

2003 DRAFTING REQUEST

Bill

Received: **03/31/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Gwendolynne Moore (608) 266-5810**

By/Representing: **Rachel Roller**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Treatment for drug offenses

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							S&L
/P1	rryan 08/22/2003	kgilfoy 08/26/2003	chaskett 08/27/2003		lemery 08/27/2003		S&L
/P2	rryan 09/04/2003	kgilfoy 09/11/2003	rschluet 09/15/2003		lemery 09/15/2003		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3	mdsida 01/20/2004 mdsida 03/02/2004	kgilfoy 01/27/2004 kgilfoy 03/02/2004	chaugen 02/05/2004	_____	_____		
/P4	mdsida 03/04/2004	csicilia 03/04/2004	pgreensl 03/03/2004	_____	_____		S&L Crime
/P5			rschluet 03/04/2004	_____	lemery 03/04/2004		S&L Crime
/1	mdsida 03/09/2004	kgilfoy 03/09/2004	pgreensl 03/09/2004	_____	mbarman 03/10/2004	mbarman 03/10/2004	

FE Sent For:

→ At
Intro.

<END>

mbarman
03/10/2004

↓
e-mail
sent

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By/Representing: **Rachel Roller**

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May Contact:

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Criminal Law - sentencing

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to: **michael.dsida@legis.state.wi.us**

Pre Topic:

No specific pre topic given

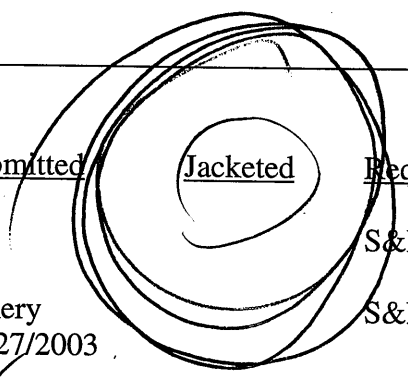
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/?			3/9				S&L
/P1	rryan 08/22/2003	kgilfoy 08/26/2003	chaskett 08/27/2003	3/9	lemery 08/27/2003		S&L
/P2	rryan 09/04/2003	kgilfoy 09/11/2003	rschuler 09/15/2003	3/9	lemery 09/15/2003		

1-3/9
KMG

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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	mdsida 03/02/2004	kgilfoy 03/02/2004		_____			
/P4	mdsida 03/04/2004	csicilia 03/04/2004	pgreensl 03/03/2004	_____			S&L Crime
/P5			rschlue 03/04/2004	_____	lemery 03/04/2004		

FE Sent For:

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

1/14-3/2
Kmg

Ch
2-4

Ch
5/24
<END>

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By/Representing: Rachel Roller

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Drafter: rryan

May Contact:

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Criminal Law - sentencing

Extra Copies: MGD

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/P1	rryan 08/22/2003	kgilfoy 08/26/2003	chaskett 08/27/2003		lemery 08/27/2003		

FE Sent For:

102-9/4 King

9-12-386

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1?	rryan	1-8/26 Kmg	1 8/27 qph	1 8/27 rs/cph			

FE Sent For:

<END>

Ryan, Robin

From: Roller, Rachel
Sent: March 31, 2003 2:07 PM
To: Ryan, Robin
Subject: Treatment Alternative Initiative

Hi Robin:

Thank you again for meeting with me last week Friday. I look forward to working with you on this endeavor.

Please find attached the YOAR draft that we briefly discussed on Friday. I believe this proposal was crafted for Senator George. Hopefully it will help in giving some direction. In addition, I have attached Jack Stoiber's DUR power point presentation for your perusal.

I have also posted Milwaukee County ADA Jack Stoiber's number below. I would also encourage you to contact Krista Ginger with the State Public Defender's Office as well. Our office has been in communication with Krista on this issue in the past and we would like to keep both the SPD's and DA's ideas in mind when crafting this legislation, in order to maintain a sense of balance. I have informed both Jack and Krista that I have very recently begun working with you on drafting treatment alternative legislation and that I have shared their telephone numbers with you:

Krista Ginger - 608/264-8572

Jack Stoiber - 414/257-7725

I have spoken to Senator Moore regarding your question of what is mandatory. She liked the idea of allowing whomever is involved with the sentencing of the offender (DA, SPD, private attorney) to approach the judge with concerns and then allow the judge to determine whether the offender should be screened for drug dependency.

Please let me know if you have any questions.

Thanks,

Rachel

Rachel Roller

Policy Analyst
State Senator Gwendolynne Moore's Office
415 South Wing, State Capitol
608/266-5810



YOAR draft.pdf DURC-modified.ppt

LRB 01-0870/P3

Sack Steiber Proposal

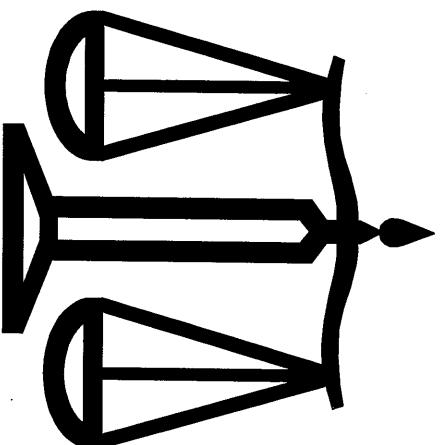
DRP



Drug Use Reduction Legislative Proposal

Milwaukee Proposal

Legislation that is supple enough to be used on an ad hoc (per case) basis in smaller counties but with enough structure to become the framework for a full time drug treatment court.



