic? That it include mental health treatment, job training, or other services when necessary? That it use graduated sanctions? Or do you want to have OJA address those issues in the eligibility criteria that it establishes under subd. 1.?

5 2. The program is designed to reduce prison and jail populations; promote
6 public safety; reduce prosecution or incarceration costs for persons described under
7 subd. 1.; and promote successful treatment of alcohol or drug dependence.

8 3. The program establishes eligibility criteria for a person's participation. In
9 establishing the criteria, the county shall specify the crimes to which the program
10 will apply.

****NOTE: Should this provision list crimes to which the program must apply? Crimes (such as violent crimes) to which it may not apply?

11 4. The program is designed to integrate services provided to program
12 participants by state and local government agencies and other organizations.

13 5. The program is developed with input from one or more circuit court judges,
14 the district attorney, the state public defender, local law enforcement officials, local
15 public and private social services agencies, and drug and alcohol treatment providers.

****NOTE: Do you want to require input from any recovering addicts? Any state agency?

16 6. The county complies with other eligibility requirements established by the
17 office of justice assistance to promote the objectives listed in subds. 1. and 2.

****NOTE: Should the statute require anything with respect to cost-effectiveness?

18 (c) Counties that receive grants under this subsection shall create oversight
19 committees to advise the counties in administering and evaluating their programs.

6. The program requires participants to pay as much of the cost of ~~their~~ treatment as possible.

3. (4) A significant number of county residents are in the custody of the department of corrections.

4

the county department that has the primary responsibility for providing substance abuse treatment, ~~and~~

services

substance abuse

17

one or more representatives from the county department that has the primary responsibility for providing substance abuse treatment,

diversion for diversion programs under this subsection

(c) The office shall assist counties receiving grants in obtaining funding from other sources for those programs.

1 Each committee shall consist of one or more circuit court judges, the district attorney
2 or his or her designee, the state public defender or his or her designee, one or more
3 local law enforcement officials, one or more representatives from local public and
4 private social service agencies, one or more representatives from drug and alcohol
5 treatment providers, and other members to be determined by the county.

***NOTE: Do you want to include one or more recovering addicts? State agency representatives?

6 (d) Two or more counties may jointly apply for and receive a grant under this
7 subsection. If counties submit a joint application, they shall include with their
8 application a written agreement specifying each county's role in developing,
9 administering, and evaluating the proposed program. The oversight committee
10 established under par. (c) shall consist of representatives from each county.

11 SECTION 2. 20.410 (1) (a) of the statutes is amended to read:

12 20.410 (1) (a) General program operations. The amounts in the schedule to
13 operate institutions and provide field services and administrative services and for
14 of transferring the amount to the appropriation account
15 paragraph for payments in accordance with other states party to the interstate
16 corrections compact under s. 302.25.

under s. 20.505 (6)(kv)

History: 1989 a. 31 ss. 340, 361 to 380, 382 to 392; 1989 a. 107, 122, 359; 1991 a. 39; 1993 a. 16, 98, 377, 437, 490; 1995 a. 27, 77, 416, 440; 1997 a. 4, 27, 35, 237, 252, 275, 283, 284; 1999 a. 9, 89; 2001 a. 16; 2003 a. 33.

***NOTE: I included this provision, the next provision, and s. 301.062 as placeholders more than anything else, since you have not yet decided how to fund the grants.

17 SECTION 3. 20.505 (6) (kv) of the statutes is created to read:

18 20.505 (6) (kv) Addicted Offender Accountability and Public Safety Act grants.

19 All moneys received from the department of corrections under s. 301.062 for the
20 purpose of making grants to counties under s. 16.964 (10).

21 SECTION 4. 301.03 (20) of the statutes is created to read:

NS 3/20 ✓

1 301.03 (20) Establish a specialized probation, parole, and extended
2 supervision unit for any county with a population of more than 500,000 that
3 establishes a diversion program funded under s. 16.964 ~~(8)~~⁽¹⁰⁾ and assign agents from
4 that unit to work with program participants. The department shall assign at least
5 50 full-time equivalent probation, parole[✓] and extended supervision agents to that
6 unit and shall maintain at least 440.5 full-time equivalent probation, parole[✓] and
7 extended supervision agents to work in any such county.

 ***NOTE: DOC currently has 390.5 FTE probation, parole[✓] and extended
supervision positions for Milwaukee county.

8 **SECTION 5.** 301.062 of the statutes is created to read:

9 **301.062 Addicted Offenders Accountability and Public Safety Act**
10 **grants funding.** The department shall transfer \$100 annually from the
11 appropriation account under s. 20.410 (1) (a)[✓] to the appropriation account under s.
12 20.505 (6) (kv)[✓] to enable the office of justice assistance to make grants to counties
13 under s. 16.964 ~~(8)~~⁽¹⁰⁾ (a).

 ***NOTE: See the ***NOTE following s. 20.410 (1) (a).

14 **SECTION 6.** 302.43 of the statutes is amended to read:

15 **302.43 Good time.** Every inmate of a county jail is eligible to earn good time
16 in the amount of one-fourth of his or her term for good behavior if sentenced to at
17 least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit
18 for time served prior to sentencing under s. 973.155, including good time under s.
19 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects
20 or refuses to perform any duty lawfully required of him or her, may be deprived by
21 the sheriff of good time under this section, except that the sheriff shall not deprive
22 the inmate of more than 2 days good time for any one offense without the approval
23 of the court. An inmate who files an action or special proceeding, including a petition

1 for a common law writ of certiorari, to which s. 807.15 applies shall be deprived of
 2 the number of days of good time specified in the court order prepared under s. 807.15

3 (3). This section does not apply to a person who is incarcerated under a diversion
 4 program funded under s. 16.964 (8)(a). → (10)

5 History: 1977 c. 353; 1989 a. 31 s. 1667; Stats. 1989 s. 302.43; 1997 a. 133.

SECTION 7. 961.472 (5) of the statutes is repealed and recreated to read:

6 961.472 (5) The court is not required to enter an order under sub. (2) if any of
 7 the following apply: *ies*

8 (a) The court finds that the person is already covered by or has recently
 9 completed an assessment under this section or a substantially similar assessment.

10 (b) The person is participating in a deferred or suspended prosecution program
 11 established under s. 971.41. ✓

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 27 s. 9126 (19); 1995 a. 448 s. 286; Stats. 1995 s. 961.472; 1999 a. 48; 2001 a. 109; 2003 a. 49.

****NOTE: If a county establishes an AOAPSA diversion program, should that
 preclude a judge from proceeding, independent of that program, under this section or
 under s. 961.47 or 961.475?

12 SECTION 8. 967.055 (3) (intro.) of the statutes is amended to read:

13 967.055 (3) NO DEFERRED PROSECUTION. (intro.) A prosecutor may not place a
 14 person in a deferred prosecution program, other than one established under s.
 15 971.41, if the person is accused of or charged with any of the following offenses:

16 History: 1981 c. 20, 184; 1983 a. 459; 1985 a. 146 s. 8; 1985 a. 331, 337; 1987 a. 3, 101; 1989 a. 105; 1991 a. 277; 1995 a. 113, 436, 448; 1997 a. 252; 2003 a. 30.

SECTION 9. 971.39 (3) of the statutes is created to read:

17 971.39 (3) This section does not apply to deferred prosecution agreements
 18 under s. 971.41.

19 SECTION 10. 971.41 of the statutes is created to read:

20 971.41 Deferred or suspended prosecution programs; alcohol and
 21 other drug offenses. (1) In this section, "~~alcohol~~-or drug-related offense" means

→ alcohol-related

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1 a crime that can be used to establish a person's eligibility for participation in a
2 diversion program funded under s. 16.964 ~~(8)~~(a). ⁽¹⁰⁾

3 (2) A county that receives a grant under s. 16.964 ~~(8)~~(a) may establish a
4 deferred or suspended prosecution program for individuals who are dependent on
5 alcohol or other drugs and who are believed to have committed, have been charged
6 with, have pled guilty to, have been found guilty of, or have been convicted of an
7 ~~alcohol~~ or drug-related offense. ^{alcohol-related}

****NOTE: This section is limited to counties that receive AOAPSA grants. Other counties would still be able to establish similar programs, but those programs would be treated differently for the purposes of ss. 967.055 (3) and 971.39. Is that okay?

8 (3) If a person pleads guilty to or is found guilty of an ~~alcohol~~ or drug-related
9 offense and the person meets the requirements for such a disposition under a
10 program established under sub. (2), the court, without entering a judgment of guilt
11 and with the person's consent, may defer further proceedings and place him or her
12 on probation upon terms and conditions. Upon violation of a term or condition, the
13 court may enter an adjudication of guilt and proceed as otherwise provided. Upon
14 fulfillment of the terms and conditions, the court shall discharge the person and
15 dismiss the proceedings against him or her. If the program so provides, the discharge
16 and dismissal shall be without adjudication of guilt and is not a conviction for
17 purposes of disqualifications or disabilities imposed by law upon conviction of a
18 crime, including the additional penalties imposed for 2nd or subsequent convictions
19 under s. 961.48.

20 (4) If a person pleads guilty to or is found guilty of an ~~alcohol~~ or drug-related
21 offense and the person meets the requirements for such a disposition under a
22 program established under sub. (2), the court may, upon request of the person and
23 with the consent of a treatment facility with special inpatient or outpatient programs

1 for the treatment of drug dependent persons, allow the person to enter the treatment
 2 programs voluntarily for purposes of treatment and rehabilitation. Treatment shall
 3 be for the period ^{that} the treatment facility feels is necessary and required, but shall not
 4 exceed the maximum sentence allowable unless the person consents to the continued
 5 treatment. At the end of the necessary and required treatment, with the consent of
 6 the court, the person may be released from sentence. If treatment efforts are
 7 ineffective or the person ceases to cooperate with treatment ~~and~~ rehabilitation efforts,
 8 the person may be remanded to the court for completion of sentencing.

****NOTE: The preceding two subsections are based on ss. 961.47 and 961.475, but allowing a county to determine a person's eligibility for these dispositions and whether the disposition under sub. (3) should be treated as a conviction may be an unconstitutional delegation of power.

9 SECTION 11. 973.016 of the statutes is created to read:

10 **973.016 Expungement in cases involving successful substance abuse**
 11 **treatment.** (1) A court may order that the record of a person's conviction for an
 12 offense be expunged if all of the following apply:

13 (a) The offense was one which rendered the person eligible for and resulted in
 14 his or her participation in a diversion program funded under s. 16.964 ⁽¹⁰⁾ (8) (a).

****NOTE: In this draft, I limited the application of this paragraph to treatment programs funded under s. 16.964 ⁽¹⁰⁾ (8) (a), in case you decide later to allow for the court to authorize expungement at sentencing. (See the NOTE following sub. (2).) In cases in which the court authorizes expungement in advance, it may be too difficult to monitor a non-AOAPSA program's determination that a person has successfully completed treatment. If you decide to require a petition, then you should consider whether you want to allow expungement based on a person's participation in a non-AOAPSA treatment program.

15 (b) The person successfully completed the treatment program described in par.
 16 (a).

****NOTE: Who determines whether a person successfully completed a treatment program? How and when do they do so? At a hearing? (These questions are closely related to the question raised in the NOTE following sub. (2).)

1 (c) The person has not been convicted of a crime since completing the treatment
2 program.

3 (d) At least 5 years have elapsed since the person completed the treatment
4 program.

****NOTE: Some of my notes indicate that you considered allowing a person to petition for expungement after three years. Let me know which of those time periods you want to use.

5 (e) The court determines that the person will benefit from and that society will
6 not be harmed by expungement.

7
8

(2) ^{sa} person may petition a court to expunge a record of conviction ^{at} any time after meeting the requirements under sub. (1).

****NOTE: Under s. 973.015, at sentencing, a court can direct that the record of a conviction be expunged upon the person's successful completion of the sentence. The offender need not file a petition in such a case. That obviously reduces the amount of court resources needed to expunge the record of conviction. Do you want to allow or require expungements to occur in a similar fashion in cases in which the court orders the person to participate in a treatment program as a condition of probation or extended supervision? If so, the next draft will include provisions specifying how the county informs the clerk of the court when a person successfully completes a treatment program. If not, the next draft will include other provisions regarding the petition and hearing process. (One question that will need to be addressed is whether a victim of a crime other than a controlled substance offense should be given notice of the hearing.)

9 SECTION 12. 973.032 (6) of the statutes is amended to read:
10 973.032 (6) CREDIT. Any sentence credit under s. 973.155 (1) or (1m) applies
11 toward service of the period under sub. (3) (a) but does not apply toward service of
12 the period under sub. (3) (b).

History: 1991 a. 39; 1993 a. 79; 1995 a. 27, 390; 1997 a. 283; 1999 a. 9, 185; 2001 a. 109.

13 SECTION 13. 973.155 (1) (b) of the statutes is amended to read:
14 973.155 (1) (b) The categories in par. (a) and sub. (1m) include custody of the
15 convicted offender which is in whole or in part the result of a probation, extended
16 supervision or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10

1 (2) placed upon the person for the same course of conduct as that resulting in the new
2 conviction.

3 History: 1977 c. 353; 1979 c. 154; 1983 a. 377, 528; 1987 a. 403 s. 256; 1989 a. 31, 107; 1997 a. 283; 2001 a. 109.

3 **SECTION 14.** 973.155 (1m) of the statutes is created to read:

4 973.155 (1m) A convicted offender shall be given credit toward the service of
5 his or her sentence for all days spent in custody as part of a diversion program funded
6 under s. 16.964 ~~(8)~~ ⁽¹⁰⁾ (a) for any offense arising out of the course of conduct that led to
7 the person's placement in that program.

8 **SECTION 15.** 973.155 (3) of the statutes is amended to read:

9 973.155 (3) The credit provided in sub. (1) or (1m) shall be computed as if the
10 convicted offender had served such time in the institution to which he or she has been
11 sentenced.

12 History: 1977 c. 353; 1979 c. 154; 1983 a. 377, 528; 1987 a. 403 s. 256; 1989 a. 31, 107; 1997 a. 283; 2001 a. 109.

(END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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as affected by 2003 Wisconsin Act... (Assembly Bill 458)

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SECTION 1. 23.33 (13) (b) 2. ✓ of the statutes is amended to read:

23.33 (13) (b) 2. Except as provided under ~~subd.~~ subds. 3. and 5., a person who violates sub. (4c) (a) 1. ~~2.~~ ^{2.} or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of an all-terrain vehicle law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

History: 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315; 1993 a. 16, 105, 119, 405; 1995 a. 27 ss. 1350 to 1351, 9126 (19); 1995 a. 436, 448; 1997 a. 27, 248, 283; 1999 a. 9; 2001 a. 16, 90, 106, 109; 2003 a. 30.

SECTION 2. 23.33 (13) (b) 3. of the statutes is amended to read:

23.33 (13) (b) 3. ~~A~~ ^{AAA} Except as provided under subd. 5., a person who violates sub. (4c) (a) 1. ~~2.~~ ^{2.} or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated operation of an all-terrain vehicle law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

History: 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315; 1993 a. 16, 105, 119, 405; 1995 a. 27 ss. 1350 to 1351, 9126 (19); 1995 a. 436, 448; 1997 a. 27, 248, 283; 1999 a. 9; 2001 a. 16, 90, 106, 109; 2003 a. 30.

SECTION 3. 23.33 (13) (b) 5. of the statutes is created to read:

23.33 (13) (b) 5. The mandatory minimum terms of imprisonment under subds. 2. and 3. do not apply to a person participating in a diversion program funded under s. 16.964 ~~(8)~~ ⁽¹⁰⁾ (a).

SECTION 4. 30.80 (6) (a) 2. of the statutes is amended to read:

30.80 (6) (a) 2. ~~A~~ ^{AAA} Except as provided under subd. 7., a person who violates s. 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the refusal law and who, within 5 years prior to the arrest for the current violation, was

1 convicted one time previously under the intoxicated boating law or the refusal law
 2 shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned for
 3 not less than 5 days nor more than 6 months.

4 **History:** 1973 c. 302; 1975 c. 208, 365, 422; 1979 c. 296 ss. 1 to 3; 1985 a. 243, 331; 1985 a. 332 s. 251 (1); 1989 a. 31, 145; 1995 a. 448; 1997 a. 198, 283; 2001 a. 109.

SECTION 5. 30.80 (6) (a) 3. of the statutes is amended to read:

5 30.80 (6) (a) 3. ~~A~~ ^{AAA} Except as provided under subd. 7., a person who violates s.
 6 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the
 7 refusal law and who, within 5 years prior to the arrest for the current violation, was
 8 convicted 2 times previously under the intoxicated boating law or refusal law shall
 9 be fined not less than \$600 nor more than \$2,000 and shall be imprisoned for not less
 10 than 30 days nor more than one year in the county jail.

11 **History:** 1973 c. 302; 1975 c. 208, 365, 422; 1979 c. 296 ss. 1 to 3; 1985 a. 243, 331; 1985 a. 332 s. 251 (1); 1989 a. 31, 145; 1995 a. 448; 1997 a. 198, 283; 2001 a. 109.

SECTION 6. 30.80 (6) (a) 4. of the statutes is amended to read:

12 30.80 (6) (a) 4. ~~A~~ Except as provided under subd. 7., a person who violates s.
 13 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the
 14 refusal law and who, within 5 years prior to the arrest for the current violation, was
 15 convicted 3 times previously under the intoxicated boating law or refusal law shall
 16 be fined not less than \$600 nor more than \$2,000 and shall be imprisoned for not less
 17 than 60 days nor more than one year in the county jail.

18 **History:** 1973 c. 302; 1975 c. 208, 365, 422; 1979 c. 296 ss. 1 to 3; 1985 a. 243, 331; 1985 a. 332 s. 251 (1); 1989 a. 31, 145; 1995 a. 448; 1997 a. 198, 283; 2001 a. 109.

SECTION 7. 30.80 (6) (a) 5. of the statutes is amended to read:

19 30.80 (6) (a) 5. ~~A~~ Except as provided under subd. 7., a person who violates s.
 20 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the
 21 refusal law and who, within 5 years prior to the arrest for the current violation, was
 22 convicted 4 or more times previously under the intoxicated boating law or refusal law

AAA

1 shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned for
2 not less than 6 months nor more than one year in the county jail.