DUR creates a mechanism for offense processing that utilizes **sanctions and incentives to promptly** address drug abuse crime (primary) and certain drug abuse related crimes (secondary).

Primary

Secondary

Simple drug (non-trafficking offenses) are automatically eligible for DUR subject to consent of the parties & court approval.

Subject to certain excluded offenses, non-automatically eligible offenses, that are significantly drug motivated subject to approval of the parties and certain court findings.

Anticipated use may be offenders involved in minor drug sales or less serious property crimes where the crimes are significantly motivated by drug abuse.

Primary Route

Arrest

Charge automatically Eligible Offense

- POCS, POCS-2d
- OCSBM 961.43
- PODP *Poss. of Drug Paraphernalia*
- Keeping 961.42

Consent of Parties furthers Eligibility

Court Approval

Primary Route No need for pre-screening as those who might fail just continue as if a normal criminal case.

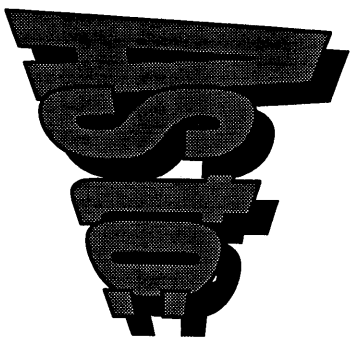
Secondary Route

Offenses significantly motivated by drug abuse

Motion for Use of DUR Processing because the offense is believed to be significantly motivated by drug abuse.

Court finds by CLEAR & Convincing Evidence

1. Offense significantly motivated by drug abuse
2. Victim specifically and Public will not be harmed
3. DUR processing in BEST interest of Public
4. DUR processing will not unduly depreciate the seriousness of the offense



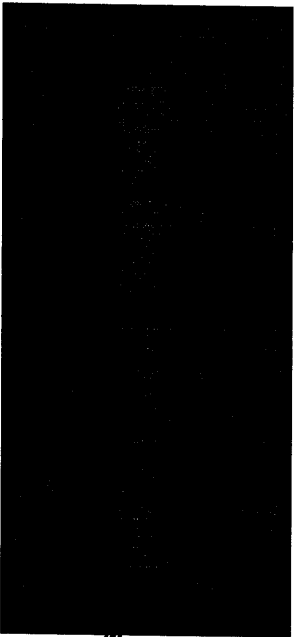
Not Automatically Eligible Offenses

Offenses that Would Take Advantage of DUR processing through the secondary route.

Any offense not herein excluded. [Also, as noted: consent of parties and favorable court findings required under the secondary route.]

Excluded Offenses:

- Class A, B, C, D and E felonies
- offenses involving firearms; e.g., CCW (firearm), Felon in Possession of Firearm, or while armed with a firearm
- operating vehicle under the influence offenses



Prompt Assumption of Responsibility

• **Guilty Plea**

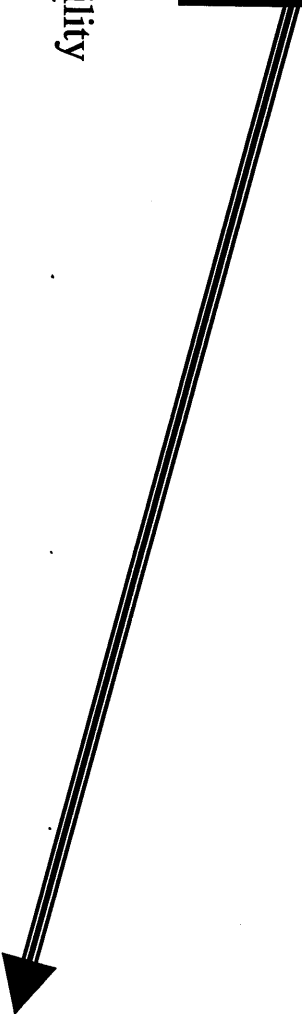
PROMPT = 10 days of
PH (felony)
or 30 days Intake
(Misdemeanor)

1) encourages prosecutors
to use DUR

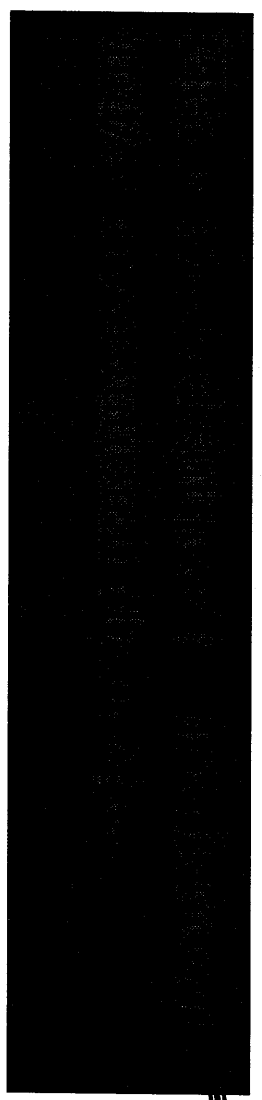
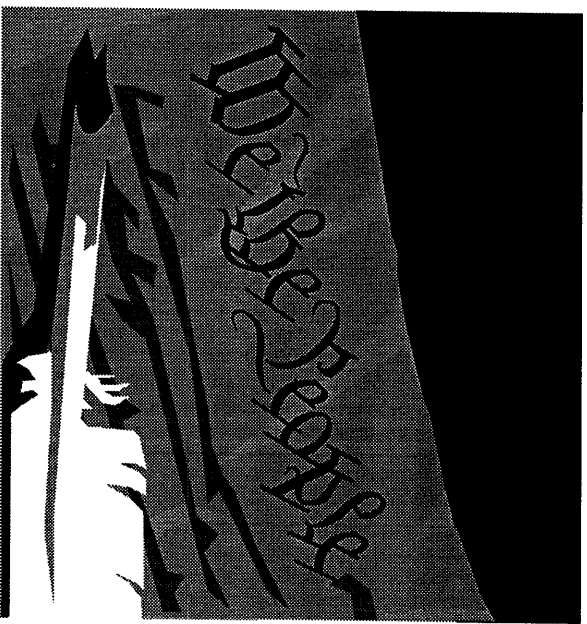
2) saves litigation
expenses