3 History: 1973 c. 302; 1975 c. 208, 365, 422; 1979 c. 296 ss. 1 to 3; 1985 a. 243, 331; 1985 a. 332 s. 251 (1); 1989 a. 31, 145; 1995 a. 448; 1997 a. 198, 283; 2001 a. 109.

SECTION 8. 30.80 (6) (a) 7. of the statutes is created to read:

4 30.80 (6) (a) 7. The mandatory minimum terms of imprisonment under subds.
5 2., 3., 4., and 5. do not apply to a person participating in a diversion program funded
6 under s. 16.964 ~~(8)~~ (a). (10)

7 **INSERT 5/4** ✓

8 **SECTION 9.** 346.65 (2) (b) of the statutes is amended to read:

9 346.65 (2) (b) Except as provided in ~~par.~~ pars. (f) and (h), shall be fined not less
10 than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more
11 than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the
12 person's lifetime, plus the total number of suspensions, revocations and other
13 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except
14 that suspensions, revocations or convictions arising out of the same incident or
15 occurrence shall be counted as one.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33.

16 **SECTION 10.** 346.65 (2) (c) of the statutes is amended to read:

17 346.65 (2) (c) Except as provided in pars. (f) and, (g), and (h), shall be fined not
18 less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor
19 more than one year in the county jail if the number of convictions under ss. 940.09
20 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
21 revocations and other convictions counted under s. 343.307 (1), equals 3, except that

1 suspensions, revocations or convictions arising out of the same incident or
2 occurrence shall be counted as one.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33.

3 **SECTION 11.** 346.65 (2) (d) of the statutes is amended to read:

4 346.65 (2) (d) Except as provided in pars. (f) and, (g), and (h),[✓] shall be fined not
5 less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor
6 more than one year in the county jail if the number of convictions under ss. 940.09
7 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
8 revocations and other convictions counted under s. 343.307 (1), equals 4, except that
9 suspensions, revocations or convictions arising out of the same incident or
10 occurrence shall be counted as one.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33.

11 **SECTION 12.** 346.65 (2) (e) of the statutes, as affected by 2001 Wisconsin Act
12 109, is amended to read:

13 346.65 (2) (e) Except as provided in pars. (f) and, (g), and (h),[✓] is guilty of a Class
14 H felony and shall be fined not less than \$600 and imprisoned for not less than 6
15 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's
16 lifetime, plus the total number of suspensions, revocations and other convictions
17 counted under s. 343.307 (1), equals 5 or more, except that suspensions, revocations
18 or convictions arising out of the same incident or occurrence shall be counted as one.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33.

19 **SECTION 13.** 346.65 (2) (h) of the statutes is created to read:

20 346.65 (2) (h) The mandatory minimum terms of imprisonment under pars. (b),[✓]
21 (c), (d), and (e) do not apply to a person participating in a diversion program funded
22 under s. 16.964 ~~(8)~~ (a).

↓
(10)

1 SECTION 14. 346.65 (2g) (d) of the statutes is amended to read:

2 346.65 (2g) (d) With respect to imprisonment under sub. (2) (b), the court shall
3 ensure that the person is imprisoned for not less than 5 days or ordered to perform
4 not less than 30 days of community service work under s. 973.03 (3) (a). This
5 paragraph does not apply to a person participating in a diversion program funded
6 under s. 16.964 (8) (a). (10)

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33.

7 SECTION 15. 346.65 (2j) (b) of the statutes is amended to read:

8 346.65 (2j) (b) Except as provided in ~~par.~~ pars. (d) and (e), shall be fined not less
9 than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more
10 than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25 in
11 the person's lifetime, plus the total number of other convictions, suspension and
12 revocations counted under s. 343.307 (2) within a 10-year period, equals 2.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33.

13 SECTION 16. 346.65 (2j) (c) of the statutes is amended to read:

14 346.65 (2j) (c) Except as provided in ~~par.~~ pars. (d) and (e), shall be fined not less
15 than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more
16 than one year in the county jail if the number of convictions under ss. 940.09 (1) and
17 940.25 in the person's lifetime, plus the total number of other convictions,
18 suspensions and revocations counted under s. 343.307 (2), equals 3 or more.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33.

19 SECTION 17. 346.65 (2j) (e) of the statutes is created to read:

20 346.65 (2j) (e) The mandatory minimum terms of imprisonment under pars.
21 (b) and (c) do not apply to a person participating in a diversion program funded under
22 s. 16.964 (8) (a).

(10)

*as affected by 2003 Wisconsin Act
... (Assembly Bill 458)*

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SECTION 18. 350.11 (3) (a) 2. of the statutes is amended to read:

350.11 (3) (a) 2. Except as provided under subd. subds. 3. and 5., a person who violates s. 350.101 (1) (a) (b) or 350.104 (5) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated snowmobiling law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

History: 1971 c. 277; 1973 c. 218; 1975 c. 365; 1987 a. 399; 1991 a. 269; 1993 a. 119, 436; 1995 a. 417, 448; 1997 a. 27, 283; 2001 a. 109.

SECTION 19. 350.11 (3) (a) 3. of the statutes is amended to read:

350.11 (3) (a) 3. AAA Except as provided under subd. 5., a person who violates s. 350.101 (1) (a) (b) or 350.104 (5) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated snowmobiling law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

History: 1971 c. 277; 1973 c. 218; 1975 c. 365; 1987 a. 399; 1991 a. 269; 1993 a. 119, 436; 1995 a. 417, 448; 1997 a. 27, 283; 2001 a. 109.

SECTION 20. 350.11 (3) (a) 5. of the statutes is created to read:

350.11 (3) (a) 5. The mandatory minimum terms of imprisonment under subds. 2. and 3. do not apply to a person participating in a diversion program funded under s. 16.964 ~~(a)~~ (a).

(10)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3289/7dn

MGD:

PK
King

Sara:

1. A person convicted of a drug offense in a county which has not established a program under this bill may argue that the bill violates the right to equal protection. That argument will probably fail. *See State v. Smart*, 2002 WI App 240, 257 Wis. 2d 713. A person convicted in a county in which expungement is unavailable may have a slightly stronger argument. But current law already authorizes counties to dispose of cases in a non-uniform manner. *See, e.g., s. 961.577* (a municipality may, but is not required, to prosecute drug paraphernalia cases as civil offenses).

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

2. Under current law, DOC must approve a sheriff's plan to place a jail prisoner in a home detention program. Do you want DOC to have that same requirement to apply to ADAPSA program participants?

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3289/P1dn
MGD:kmg:jf

December 4, 2003

Sara:

1. A person convicted of a drug offense in a county which has not established a program under this bill may argue that the bill violates the right to equal protection. That argument will probably fail. *See State v. Smart*, 2002 WI App 240, 257 Wis. 2d 713. A person convicted in a county in which expungement is unavailable may have a slightly stronger argument. But current law already authorizes counties to dispose of cases in a nonuniform manner. *See, e.g., s. 961.577* (a municipality may, but is not required, to prosecute drug paraphernalia cases as civil offenses).
2. Under current law, DOC must approve a sheriff's plan to place a jail prisoner in a home detention program. Do you want that requirement to apply to an AOAPSA program participant?

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

Plc from ~~the~~ - ~~the~~ ^{DeDe} ^{severable}
Deedee Morgan

1) Small countries ineligible??

2) Plead no contest?

3) Conflict of interest to

Me:

have president review their
own work

971.41(3),(4) should more clearly state that
those are 2 possible versions of Def. pros.
Not only options

Look at history of s. 971.39

1

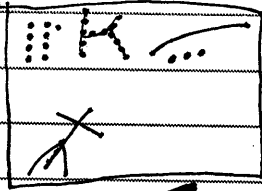
1/21 - let Sara know abt these

1/7/04

Met at Sen Rosales

Elliot Levine

Kelly Thompson



Diversion agreement is another ^{type} agmt. Δ suspend prosecution

Deferred pros

Before complaint

Other variants

- Diversion + Plea sentence (gives DOC responsibility for monitoring)
- ATR (alternatives to revocation)

1) Have it cover not just counties that receive OSA \$, but also counties ~~that~~ whose programs meet the OSA reqs

2) Use "Best practices"
Specify - graduated sanctions and incentives

3) Modify 973.03 (4) (a) so that if county wants home confinement + judgment of conviction, it doesn't have to use electronic monitoring

Discussed constitutional issue -

re pre-~~charge~~ charging confinement

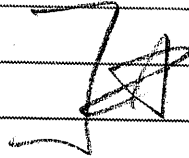
(if we ~~don't~~ allow post-charging confinement, it could entail ^{ing it} Treat as bail ^{revocation} if it were ~~not~~)

4) Add community corrections to 3/5 + 3/12 lists

~~5) Add community corrections lists~~

5) Eliminate 50. P.O. provision + replace it w/ a ratio (but wait to hear from Kelly Thompson re what Mke needs ^{She's talking to MKE folks})

* Amend 971.40 to ~~add~~ add division agmt
(don't need it - appr.)