3) drug use problems call
for prompt attention

[4] In non-drug, victim
involved crimes, less
burden on the victim.]



Integrity of the process necessitates ability to lodge certain challenges.



So as not to interfere with promptly moving toward treatment or other intervention
AND so motion practice is not used solely to delay, guilty pleas can be accepted
subject to this litigation.

Sentence

Offender remains amenable to treatment or other intervention.

Presumption for Automatically eligible offenses (primary): No Incarceration.

Probation supervision subject to conditions of treatment or other alternatives directed to abstinence (Education; community service), urine screens, reporting, etc.

GOAL → successful treatment or other intervention directed at achieving sustained abstinence

Court -- Probation Supervision

Court maintains involvement with **DOC** in overseeing "drug treatment or other intervention." through reviews (times could be established).

Authority: --use graduated sanctions (incarceration) or amend conditions to achieve goals.

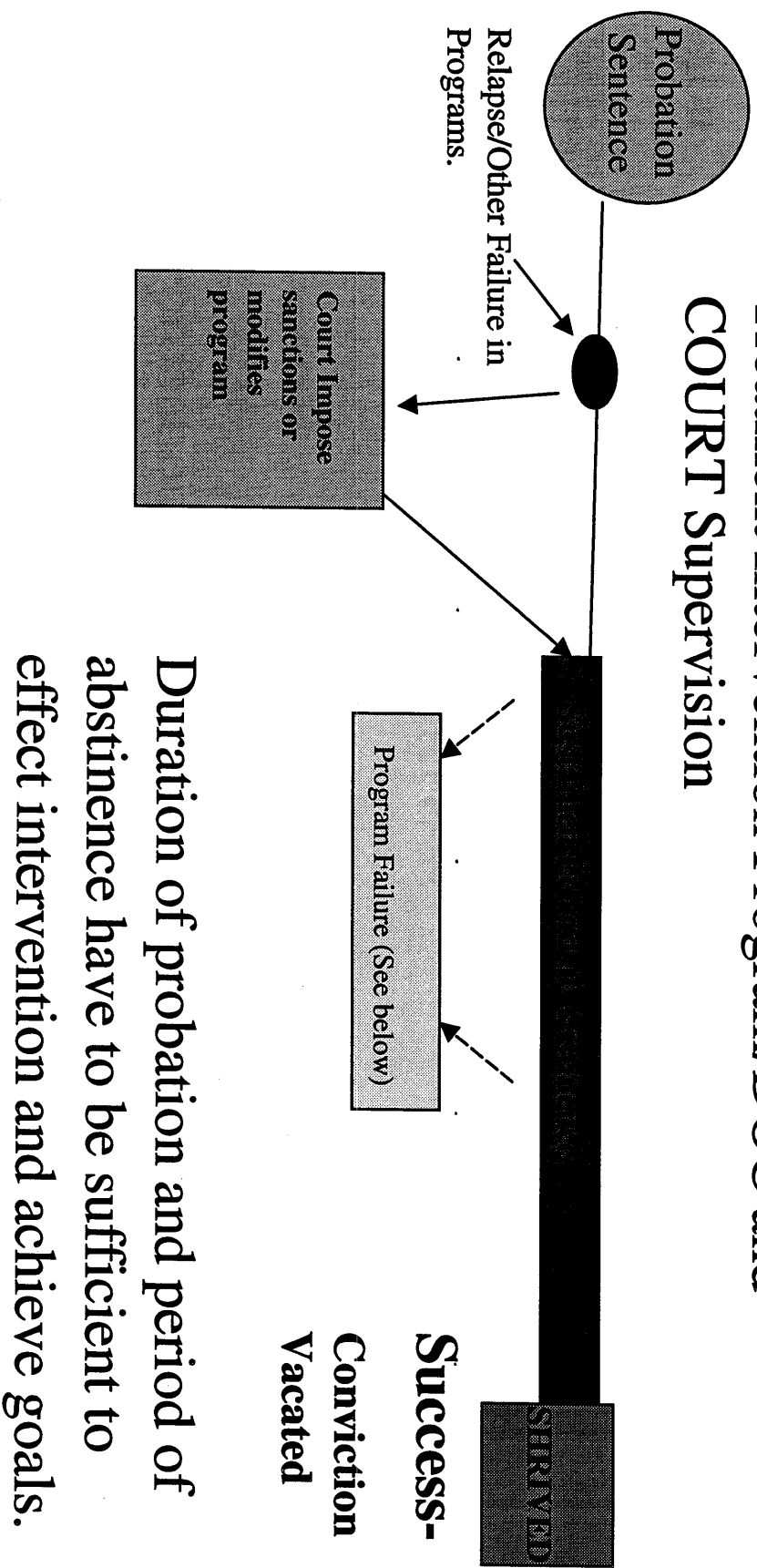
PSI (specific

for drug evaluation

(statute must permit PSI for misdemeanor)



Treatment Intervention Program/DOC and COURT Supervision

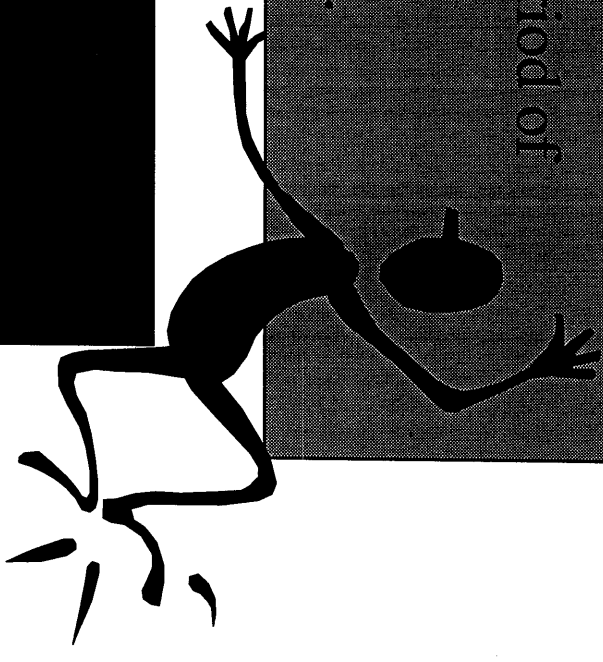


Duration of probation and period of abstinence have to be sufficient to effect intervention and achieve goals.

Program failure that precludes achieving goals would lead to probation revocation and sentencing. "Preclude" would mean there was no reasonable likelihood for DUR success after remedial measures, such as sanctions or modified treatment, were tried and failed, or the initial program failed and there are no viable remedial measures to impose.

Success--

- 1) Drug Treatment or other intervention leads to sustained period of drug abstinence, e.g., 9 months.
- 2) And No new Criminal Charges.



Final Report and Note

DUR should be considered in conjunction with the *Youthful Offender/Anti-Recidivism Proposal (YOAR)*. This cannot be too strongly emphasized. It promotes *DUR* policy goals.

YOAR creates the mechanism for 17, 18, 19 and 20 year old offenders to earn their way out from under the heavy burden of a felony conviction record (obtain civic redemption). It does not put the public at risk and overall promotes the public interest. *YOAR* keeps **hope** alive for youthful offender's, thereby creating incentive not to return to illegal activity (such as drug trafficking) or turn to drug abuse.

Meeting w/ Rachel 7/31/03

LRB-2444

- (1) Wants bill by Sept. 5th
- (2) Exempt Dane & LaCrosse Drug Court programs
- (3) Mandatory probation
allow 2-3 yrs. to meet prog. reqs
- (4) Basic stds. for treatment in law - OK
to have DHS specify by rule
- (5) Assessment is necessary
- (6) Use Stolbu's list of elig. offenses
- (7) What triggers assess? ~~Under secondary~~
~~rule?~~
 - poss. offense
 - "under influence" when commit offense
 - DA ~~asks~~ defense atty, defendant - asks
for assessment
- (8) DHS - rule on who does assessment
- (9) Flexibility to change treatment as needed
- (10) Cty. decides who puts plan together
- (11) Graduated sanctions
- (12) expunge record
- looked at Youthful Offender proposal
- (13) Require input from community in building

The program

(14) Allow cities to combine treatment programs

(15) Allow 1st class city to contract for probation supervision - (i.e. not DOC)

(16) Don't specify length of treatment

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2444/P1dn

RLR: /...
king

Rachel Roller:

1. Under the bill, a person who commits a first or second drug possession offense is automatically eligible for probation. The bill does not count convictions for drug possession offenses in other jurisdictions as prior convictions. Should it?
2. Do you want to specify a time^Δ frame for prior convictions that count against a person for purposes of eligibility for probation and treatment under the primary route. For example, if a person had two possession offenses when he or she was 20, and then was convicted of possession again at age 40, should the two prior convictions bar him from automatic eligibility?
3. Should a person who has two or more prior drug possession convictions be eligible for probation and treatment under the secondary route? Under the bill, such a person is eligible.
4. Instead of using two or more prior convictions for possession as the bar to automatic eligibility, perhaps you could use a combination of prior convictions and failure in the probation and treatment program.
5. The bill uses Stoiber's list of offenses that trigger automatic eligibility for probation and treatment, including possession of drug paraphernalia related to methamphetamine [s. 961.573 (3)] and making counterfeit drugs [s. 961.43 (1) (b) 1.]. A person who operates a methamphetamine lab or counterfeits drugs does not necessarily use drugs, so it may be more appropriate to make persons who commit these offenses eligible for probation and treatment under the secondary route rather than under the primary route.
6. Under the bill, a court must order a person ^{if} assessed for drug use under the secondary route ~~if~~ the person had a controlled substance that he or she was not authorized to take in his or her blood when he or she committed the offense. Should an assessment also be mandatory if the person has a controlled substance that he or she is authorized to take in his or her blood, for example, morphine or vicodin? ^{to be}
7. We talked about allowing a defense attorney to request that his or her client be assessed for drug use for purposes of eligibility under the secondary route. Under the bill, only the defendant, the district attorney, or the court may seek an assessment.