-- Delete (d) at 14/3



- Credit for inpatient treatment
(as in drunk driving)

2/2 - Mtg w/ Sen. Roescher
Don't include OWI ✓

"integrated services" ✓

"abuse-related disorders" ?

I A to E or any offense that ~~does not~~ have use or possession of a dangerous weapon as an element ??

⇒ Use fed'l criteria ~~for~~ for offenses ✓
(Not offense-listing)

~~Victim cases are~~

IF DAS
don't change

- 1) Unlikely to be pre-charge diversion
- 2) Elliot - DAs likely to consult ^{angways}
- 3) Silence ~~in~~ in other cases ✓
- 4) Elliot - drug treatment → public safety

3/3 - reas amt, based on
assets + income ✓

Jud/DA/SPD - 51.42 b.d. Behavioral Health Div'n of Mke
↑ Mch Dept of H. + HS.

2/4 - ~~the~~ OJA has to establish a committee
including representatives ...

"best practices"

still open ?

2/9

Ⓢ

Plc from Sara

p. 2 Q1 - Yes ✓

Q2 - holistic ✓

3 - No to addicts ✓

Yes DHFS ~~to~~, + DOC ✓

3 - No re cost effective ✓

7 - Mke has to be pilot county ✓
has to apply

11 - No ✓

Expungement - per via petition 938,355 ✓
973,015

Plc to Sara

p. 2 - just say holistic

3# 2 - No

7

Jim Doyle
Governor

**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

1400 E Washington Ave
PO Box 8935
Madison WI 53708-8935

Donsia Strong Hill
Secretary



Email:
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Voice: 608-268-2112
FAX: 608-267-0644
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January 29, 2004

Sarah Sequist
Senator Carol Roessler
State Capitol, 8 South
Madison, WI 53707-7882

Dear Sarah:

Thank you for the opportunity to review LRB-3289/P1. Here are my comments.

p. 2, between lines 2 and 3: insert "The AODA dependency may be a primary diagnosis or a dual diagnosis with a co-occurring mental health diagnosis."

p. 2, line 9: I'm uncertain about the meaning of "who is believed to have committed". The only thing I can think of in that regard would be a probation or parole agent who gets information about a violation, but the phrase opens up a lot of other possibilities. Perhaps it should be spelled out more explicitly.

p. 2, note following line 11: I would suggest not spelling out much in the statute, as part of the purpose of the legislation seems to be to stimulate creative programs.

p. 2, line 14: insert "reduce recidivism" after "subd. 1."

p. 2, lines 15 and 16: I can't understand the reason for this requirement (and if it stays in, what is a "significant number"?)

p. 2, note following line 19: My opinion is that the statute should not attempt to spell out the crimes to which the program applies.

p. 3, line 8: insert "probation and parole" after "agencies".

p. 3, note following line 11: My personal opinion is that the statute should not require anything specific with respect to cost-effectiveness, though a phrase like "the program may be reviewed for cost-effectiveness" wouldn't hurt.

p. 3, lines 12 and 13: The first sentence should be in the singular, "A county that receives a grant under this subsection shall create an oversight committee to advise the county in administering and evaluating its program."

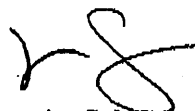
p. 3, lines 19 and 20: insert "probation and parole, persons in recovery," after "providers".

p. 8, lines 1 and 2: I may be missing something, but I don't understand the phrase "incarcerated under a diversion program".

p. 12, line 5: same comment about "who are believed to have committed".

p. 13, lines 16 and 17: Subparagraph (b) refers to "the treatment program described in par. (a)", but paragraph (a) of that section uses the phrase "diversion program" and it would be better to keep the same language to avoid confusion.

Sincerely,



John Schweitzer, Legal Counsel

Plc from Sara

~~mas~~ - Not apply to violent crimes ✓

- All ATR stuff in ✓

- Graduated sanctions + grad incentives ✓

~~mas~~ - Regular dialog bt treatment providers + corrections
in indiv'l cases ✓

➔ Refu to county dept of human svcs (as applicant/grantee) ✓

2/3 - ~~DSM IV~~ - "abuse of alcohol" or other drugs ✓

➔ + everywhere else

2/12 - reduce recidivism ✓

3/11 - including all MH. services ✓

3/20 * Yes / No ✓

~~12/23~~

13/7 - "Not effective, not successful" ? ✓

~~12/23~~ HRS 75

look at 973.03(4)

Keep separate
Electronic monitoring, ✓
Voice recognition, ✓
Day reporting, including ~~mas~~ ✓
Bracelets ✓

Other technology (GPS)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

probation,
violations of extended supervision,
or parole by persons who ~~abuse~~
alcohol or other drugs,

abuse

grants to counties
for providing alternatives
to prosecution and incarceration
for ~~Y~~

Gen. Cat.

1 AN ACT to amend 20.410 (1) (a), 23.33 (13) (b) 2., 23.33 (13) (b) 3., 30.80 (6) (a)
2 2., 30.80 (6) (a) 3., 30.80 (6) (a) 4., 30.80 (6) (a) 5., 302.43, 346.65 (2) (b), 346.65
3 (2) (c), 346.65 (2) (d), 346.65 (2) (e), 346.65 (2g) (d), 346.65 (2j) (b), 346.65 (2j) (c),
4 350.11 (3) (a) 2., 350.11 (3) (a) 3., 967.055 (3) (intro.), 973.032 (6), 973.155 (1) (b)
5 and 973.155 (3); to repeal and recreate 961.472 (5); and to create 16.964 (10),
6 20.505 (6) (kv), 23.33 (13) (b) 5., 30.80 (6) (a) 7., 301.03 (20), 301.062, 346.65 (2)
7 (h), 346.65 (2j) (e), 350.11 (3) (a) 5., 971.39 (3), 971.41, 973.016 and 973.155 (1m)
8 of the statutes; relating to: ~~diversion of drug offenders~~ and making an
9 appropriation.

Analysis by the Legislative Reference Bureau

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

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

10 SECTION 1. 16.964 (10) of the statutes is created to read:

INS 2/2

INS 2/1A

INS 2/1B

1 16.964 (10) (a) The office shall make grants to counties to enable them to
 2 establish and operate programs providing alternatives to prosecution and
 3 incarceration for criminal offenders who are dependent on alcohol or other drugs.
 4 The office shall collaborate with the departments of corrections and health and
 5 family services in establishing this grant program.

****NOTE: The bill does not address the needs of an offender in need of mental health treatment unless the offender also needs substance abuse treatment. Is that your intent?

department

6 (b) A county shall be eligible for a grant under par. (a) if all of the following
 7 apply:

8 1. The county's program is designed to meet the needs of a person who is
 9 dependent on alcohol or other drugs and who is believed to have committed or has
 10 been charged with or convicted of a crime related to the person's use of or dependence
 11 on alcohol or other drugs.

****NOTE: How much detail do you want to include in this statute regarding the type of treatment that the person is to receive? For example, do you want to require that the treatment be holistic? That it include mental health treatment, job training, or other services when necessary? That it use graduated sanctions? Or do you want to have OJA address those issues in the eligibility criteria that it establishes under subd. 4.?

may be

12 2. The program is designed to reduce prison and jail populations, promote
 13 public safety, reduce prosecution and incarceration costs, and for persons described under
 14 subd. 1 and promote successful treatment of alcohol or drug dependence.

INS 2/13

15 3. A significant number of county residents are in the custody of the
 16 department of corrections for crimes relating to substance abuse

INS 2/17

17 4. The program establishes eligibility criteria for a person's participation. In
 18 3. establishing the criteria, the county shall specify the crimes to which the program
 19 will apply.

****NOTE: Should this provision list crimes to which the program must apply? Crimes (such as violent crimes) to which it may not apply?

all mental health

1 5. The program is designed to integrate services provided to program
2 participants by state and local government agencies and other organizations. (A) INS 3/2

3 6. The program requires participants to pay a reasonable amount for their
4 as possible, as much of the cost of treatment,
5 , based on their

6 7. The program is developed with input from one or more circuit court judges,
7 the district attorney, the state public defender, local law enforcement officials, the
8 county department that has the primary responsibility for providing substance
9 abuse treatment, private social services agencies, and substance abuse treatment
providers. (A) INS 3/8 ✓

***NOTE: Do you want to require input from any recovering addicts? Any state agency?

10 8. The county complies with other eligibility requirements established by the
11 office to promote the objectives listed in subds. 1. and 2.

***NOTE: Should the statute require anything with respect to cost-effectiveness?

12 (A) (B) (C) (D) (E) (F) (G) Counties that receive grants under this subsection shall create an
13 committees to advise the counties in administering and evaluating its programs.
14 Each committee shall consist of one or more circuit court judges, the district attorney
15 or his or her designee, the state public defender or his or her designee, one or more
16 local law enforcement officials, one or more representatives from the county
17 department that has the primary responsibility for providing substance abuse
18 treatment, one or more representatives from private social services agencies, one or
19 more representatives from substance abuse treatment providers, and other
20 members to be determined by the county.

***NOTE: Do you want to include one or more recovering addicts? State agency representatives?

(A) INS 3/18 ✓

INS 3/11
Department

departments

department

1 (d) Two or more counties may jointly apply for and receive a grant under this
 2 subsection. If counties submit a joint application, they shall include with their
 3 application a written agreement specifying each county's role in developing,
 4 administering, and evaluating the proposed program. The oversight committee
 5 established under par. (c) shall consist of representatives from each county.

6 (e) The office shall assist counties receiving grants for diversion programs
 7 under this subsection in obtaining funding from other sources for those programs.

INS 4/7

8 SECTION 2. 20.410 (1) (a) of the statutes is amended to read:

9 20.410 (1) (a) *General program operations.* The amounts in the schedule to
 10 operate institutions and provide field services and administrative services and for
 11 the purpose of transferring the amount specified under s. 301.062 to the
 12 appropriation account under s. 20.505 (6) (kv). No payments may be made under this
 13 paragraph for payments in accordance with other states party to the interstate
 14 corrections compact under s. 302.25.

***NOTE: I included this provision, the next provision, and s. 301.062 as placeholders more than anything else, since you have not yet decided how to fund the grants.

15 SECTION 3. 20.505 (6) (kv) of the statutes is created to read:

16 20.505 (6) (kv) *Addicted Offender Accountability and Public Safety Act grants.*
 17 All moneys received from the department of corrections under s. 301.062 for the
 18 purpose of making grants to counties under s. 16.964 (10).

19 ~~SECTION 4. 23.33 (13) (b) 2. of the statutes, as affected by 2003 Wisconsin Act~~
 20 ~~... (Assembly Bill 458), is amended to read:~~

21 ~~23.33 (13) (b) 2. Except as provided under subd. subds. 3. and 5., a person who~~
 22 ~~violates sub. (4c) (a) 1., 2., or 2m. or (4p) (e) and who, within 5 years prior to the arrest~~
 23 ~~for the current violation, was convicted previously under the intoxicated operation~~

1 of an all-terrain vehicle law or the refusal law shall be fined not less than \$300 nor
2 more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6
3 months.

4 **SECTION 5.** 23.33 (13) (b) 3. of the statutes, as affected by 2003 Wisconsin Act
5 ... (Assembly Bill 458), is amended to read:

6 23.33 (13) (b) 3. ~~A~~ Except as provided under subd. 5., a person who violates
7 sub. (4c) (a) 1., 2., or 2m. or (4p) (e) and who, within 5 years prior to the arrest for the
8 current violation, was convicted 2 or more times previously under the intoxicated
9 operation of an all-terrain vehicle law or refusal law shall be fined not less than \$600
10 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than
11 one year in the county jail.

12 **SECTION 6.** 23.33 (13) (b) 5. of the statutes is created to read:

13 23.33 (13) (b) 5. The mandatory minimum terms of imprisonment under subds.
14 2. and 3. do not apply to a person participating in a diversion program funded under
15 s. 16.964 (1)(a). INS 5/14

16 **SECTION 7.** 30.80 (6) (a) 2. of the statutes is amended to read:

17 30.80 (6) (a) 2. ~~A~~ Except as provided under subd. 7., a person who violates s.
18 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the
19 refusal law and who, within 5 years prior to the arrest for the current violation, was
20 convicted one time previously under the intoxicated boating law or the refusal law
21 shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned for
22 not less than 5 days nor more than 6 months.

23 **SECTION 8.** 30.80 (6) (a) 3. of the statutes is amended to read:

24 30.80 (6) (a) 3. ~~A~~ Except as provided under subd. 7., a person who violates s.
25 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the

1 refusal law and who, within 5 years prior to the arrest for the current violation, was
2 convicted 2 times previously under the intoxicated boating law or refusal law shall
3 be fined not less than \$600 nor more than \$2,000 and shall be imprisoned for not less
4 than 30 days nor more than one year in the county jail.

5 **SECTION 9.** 30.80 (6) (a) 4. of the statutes is amended to read:

6 30.80 (6) (a) 4. ~~A~~ Except as provided under subd. 7., a person who violates s.
7 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the
8 refusal law and who, within 5 years prior to the arrest for the current violation, was
9 convicted 3 times previously under the intoxicated boating law or refusal law shall
10 be fined not less than \$600 nor more than \$2,000 and shall be imprisoned for not less
11 than 60 days nor more than one year in the county jail.

12 **SECTION 10.** 30.80 (6) (a) 5. of the statutes is amended to read:

13 30.80 (6) (a) 5. ~~A~~ Except as provided under subd. 7., a person who violates s.
14 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the
15 refusal law and who, within 5 years prior to the arrest for the current violation, was
16 convicted 4 or more times previously under the intoxicated boating law or refusal law
17 shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned for
18 not less than 6 months nor more than one year in the county jail.

19 **SECTION 11.** 30.80 (6) (a) 7. of the statutes is created to read:

20 30.80 (6) (a) 7. The mandatory minimum terms of imprisonment under subds.
21 2., 3., 4., and 5. do not apply to a person participating in a diversion program funded

22 under s. 16.964 (10) (a).

23 **SECTION 12.** 301.03 (20) of the statutes is created to read:

24 301.03 (20) Establish a specialized probation, parole, and extended
25 supervision unit for any county with a population of more than 500,000 that

INS 7/11

1 establishes a ~~diversion~~ program funded under s. 16.964 (10) and assign agents from
2 that unit to work with program participants. The department shall assign at least
3 50 full-time equivalent probation, parole, and extended supervision agents to that
4 unit and shall maintain at least 440.5 full-time equivalent probation, parole, and
5 extended supervision agents to work in any such county.

****NOTE: DOC currently has 390.5 FTE probation, parole, and extended supervision positions for Milwaukee County.

6 SECTION 13. 301.062 of the statutes is created to read:

7 301.062 **Addicted** *Substance Abusing* Offenders Accountability and Public Safety Act
8 grants funding. The department shall transfer \$100 annually from the
9 appropriation account under s. 20.410 (1) (a) to the appropriation account under s.
10 20.505 (6) (kv) to enable the office of justice assistance to make grants to counties
11 under s. 16.964 (10) (a). *b*

****NOTE: See the ****NOTE following s. 20.410 (1) (a).

12 SECTION 14. 302.43 of the statutes is amended to read:

13 302.43 **Good time.** Every inmate of a county jail is eligible to earn good time
14 in the amount of one-fourth of his or her term for good behavior if sentenced to at
15 least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit
16 for time served prior to sentencing under s. 973.155, including good time under s.
17 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects
18 or refuses to perform any duty lawfully required of him or her, may be deprived by
19 the sheriff of good time under this section, except that the sheriff shall not deprive
20 the inmate of more than 2 days good time for any one offense without the approval
21 of the court. An inmate who files an action or special proceeding, including a petition
22 for a common law writ of certiorari, to which s. 807.15 applies shall be deprived of
23 the number of days of good time specified in the court order prepared under s. 807.15

county departments

11

INS 7/11

(3). This section does not apply to a person who is incarcerated under a diversion program funded under s. 16.964 (10) (a). *INS 8/2*

*NS
8/3*

~~SECTION 15. 346.65 (2) (b) of the statutes is amended to read:~~

~~346.65 (2) (b) Except as provided in ~~par.~~ pars. (f) and (h), shall be fined not less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.~~

~~SECTION 16. 346.65 (2) (c) of the statutes is amended to read:~~

~~346.65 (2) (c) Except as provided in pars. (f) and, (g), and (h), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1), equals 3, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.~~

~~SECTION 17. 346.65 (2) (d) of the statutes is amended to read:~~

~~346.65 (2) (d) Except as provided in pars. (f) and, (g), and (h), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1), equals 4, except that~~

1 suspensions, revocations or convictions arising out of the same incident or
2 occurrence shall be counted as one.

3 **SECTION 18.** 346.65 (2) (e) of the statutes, as affected by 2001 Wisconsin Act
4 109, is amended to read:

5 346.65 (2) (e) Except as provided in pars. (f) and (g), and (h), is guilty of a Class
6 H felony and shall be fined not less than \$600 and imprisoned for not less than 6
7 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's
8 lifetime, plus the total number of suspensions, revocations and other convictions
9 counted under s. 343.307 (1), equals 5 or more, except that suspensions, revocations
10 or convictions arising out of the same incident or occurrence shall be counted as one.

11 **SECTION 19.** 346.65 (2) (h) of the statutes is created to read:

12 346.65 (2) (h) The mandatory minimum terms of imprisonment under pars. (b),
13 (c), (d), and (e) do not apply to a person participating in a diversion program funded
14 under s. 16.964 (10) (a). *INS 9/14*

15 **SECTION 20.** 346.65 (2g) (d) of the statutes is amended to read:

16 346.65 (2g) (d) With respect to imprisonment under sub. (2) (b), the court shall
17 ensure that the person is imprisoned for not less than 5 days or ordered to perform
18 not less than 30 days of community service work under s. 973.03 (3) (a). This
19 paragraph does not apply to a person participating in a diversion program funded
20 under s. 16.964 (10) (a). *INS 9/20*

21 **SECTION 21.** 346.65 (2j) (b) of the statutes is amended to read:

22 346.65 (2j) (b) Except as provided in ~~par.~~ pars. (d) and (e), shall be fined not less
23 than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more
24 than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25 in

1 the person's lifetime, plus the total number of other convictions, suspension and
2 revocations counted under s. 343.307 (2) within a 10-year period, equals 2.