Allowing a defense attorney to seek an assessment contrary to the wishes of his or her client would interfere with the defendant's right to make decisions regarding the conduct of his or her defense.

8. A defendant is generally charged in the county in which the offense is committed, which is not necessarily the county in which the defendant resides. It would be difficult for a person to participate in treatment provided by a county other than the county in which the person resides. Do you want to include a provision that requires the court in the county where the offense is committed to transfer the case to the offender's county of residence after the conviction is entered? If so, which county should pay for the treatment?

9. Should there be a distinction between the terms drug "use" and drug "abuse?" In other words, is drug use always abuse for purposes of this bill? I used the term drug "use" throughout the bill. ✓

✓ 10. Do you want to set a maximum number of days that a court may confine a person in jail as a sanction for a violation of a condition of probation? Under current law, a court may place a person who is on probation in jail for up to one year. The bill specifies that the one-year confinement provision does not apply to the treatment and probation program, but does allow some jail time as a sanction. Theoretically, under the bill, a court could confine a person for up to 364 days as a sanction.

I 11. Under current law, if a county does not have sufficient funding to provide drug treatment to all persons who need treatment, the county must give priority to pregnant women (see) s. 51.42 (3) (ar) 4m.). Do you want to mandate full funding of the probation and treatment program. If not, do you want to establish what priority level people in the probation program have versus others who need drug treatment. Do you want to specify how counties should prioritize among people who are participating in the probation and treatment program? During our phone conversation with representatives from the Public Defender's office, one of the representatives expressed concern that the probation and treatment program will get filled up with people who commit lesser offenses, and then the people who commit felonies will not be given sufficient services, so they will fail and will be sent to prison.

12. The bill requires that in developing a plan to provide services under the probation and treatment program, county departments ~~also~~ solicit input from residents of the county. Should counties be required to solicit input from anyone else, for example, treatment providers?

13. We discussed allowing counties to join together to develop a single multi-county treatment program. Under current law, counties may already form joint departments of community programs, so it is not necessary to give counties additional authority.

14. Under the bill, if a person successfully completes probation, the court must both vacate the judgment of conviction and expunge the record of conviction. Further, the vacated conviction cannot be considered as a conviction for any purposes (including as a strike against future eligibility for probation and drug treatment). Are there any circumstances under which you would not want the record of conviction expunged? Do

you want the vacated conviction to remain of record for any purpose? Would you prefer that courts determine whether expunction is appropriate on a case-by-case basis?

15. Under the current law "volunteers in probation" provision (s. 973.11), courts may place people on probation under the supervision of a person other than the Department of Corrections. This serves as a precedent for choosing an entity other than the Department of Corrections to supervise people participating in the probation and treatment program in the city of Milwaukee.

16. This bill does not address funding for treatment. Nor does it specify whether persons who are placed on probation under the bill will be required to pay for any portion of their treatment.

17. The bill repeals current law sections 961.47, 961.472, and 961.475, the conditional discharge provision for certain first time possession offenses, and the treatment option (including the assessment provision for treatment), all of which are described in the analysis of the bill. Please let me know if you would prefer to modify these provisions rather than repealing them. The current treatment provision under s. 961.475 allows a person to voluntarily enter treatment at his or her own expense and does not require significant court oversight. You may therefore wish to keep this provision because it seems to be of little or no cost to government. If you do keep it, should a person who fails private voluntary treatment be eligible for the probation and treatment program created under the bill?

19. Following are the major differences between the bill and the Stoiber proposal:

- a. Under the bill, a court must place a defendant on probation if he or she commits a simple drug offense or if he or she commits another eligible offense that is drug motivated. Stoiber requires the district attorney's consent to probation, and allows the judge discretion to impose a sentence instead of granting probation.
- b. The Stoiber proposal requires the defendant to "promptly assume responsibility" by pleading guilty within 10 days of the charge for a felony and 30 days for a misdemeanor. Under the bill, a defendant is not required to plead guilty he or she may plead no contest or may even go to trial, and there are no time limits on eligibility for probation and treatment. Also, the bill does not defer motion practice.
- c. The Stoiber proposal uses the presentence investigation conducted by the Department of Corrections to evaluate a defendant's drug use. The bill requires that assessments be performed by persons who meet standards established by the Department of Health and Family Services.
- d. The Stoiber proposal requires that a person achieve a sustained period of abstinence (9 months suggested) before he or she may successfully complete probation. The bill leaves up to DHFS and the courts what constitutes success.

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

18. The bill does not provide that a person who is convicted of an attempt to commit an offense is eligible for probation to the same extent as the person would be if he or she had committed the offense. I will add this in the next draft.

"m"dash

am



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-24447

PI

RLR:k:...

kmj

Wanted Soon
In 8/22/03

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Mem. Act.

1 AN ACT *relating to*; relating to: probation and treatment for persons who commit certain
2 drug-related offenses, requiring the exercise of rule-making authority and
3 providing an exemption *from* emergency rule procedures, and

for a first offense
Analysis by the Legislative Reference Bureau

Current law prohibits a person from possessing various controlled substances. The penalties for possession of these controlled substances range from an unclassified misdemeanor to a Class H felony. The higher penalties are for possession of narcotics, cocaine, hallucinogens, stimulants, and certain so-called "club drugs," including flunitrazepam, ketamine, and gamma-hydroxybutyric acid. For many possession offenses, the maximum penalty for a second or subsequent offense is greater than the maximum penalty for a first offense.

The following drug-related activities are also crimes under current law:

1. Keeping or maintaining a place for using controlled substances is a Class I felony.
 2. Acquiring a controlled substance by misrepresentation or fraud, or counterfeiting a controlled substance is a Class H felony.
 3. Possessing drug paraphernalia is generally an unclassified misdemeanor, ~~but~~ possessing paraphernalia for methamphetamine is a Class H felony.
- The maximum penalties for the crimes cited above are as follows:

Stat

<i>Crime</i>	<i>Maximum Fine</i>	<i>Maximum Term of Imprisonment (for felonies, includes term of extended supervision)</i>
Class A misdemeanor	\$10,000	Nine months
Class I felony	\$10,000	Three and one-half years
Class H felony	\$10,000	Six years

considered

Current law provides that a court may allow a person who is convicted for possession of a controlled substance to participate in treatment for drug dependency as an alternative to sentencing if the offender volunteers to participate in treatment and if a treatment facility agrees to provide treatment. The treatment is for the period of time ~~deemed~~ necessary by the treatment facility, but may not exceed the maximum possible sentence length for the possession offense unless the offender consents to a longer term. At the end of the treatment period, the court may waive sentencing for the drug possession offense. However, if treatment is ineffective or if the offender does not comply with treatment, the court may sentence the person for the drug possession offense. If a person is convicted for possession of heroin, cocaine, or certain hallucinogens or stimulants, the sentencing court must order ~~that~~ the offender submit to an assessment of the offender's drug use to determine whether the offender is appropriate for treatment.

to

Conditional discharge is another alternative to ^a sentencing for a drug possession offense for which the maximum penalty is ^a fine not to exceed \$500 ^{or} confinement in jail for not more than 30 days ^{or} both. If a person has no prior drug-related convictions and pleads guilty or is found guilty of such a possession offense and the person successfully completes probation for the offense, the court may discharge the person's sentence without creating a record of conviction.

This bill repeals the voluntary treatment alternative to sentencing, the assessment requirement for persons convicted of certain possession offenses, and the conditional discharge alternative.

~~The bill requires that~~ a person is convicted of certain simple drug offenses and the person consents to participate in drug treatment and rehabilitation, ^{IF} the court ^{to} place the person on probation and order treatment and rehabilitation services as a condition of probation. The simple drug offenses are a first or second conviction of possession of a controlled substance, keeping or maintaining a place for drug use, acquiring a controlled substance by misrepresentation or fraud or counterfeiting a controlled substance, and possession of drug paraphernalia.

the bill requires

to

The bill also requires a court to place a person who commits certain other crimes on probation if the court finds that commission of the crime was significantly motivated by the offender's use of drugs. Unless the defendant is convicted of an ineligible offense, if the defendant or district attorney requests that the court consider placing the person on probation with treatment and rehabilitation services, the court must order an assessment of the defendant's drug use and hold a hearing on whether to place the defendant on probation. The court must also order an assessment and hold a hearing if the offender had an unauthorized controlled

with drug treatment and rehabilitation services;

substance in his or her blood when he or she committed the crime. If after the hearing the court finds that all of the following are true, the court must place the defendant on probation and order drug treatment and rehabilitation services as a condition of probation: 1) the commission of the crime was significantly motivated by the defendant's drug use; 2) ~~that~~ neither the victim of the offense ~~nor~~ the public will be harmed by placing the defendant on probation ~~under this section~~; 3) ~~that~~ placing the defendant on probation is in the best interests of the public; and 4) ~~that~~ placing the defendant on probation will not unduly depreciate the seriousness of the offense.

nor

its

The court may also order an assessment and initiate proceedings to consider probation on ~~its~~ own motion. The following are ineligible offenses, for which a person may not be placed on probation under this bill: a Class A, B, C, D, or E felony; an offense involving a weapon; or operating a motor vehicle while intoxicated.

The bill requires the Department of Health and Family Services (DHFS) to promulgate rules that specify the drug treatment and rehabilitation services that counties must provide to persons placed on probation under this bill and to establish minimum standards for the provision of the services. County departments of community programs must either directly provide the required services or contract for provision of the services. Each county department of community programs must submit to DHFS a plan for how ~~it~~ intends to provide the required services. The county departments are required to solicit input from residents of the county in developing the plan.

the county department

the

that

When a court places a person on probation for a simple drug offense or a drug motivated offense, the court must specify ~~what~~ drug treatment and rehabilitation ~~services~~ the person must participate in as a condition of probation. The court may change the services ordered as needed. If a person on probation under this bill violates a condition of probation that is not related to drug treatment ~~or~~ rehabilitation services, the court may revoke the person's probation and order the person to serve a sentence. If a person violates a condition related to treatment or rehabilitation services, the court may impose graduated sanctions, including time in jail. The court may not revoke a person's probation for a violation related to treatment or rehabilitation services unless both of the following conditions are met:

or

3

1) the court modified the treatment and rehabilitation conditions or imposed graduated sanctions and the defendant again violated a condition that he or she participate in drug treatment and rehabilitation services, or there are no reasonable ~~treatment and rehabilitation service~~ options other than the services originally ordered by the court; and 2) the court finds that there is no reasonable likelihood that the defendant will abstain from drug use for the remainder of the term of probation. If a person successfully complete probation, the court must vacate the judgment of conviction and expunge the record of conviction.