3 **SECTION 22.** 346.65 (2j) (c) of the statutes is amended to read:

4 346.65 (2j) (c) Except as provided in ~~par.~~ pars. (d) and (e), shall be fined not less
5 than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more
6 than one year in the county jail if the number of convictions under ss. 940.09 (1) and
7 940.25 in the person's lifetime, plus the total number of other convictions,
8 suspensions and revocations counted under s. 343.307 (2), equals 3 or more.

9 **SECTION 23.** 346.65 (2j) (e) of the statutes is created to read:

10 346.65 (2j) (e) The mandatory minimum terms of imprisonment under pars.
11 (b) and (c) do not apply to a person participating in a diversion program funded under

12 s. 16.964 (10) (a). *INS 10/12*

13 **SECTION 24.** 350.11 (3) (a) 2. of the statutes, as affected by 2003 Wisconsin Act
14 (Assembly Bill 458), is amended to read:

15 350.11 (3) (a) 2. Except as provided under ~~subd.~~ subds. 3. and 5., a person who
16 violates s. 350.101 (1) (a), (b), or (bm) or 350.104 (5) and who, within 5 years prior to
17 the arrest for the current violation, was convicted previously under the intoxicated
18 snowmobiling law or the refusal law shall be fined not less than \$300 nor more than
19 \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

20 **SECTION 25.** 350.11 (3) (a) 3. of the statutes, as affected by 2003 Wisconsin Act
21 (Assembly Bill 458), is amended to read:

22 350.11 (3) (a) 3. ~~A~~ Except as provided under subd. 5., a person who violates
23 s. 350.101 (1) (a), (b), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest
24 for the current violation, was convicted 2 or more times previously under the
25 intoxicated snowmobiling law or refusal law shall be fined not less than \$600 nor

1 more than \$2,000 and shall be imprisoned not less than 30 days nor more than one
2 year in the county jail.

3 SECTION 26. 350.11 (3) (a) 5. of the statutes is created to read:

4 350.11 (3) (a) 5. The mandatory minimum terms of imprisonment under subds.
5 2. and 3. do not apply to a person participating in a diversion program funded under
6 ~~s. 16.964 (10) (a).~~ *INS 11/6*

7 SECTION 27. 961.472 (5) of the statutes is repealed and recreated to read:

8 961.472 (5) The court is not required to enter an order under sub. (2) if any of
9 the following applies:

10 (a) The court finds that the person is already covered by or has recently
11 completed an assessment under this section or a substantially similar assessment.

12 (b) The person is participating in a deferred or suspended prosecution program
13 established under s. 971.41. *INS 11/13*

****NOTE: If a county establishes an AOAPSA diversion program, should that
preclude a judge from proceeding, independent of that program, under this section or
under s. 961.47 or 961.475? *NO*

14 SECTION 28. 967.055 (3) (intro.) of the statutes is amended to read:

15 967.055 (3) NO DEFERRED PROSECUTION. (intro.) A prosecutor may not place a
16 person in a deferred prosecution program, other than one established under s.
17 971.41, if the person is accused of or charged with any of the following offenses:

18 SECTION 29. 971.39 (3) of the statutes is created to read:

19 971.39 (3) This section does not apply to deferred prosecution agreements
20 under s. 971.41.

21 SECTION 30. 971.41 of the statutes is created to read:

22 971.41 Deferred or suspended prosecution programs; alcohol and
23 other drug offenses. (1) In this section, "alcohol-related or drug-related offense"

1 means a crime that can be used to establish a person's eligibility for participation in
2 a ~~diversion program funded under s. 16.964 (10) (a).~~ *INS 12/2* *INS 12/3*

3 (2) A county that receives a grant under s. 16.964 (10) (a) ~~may establish a~~
4 deferred or suspended prosecution program for individuals who are ~~dependent on~~ *may be or* abuse
5 alcohol or other drugs and who ~~are believed to have committed,~~ have been charged
6 with, have pled guilty to, have been found guilty of, or have been convicted of an
7 alcohol-related or drug-related offense.

IMP
AT
****NOTE: This section is limited to counties that receive AOAPSA grants. Other
counties would still be able to establish similar programs, but those programs would be
treated differently for the purposes of ss. 967.055 (3) and 971.39. Is that okay?

Does 971.39 still allow deferred pros w/o dpc? Yes see hist

8 (3) If a person pleads guilty to or is found guilty of an alcohol-related or
9 drug-related offense and the person meets the requirements for such a disposition
10 under a program established under sub. (2), the court, without entering a judgment
11 of guilt and with the person's consent, may defer further proceedings and place him
12 or her on probation upon terms and conditions. Upon violation of a term or condition,
13 the court may enter an adjudication of guilt and proceed as otherwise provided. Upon
14 fulfillment of the terms and conditions, the court shall discharge the person and
15 dismiss the proceedings against him or her. If the program so provides, the discharge
16 and dismissal shall be without adjudication of guilt and is not a conviction for
17 purposes of disqualifications or disabilities imposed by law upon conviction of a
18 crime, including the additional penalties imposed for 2nd or subsequent convictions
19 under s. 961.48.

20 (4) If a person pleads guilty to or is found guilty of an alcohol-related or
21 drug-related offense and the person meets the requirements for such a disposition
22 under a program established under sub. (2), the court may, upon request of the
23 person and with the consent of a treatment facility with special inpatient or

who abuse

1 outpatient programs for the treatment of drug dependent persons) allow the person
 2 to enter the treatment programs voluntarily for purposes of treatment and
 3 rehabilitation. Treatment shall be for the period that the treatment facility feels is
 4 necessary and required, but shall not exceed the maximum sentence allowable
 5 unless the person consents to the continued treatment. At the end of the necessary
 6 and required treatment, with the consent of the court, the person may be released
 7 from sentence. If treatment efforts are ineffective ^{or unsuccessful} for the person ceases to cooperate
 8 with treatment rehabilitation efforts, the person may be remanded to the court for
 9 completion of sentencing.

****NOTE: The preceding two subsections are based on ss. 961.47 and 961.475, but allowing a county to determine a person's eligibility for these dispositions and whether the disposition under sub. (3) should be treated as a conviction may be an unconstitutional delegation of power.

10 SECTION 31. 973.016 of the statutes is created to read:

11 **973.016 Expungement in cases involving successful substance abuse**
 12 **treatment.** (1) A court may order that the record of a person's conviction for an
 13 offense be expunged if all of the following apply:

14 (a) The offense was one which rendered the person eligible for and resulted in
 15 his or her participation in a diversion program funded under s. 16.964 (10) (a). *INS 13/15*

****NOTE: In this draft, I limited the application of this paragraph to treatment programs funded under s. 16.964 (10) (a), in case you decide later to allow for the court to authorize expungement at sentencing. (See the NOTE following sub. (2).) In cases in which the court authorizes expungement in advance, it may be too difficult to monitor a non-AOAPSA program's determination that a person has successfully completed treatment. If you decide to require a petition, then you should consider whether you want to allow expungement based on a person's participation in a non-AOAPSA treatment program.

16 (b) The person successfully completed the treatment program described in par.
 17 (a).

****NOTE: Who determines whether a person successfully completed a treatment program? How and when do they do so? At a hearing? (These questions are closely related to the question raised in the NOTE following sub. (2).)

1 (c) The person has not been convicted of a crime since completing the treatment
2 program.

3 (d) At least 5 years have elapsed since the person completed the treatment
4 program.

9 [******NOTE:** Some of my notes indicate that you considered allowing a person to
petition for expungement after three years. Let me know which of those time periods you
want to use.

5 (e) The court determines that the person will benefit from and that society will
6 not be harmed by expungement.

7 (2) At any time after meeting the requirements under sub. (1), a person may
8 petition a court to expunge a record of conviction.

******NOTE:** Under s. 973.015, at sentencing, a court can direct that the record of a
conviction be expunged upon the person's successful completion of the sentence. The
offender need not file a petition in such a case. That obviously reduces the amount of court
resources needed to expunge the record of conviction. Do you want to allow or require
expungements to occur in a similar fashion in cases in which the court orders the person
to participate in a treatment program as a condition of probation or extended
supervision? If so, the next draft will include provisions specifying how the county
informs the clerk of the court when a person successfully completes a treatment program.
If not, the next draft will include other provisions regarding the petition and hearing
process. (One question that will need to be addressed is whether a victim of a crime other
than a controlled substance offense should be given notice of the hearing.)

9 **SECTION 32.** 973.032 (6) of the statutes is amended to read:

10 973.032 (6) CREDIT. Any sentence credit under s. 973.155 (1) or (1m) applies
11 toward service of the period under sub. (3) (a) but does not apply toward service of
12 the period under sub. (3) (b).

INS
14/12

13 **SECTION 33.** 973.155 (1) (b) of the statutes is amended to read:

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

1 **SECTION 34.** 973.155 (1m) of the statutes is created to read:

2 973.155 (1m) A convicted offender shall be given credit toward the service of
3 his or her sentence for all days spent in custody as part of a diversion program funded
4 under s. 16.964 (10) (a) for any offense arising out of the course of conduct that led
5 to the person's placement in that program.