(DOC)

The bill further requires that the Department of Corrections ~~contract~~ with another entity to provide probation supervision services for persons placed on probation and ordered to participate in drug treatment and rehabilitation services for offenses committed in the city of Milwaukee. In the remainder of the state, ~~the~~ Department of Corrections must supervise people placed on probation under the bill, as under current law.

DOC

Finally, the bill provides that counties that operate a drug court program that exists before this bill is enacted as an act may continue to serve through the drug court program those persons who are eligible for both the drug court program and the probation and treatment program required by this bill.

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

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

1 SECTION 1. 46.03 (18) (fm) of the statutes is repealed.

2 SECTION 2. 51.49 of the statutes is created to read:

3 **51.49 Treatment intervention program.** (1) COUNTY RESPONSIBILITY. (a)

4 The county department of community programs shall provide assessments of drug
5 use that are ordered by the circuit court under s. 973.105 (2). The assessments shall
6 satisfy standards established by the department of health and family services under
7 sub. (2).

8 (b) The county department of community programs shall develop a network of
9 drug treatment and rehabilitation services consisting of the services required by rule
10 under sub. (2) and any other services ^{that} the county elects to provide, and shall provide
11 the services ^{as} ordered by the circuit court to persons placed on probation under s.
12 973.105. ^{as}

13 (c) The county department of community programs may directly provide the
14 assessments and services that are required under this subsection or may contract
15 with another person to provide the assessments and services. By the first day of the ^X
16 10th month beginning after ^{the effective date of this paragraph} ~~publication~~ ^{L A} [revisor inserts date], the county
17 department of community programs shall submit a plan of services to the
18 department of health and family services specifying who shall provide the
19 assessments and services and describing how and where they shall be provided. ^X The

repealed

1 county department of community programs shall solicit input from residents of the
2 county in developing the plan and selecting providers.

3 (2) RULES. The department of health and family services shall promulgate
4 rules specifying ^{all of} the following: (3)

5 (a) The services including treatment for drug use, education concerning the
6 effects of drug use, drug use tests, and employment support that county departments
7 of community programs must make available to the circuit court for persons placed
8 on probation under s. 973.105.

9 (b) Minimum standards for the services specified under par. (a). 973.105

10 (c) Requirements for drug use assessments ordered under s. ~~973.105~~ (2).

11 (d) Qualifications for providers of the services required under par. (a) and for
12 the providers of assessments ordered under s. ~~973.105~~ (2).

13 SECTION 3. 961.47 of the statutes is repealed. (3) (49)

14 SECTION 4. 961.472 of the statutes, as affected by 2001 Wisconsin Act ~~109~~, is
15 repealed.

16 SECTION 5. 961.475 of the statutes is repealed.

17 SECTION 6. 973.105 of the statutes is created to read:

18 **973.105 Treatment intervention program for drug offenders.** (1) (a)

19 "Drug" means a controlled substance ⁽¹⁾ as defined in s. 961.01 (4).

20 (b) "Ineligible offense" means any ~~crime~~, ^{of} as defined in s. 939.12, except the
21 following:

22 1. A Class A, B, C, D, or E felony.

23 2. An offense under ^{s.} 941.20, 941.21, 941.23, 941.235, 941.237, or 941.29.

24 3. An offense under s. 346.63.

1 (c) "Simple drug offense" means ¹⁾ an offense under s. 961.41 (3g), 961.42, 961.43,
 2 or 961.573.

3 (2) (a) If a person who is a resident of ~~Wisconsin~~ ^{this state} is convicted of a simple drug
 4 offense, except a 3rd or subsequent conviction for an offense under s. 961.41 (3g), the
 5 court shall order the person to comply with an assessment of the person's drug use
 6 and, if the person agrees to participate in ~~the~~ drug treatment and rehabilitation
 7 services ordered by the court, the court shall place the person on probation under this
 8 section.

9 (b) 1. If a person who is a resident of ~~Wisconsin~~ ^{this state} is convicted of a crime, other
 10 than an ineligible offense, and any of the following applies, the court shall order the
 11 person to comply with an assessment of the person's drug use:

12 a. The person had a controlled substance that the person ^g was not authorized
 13 to ingest in his or her blood when he or she committed the offense.

14 b. The person or the district attorney, or the court on its own motion, requests
 15 a hearing on whether the person satisfies the conditions under subd. 2. a. to d.

16 2. If the court orders an assessment under subd. 1., the assessor shall report
 17 the results of the assessment to the court. Upon receipt of the assessment results ¹⁾ the
 18 court shall hold a hearing on the person's eligibility for probation under this
 19 paragraph. If the person agrees to participate in drug treatment and rehabilitation
 20 services and if the court finds by clear and convincing evidence that all of the
 21 following are true, the court shall place the person on probation under this section:

22 a. The offense was significantly motivated by the person's use of drugs.