6 **SECTION 35.** 973.155 (3) of the statutes is amended to read:

7 973.155 (3) The credit provided in sub. (1) or (1m) shall be computed as if the
8 convicted offender had served such time in the institution to which he or she has been
9 sentenced.

10

(END)

INS
15/4

INS 15/9 ✓

1 **INSERT 2/1A** ✓

2 (No P) In this subsection:

3 1. "County department" means a county department under s. 51.42 or 51.437
4 that provides substance abuse treatment services.

5 2. "Violent offender" means a person to whom one of the following applies:

6 a. The person has been charged with or convicted of an offense in a pending case
7 and, during the course of the offense, the person carried, possessed, or used a
8 dangerous weapon, the person used force against another person, or a person died
9 or suffered serious bodily harm.

10 b. The person has one or more prior convictions for a felony involving the use
11 or attempted use of force against another person with the intent to cause death or
12 serious bodily harm.

13 (b)

14 **INSERT 2/1B** ✓

15 county departments

16 **INSERT 2/2** ✓

17 , including suspended and deferred prosecution programs, that

18 **INSERT 2/13** ✓

19 , reduce recidivism, and improve the welfare of clients' families by meeting the
20 comprehensive needs of clients.

21 **INSERT 2/17** ✓

22 (No P) The criteria shall specify that a violent offender is not eligible to participate in
23 the program.

1 4. The program is consistent with the best practices in substance abuse
2 treatment.

3 5. The program uses graduated sanctions and incentives to promote successful
4 substance abuse treatment.

5 6. The program provides holistic treatment to its participants.

6 INSERT 3/2 ✓

7 ^(No 9) The program shall require regular communication between a participant's
8 substance abuse treatment providers and any probation, extended supervision, and
9 parole agent assigned to the participant.

10 INSERT 3/8 ✓

11 the departments of corrections and health and family services,

~~12~~ ✓ INSERT 3/11

13 (d) A county department for a county with a population of 500,000 or more shall
14 apply for a grant from the office under par. (b). After ensuring that the county
15 department's program meets the requirements of par. (c), the office shall award the
16 county department a grant under par. (a).

17 (e) In selecting among competing grant proposals from county departments
18 other than a county department applying under par. (d), the office shall give priority
19 to counties that have more residents in the custody of the department of corrections
20 as a result of crimes or violations of extended supervision, parole, or probation
21 relating to substance abuse.

22 INSERT 3/18 ✓

23 representatives of the departments of corrections and health and family
24 services,

25 INSERT 4/7 ✓

the county department

(g) The office shall inform any county department that is applying for a grant under this subsection whether (h) meets the requirements established under par. (b), regardless of whether the county department receives a grant.

INSERT 7/11

SECTION 1. 302.113 (7) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

302.113 (7) Any inmate released to extended supervision under this section is subject to all conditions and rules of extended supervision until the expiration of the term of extended supervision portion of the bifurcated sentence. The department may set conditions of extended supervision in addition to any conditions of extended supervision required under s. 302.116, if applicable, or set by the court under sub. (7m) or s. 973.01 (5) if the conditions set by the department do not conflict with the court's conditions. The reviewing authority, as defined in s. 302.113 (9) (ag) 2., may set or modify conditions under sub. (9) (am) 2. or 3.

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33.

SECTION 2. 302.113 (9) (ag) of the statutes is renumbered 302.113 (9) (ag) (intro.) and amended to read:

302.113 (9) (ag) (intro.) In this subsection "reviewing:

2. "Reviewing authority" means the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the person on extended supervision waives a hearing.

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33.

SECTION 3. 302.113 (9) (ag) 1. of the statutes is created to read:

302.113 (9) (ag) 1. "Approved substance abuse treatment program" means a substance abuse treatment program that meets the requirements of s. 16.964 (10) (b), as determined by the office of justice assistance under s. 16.964 (10) (f).

(i)

(c)

(13)

(15)

21

22

23

24

(c)

(i)

X

X

affected

1 SECTION 4. 302.113 (9) (am) of the statutes, as created by 2001 Wisconsin Act
2 109, is renumbered 302.113 (9) (am) (intro.) and amended to read:

3 302.113 (9) (am) (intro.) If a person released to extended supervision under this
4 section violates a condition of extended supervision, the reviewing authority may
5 revoke do one of the following:

6 1. Revoke the extended supervision of the person.

7 (ap) If the extended supervision of the person is revoked, the person shall be
8 returned to the circuit court for the county in which the person was convicted of the
9 offense for which he or she was on extended supervision, and the ~~court shall order~~
10 ~~the person to be returned to prison for any specified period of time that does not~~
11 ~~exceed the time remaining on the bifurcated sentence~~ reviewing authority shall
12 make a recommendation to the court concerning the period of time for which the
13 person should be returned to prison. The recommended time period may not exceed
14 the time remaining on the bifurcated sentence, which is the total length of the
15 bifurcated sentence, less time served by the person in confinement under the
16 sentence before release to extended supervision under sub. (2) and less all time
17 served in confinement for previous revocations of extended supervision under the
18 sentence. ~~A court order returning a person to prison under this subdivision shall~~
19 ~~provide the person whose extended supervision was revoked with credit in~~
20 ~~accordance with ss. 304.072 and 973.155.~~

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33.

21 SECTION 5. 302.113 (9) (am) 2. of the statutes is created to read:

22 302.113 (9) (am) 2. If the violation relates to the person's use of alcohol or other
23 drugs, the person resides in a county that has an approved substance abuse
24 treatment program, and the person meets the requirements for being admitted into

1 the program, order the person to participate in the program as a condition of
2 extended supervision.

3 **SECTION 6.** 302.113 (9) (am) 3. of the statutes is created to read:

4 302.113 (9) (am) 3. If the person is required to participate in an approved
5 substance abuse treatment program as a condition of extended supervision and the
6 violation relates to the person's participation in the program, establish, maintain, or
7 modify conditions of extended supervision relating to the person's participation in
8 the program.

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

10 302.113 (9) (ar) If a person is returned to court under par. (ap) after revocation
11 of extended supervision, the court shall do one of the following:

12 1. Order the person to be returned to prison for any specified period of time that
13 does not exceed the time remaining on the bifurcated sentence, as calculated under
14 par. (ap). A court order returning a person to prison under this subdivision shall
15 provide the person whose extended supervision was revoked with credit in
16 accordance with ss. 304.072 and 973.155.

17 2. If the violation relates to the person's use of alcohol or other drugs, the person
18 resides in a county that has an approved substance abuse treatment program, and
19 the person meets the requirements for being admitted into the program, vacate the
20 reviewing authority's decision to revoke the person's extended supervision and order
21 the person to participate in the program as a condition of extended supervision.

22 3. If the person is required to participate in an approved substance abuse
23 treatment program as a condition of extended supervision and the violation relates
24 to the person's participation in the program, vacate the reviewing authority's
25 decision to revoke the person's extended supervision and establish, maintain, or

1 modify conditions of extended supervision relating to the person's participation in
2 the program.

, as created by 2001 Wisconsin Act 109,

3 **SECTION 8.** 302.113 (9) (at) of the statutes is repealed.

4 **SECTION 9.** 302.113 (9) (b) of the statutes, as affected by 2001 Wisconsin Act 109,
5 is amended to read:

6 302.113 (9) (b) A person who is returned to prison after revocation of extended
7 supervision shall be incarcerated for the entire period of time specified by the court
8 under par. ~~(am)~~ (ar) 1. The period of time specified under par. ~~(am)~~ (ar) 1. may be
9 extended in accordance with sub. (3). If a person is returned to prison under par. ~~(am)~~
10 (ar) 1. for a period of time that is less than the time remaining on the bifurcated
11 sentence, the person shall be released to extended supervision after he or she has
12 served the period of time specified by the court under par. ~~(am)~~ (ar) 1. and any periods
13 of extension imposed in accordance with sub. (3).

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33.

14 **SECTION 10.** 302.113 (9) (c) of the statutes, as affected by 2001 Wisconsin Act
15 109, is amended to read:

16 302.113 (9) (c) A person who is subsequently released to extended supervision
17 after service of the period of time specified by the court under par. ~~(am)~~ (ar) 1. is
18 subject to all conditions and rules under subs. (7) and, if applicable, (7m) until the
19 expiration of the remaining extended supervision portion of the bifurcated sentence.
20 The remaining extended supervision portion of the bifurcated sentence is the total
21 length of the bifurcated sentence, less the time served by the person in confinement
22 under the bifurcated sentence before release to extended supervision under sub. (2)

1 and less all time served in confinement for previous revocations of extended
2 supervision under the bifurcated sentence.

3 History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33.

INSERT 8/2 ✓

4 substance abuse treatment program that meets the requirements of s. 16.964

5 (10) ^c ~~(b)~~, as determined by the office of justice assistance under s. 16.964 (10) ~~(f)~~ _i

6 INSERT 8/3 ✓

7 SECTION 11. 304.06 (3b) of the statutes is created to read:

8 304.06 (3b) (a) "Approved substance abuse treatment program" means a
9 substance abuse treatment program that meets the requirements of s. 16.964 (10)

10 ^c ~~(b)~~, as determined by the office of justice assistance under s. 16.964 (10) ~~(f)~~ _i

11 (b) If a parolee violates a condition of parole, the violation relates to the
12 parolee's use of alcohol or other drugs, the parolee resides in a county that has an
13 approved substance abuse treatment program, and the parolee meets the
14 requirements for being admitted into the program, the division of hearings and
15 appeals in the department of administration or, if the parolee waives the final
16 administrative hearing, the secretary of corrections may, in lieu of revoking parole,
17 order the parolee to participate in the program as a condition of parole.

18 (c) If a parolee is required to participate in an approved substance abuse
19 treatment program as a condition of parole and the parolee violates a condition of
20 parole that relates to the parolee's participation in the program, the division of
21 hearings and appeals in the department of administration or, if the parolee waives
22 the final administrative hearing, the secretary of corrections may, in lieu of revoking
23 parole, establish, maintain[✓] or modify conditions of parole relating to the person's
24 participation in the program.

1 SECTION 12. 808.075 (4) (g) 3. of the statutes is amended to read:

2 808.075 (4) (g) 3. Imposition of sentence upon revocation of probation under s.
3 973.10 (2) (2b) (c) 1. or (2e) (a) 1.

History: Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1989 a. 86; 1993 a. 16, 446, 479, 481; 1995 a. 38, 73, 77, 275; 1997 a. 35, 191, 292, 296, 334; 1999 a. 9; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16.

4 INSERT 11/13 ✓

5 substance abuse treatment program that meets the requirements of s. 16.964
6 (10) (h)^c, as determined by the office of justice assistance under s. 16.964 (10) (f)

7 INSERT 14/12 ✓

8 SECTION 13. 973.10 (1) of the statutes is renumbered 973.10 (1j) and amended
9 to read:

10 973.10 (1j) Imposition of probation shall have the effect of placing the
11 defendant in the custody of the department and shall subject the defendant to the
12 control of the department under conditions set by the court or, under sub. (2), by the
13 department or the division of hearings and appeals in the department of
14 administration and under rules and regulations established by the department for
15 the supervision of probationers, parolees and persons on extended supervision.

History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283.

16 SECTION 14. 973.10 (1d) of the statutes is created to read:

17 973.10 (1d) In this section, "approved substance abuse treatment program"
18 means a substance abuse treatment program that meets the requirements of s.
19 16.964 (10) (h)^c, as determined by the office of justice assistance under s. 16.964 (10)
20 (f)ⁱ.

21 SECTION 15. 973.10 (2) (intro.) of the statutes is renumbered 973.10 (2) (a) and
22 amended to read:

23 973.10 (2) (a) If a probationer violates the conditions of probation, the
24 department of corrections may initiate a proceeding before the division of hearings

1 and appeals in the department of administration. Unless waived by the probationer,
 2 a hearing examiner for the division shall conduct an administrative hearing and
 3 enter an order either revoking or not revoking probation. Upon request of either
 4 party, the administrator of the division shall review the order. If the probationer
 5 waives the final administrative hearing, the secretary of corrections shall enter an
 6 order either revoking or not revoking probation. ~~If probation is revoked, the~~
 7 ~~department shall:~~

8 History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283.

SECTION 16. 973.10 (2) (a) of the statutes is renumbered 973.10 (2b) (c) 1.

9 History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283.

SECTION 17. 973.10 (2) (b) of the statutes is renumbered 973.10 (2b) (c) 2.

10 History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283.

SECTION 18. 973.10 (2) (bm) of the statutes is created to read:

11 973.10 (2) (bm) If the violation of probation relates to the probationer's use of
 12 alcohol or other drugs, if the probationer resides in a county that has an approved
 13 substance abuse treatment program, and if the probationer meets the requirements
 14 for being admitted into the program, the division of hearings and appeals in the
 15 department of administration or, if the probationer waives the final administrative
 16 hearing, the secretary of corrections may, in lieu of revoking probation, order the
 17 probationer to participate in the program as a condition of probation.

18 **SECTION 19.** 973.10 (2) (c) of the statutes is created to read:

19 973.10 (2) (c) If the probationer is required to participate in an approved
 20 substance abuse treatment program as a condition of probation and he or she violates
 21 a condition of probation that relates to his or her participation in the program, the
 22 division of hearings and appeals in the department of administration or, if the
 23 probationer waives the final administrative hearing, the secretary of corrections

1 may, in lieu of revoking probation, establish, maintain or modify conditions of
2 probation relating to the person's participation in the program.

3 SECTION 20. 973.10 (2b) of the statutes is created to read:

4 973.10 (2b) (a) If a person's probation is revoked, the department shall proceed
5 under par. (c) if any of the following ~~apply~~: *applies*

6 (a) The person is not required to participate in an approved substance abuse
7 treatment program as a condition of probation and one of the following applies:

8 1. The revocation does not relate to the probationer's use of alcohol or other
9 drugs.

10 2. The person does not reside in a county that has an approved substance abuse
11 treatment program.

12 3. The county has established such a program but the person does not meet the
13 requirements for being admitted into it.

14 (b) The person is required to participate in an approved substance abuse
15 treatment program as a condition of probation but the violation does not relate to his
16 or her participation in the program.

17 (c) If par. (a) or (b) applies, the department shall do one of the following:

18 SECTION 21. 973.10 (2e) of the statutes is created to read:

19 973.10 (2e) (a) If a person's probation is revoked but neither sub. (2b) (a) nor
20 sub. (2b) (b) applies, the department shall order that the person be brought before
21 the court. The court shall then do one of the following:

22 1. If the person has not already been sentenced, impose sentence without
23 further stay under s. 973.15. ✓

1 2. If the person has already been sentenced, vacate the stay of the sentence.
 2 The term of a sentence under this subdivision shall begin on the date the person
 3 enters the prison.

↑
on which

4 3. Rescind the order revoking the person's extended supervision and order the
 5 person to participate in an approved substance abuse treatment program in his or
 6 her county of residence as a condition of probation or, if the person is already required
 7 to participate in such a program as a condition of probation, establish, maintain, or
 8 modify conditions relating to the person's participation in the program.

), as created by 2001 Wisconsin Act 109,

9 **SECTION 22.** 973.15 (2m) (a) 3. of the statutes is amended to read:

10 973.15 (2m) (a) 3. "Period of confinement in prison," with respect to any
 11 sentence to the Wisconsin state prisons, means any time during which a person is
 12 incarcerated under that sentence, including any extensions imposed under s. 302.11
 13 (3), 302.113 (3), or 302.114 (3) and any period of confinement in prison required to
 14 be served under s. 302.113 (9) (am), 2001 stats., or s. 302.11 (7) (am), 302.113 (9) (am)
 15 (ar) 1., or 302.114 (9) (am).

History: 1973 c. 90; 1977 c. 347, 353, 447; 1981 c. 50, 292; 1983 a. 528; 1989 a. 31, 85; 1991 a. 39; 1993 a. 79; 1995 a. 390; 1997 a. 283; 2001 a. 109.

16 **SECTION 23.** 973.15 (2m) (e) of the statutes is amended to read:

17 973.15 (2m) (e) *Revocation in multiple sentence cases.* If a person is serving
 18 concurrent determinate sentences and extended supervision is revoked in each case,
 19 or if a person is serving a determinate sentence concurrent with an indeterminate
 20 sentence and both extended supervision and parole are revoked, the person shall
 21 concurrently serve any periods of confinement in prison required under those
 22 sentences under s. 302.113 (9) (am), 2001 stats., or s. 302.11 (7) (am), 302.113 (9) (am)
 23 (ar) 1., or 302.114 (9) (am).

24 **INSERT 15/4** ✓

1 ^(NOT) substance abuse treatment program that meets the requirements of s. 16.964
 2 (10) ^c (b), as determined by the office of justice assistance under s. 16.964 (10) ⁱ (f)

3 **INSERT 15/9** ✓

4 **SECTION 24. Initial applicability.**

5 [#] (1) EXTENDED SUPERVISION REVOCATION PROCEEDINGS. The treatment of section
 6 302.113 (7) and (9) (ar), (at), (b), and (c) of the statutes, the renumbering and
 7 amendment of section 302.113 (9) (ag) and (am) of the statutes, and the creation of
 8 section 302.113 (9) (ag) 1. and (am) 2. and 3. of the statutes first apply to extended
 9 supervision revocation proceedings pending on the effective date of this subsection.

10 [#] (2) PAROLE REVOCATION PROCEEDINGS. The treatment of section 304.06 (3b) of the
 11 statutes first applies to parole revocation proceedings pending on the effective date
 12 of this subsection.

13 [#] (3) PROBATION REVOCATION PROCEEDINGS. The treatment of section 973.10 (2)
 14 (intro.), (a), (b), (bm), and (c), (2b), and (2e) of the statutes first applies to probation
 15 revocation proceedings pending on the effective date of this subsection.

16 **SECTION 25. Effective date.**

17 [#] (1) This act takes effect on the first day of the ^{4th} fourth month beginning after
 18 publication.