23 b. Neither the victim of the offense [✓] nor the public will be harmed by placing the
 24 ~~defendant~~ ^{person} on probation under this section.

Handwritten notes:
 person (circled)
 defendant (circled)
 person (crossed out)
 NOT (written)

1 c. Placing the person on probation under this section is in the best interests of
2 the public.

3 d. Placing the person on probation under this section will not unduly depreciate
4 the seriousness of the offense.

5 (c) The county department of community programs shall provide any
6 assessment of drug use ordered under par. (a) or (b).

7 (3) (a) If a person is placed on probation under this section, the court shall order,
8 that as condition of probation, the person ~~must~~ participate in specified drug
9 treatment and rehabilitation services that are included in the plan of services
10 developed by the county department of community program under s. 51.49 (1). The
11 court shall monitor the person's participation in the ordered services and may modify
12 its order for services at any time. If the person violates a condition of probation, the
13 court may impose graduated sanctions, including incarceration in jail or in a
14 probation and parole holding facility. The person's probation agent or probation
15 supervisor selected under sub. (6), whichever is applicable, shall notify the court if
16 the person violates a condition of probation.

17 (b) All of the provisions for probation under ss. 973.09 and 973.10 except the
18 following apply to a person placed on probation under this section:

19 1. A court may not order a person confined as provided under s. 973.09 (4),
20 except as a sanction imposed under par. (a).

21 2. A court may not order a person confined in ^a correctional institution under s.
22 301.13 or a probation and parole holding facility under s. 301.16 (1q) as provided
23 under s. 973.09 (4) (b), except as a sanction imposed under par. (a).

24 3. The provisions for revocation of probation under s. 973.10 (2) do not apply.

1 [✓](4) (a) If the court finds, after providing the person an opportunity for a hearing
2 on revocation, that a person placed on probation under this section violated a
3 condition of probation, ^(S) other than the condition that the person participate in drug
4 treatment and rehabilitation services ordered by the court, [✓] the court may revoke the
5 person's probation.

6 (b) The court may not revoke a person's probation for failing to participate in
7 drug treatment and rehabilitation services ordered by the court unless, after
8 providing the person an opportunity for a hearing on revocation, the court finds all
9 of the following:

10 1. The person violated a condition that he or she participate in drug treatment
11 and rehabilitation services.

12 2. The court modified the treatment and rehabilitation conditions or imposed
13 graduated sanctions and the person again violated a condition that he or she
14 participate in drug treatment and rehabilitation services, or there are no reasonable
15 treatment and rehabilitation service [✓] ^(S) options [✓] other than the services originally
16 ordered by the court.

17 3. There is no reasonable likelihood that the person will abstain from drug use
18 for the remainder of the term of probation.

19 (c) If the court revokes a person's probation under this subsection, and the
20 person has already been sentenced, the court shall rescind the stay of the sentence
21 and order the person to begin serving the sentence. If the person was not already
22 sentenced, the court shall sentence the person. [✓] her

23 [✓](5) (a) If a person completes his or ^{her} term of probation under this section without
24 revocation, the court shall vacate the judgment of conviction for the offense for which

1 the person was placed on probation and shall order that the record of conviction be
2 expunged.

3 (b) If the court vacates a judgment of conviction under par. (a), the person shall
4 not be subject to any prohibition, disqualification, disability, increased penalty, or
5 other adverse or unfavorable treatment that would otherwise result from the person
6 having been convicted of the offense.

7 (c) The clerk of ~~the~~ court shall notify the department of justice of any
8 expungement ordered under par. (a). Notwithstanding ^g SCR 72.06 (3), the existence
9 and contents of a court record that is expunged under par. (a) may be disclosed to the
10 person who was convicted or, if authorized by that person, to an attorney
11 representing the person. Otherwise, neither the existence nor the contents of the
12 court's records relating to the offense may be disclosed to any person.

13 (6) (a) Notwithstanding sub. (3) (b), a person who is placed on probation under
14 this section for an offense committed in a ~~first~~ ^{1st} class city is not under the care or
15 control of the department.

16 (b) The department shall contract with a person to supervise persons placed
17 on probation under this section for committing an offense in a ~~first~~ ^{1st} class city. The
18 department shall issue a request for proposals to provide probation supervision
19 services for offenses committed in a ~~first~~ ^{1st} class city. paragraph

20 (7) Subsection (2) does not apply to a defendant with respect to a specific offense
21 if the defendant ^(b) is given the opportunity with respect to that offense to participate
22 in a drug court program that existed on the ^{effective date of this subsection} day after publication... [revisor inserts
23 date]. ^{No (a)} In this subsection, "drug court program" means a program operated by a
24 county and a circuit court, under which a defendant whom the court finds committed
25 an offense may agree to participate in drug treatment under the supervision of the

End of Move

1 court and if the defendant successfully completes treatment, the court does not enter
2 a judgment of conviction for the offense, or enters a judgment of conviction for a lesser
3 offense.

4 **SECTION 7. Nonstatutory provisions.**

5 (1) The department of health and family services shall submit in proposed form
6 the rules required under section 51.49 (2) of the statutes, as created by this act, to
7 the legislative council staff under section 227.15 (1) of the statutes no later than the
8 first day of the 4th month beginning after the effective date of this subsection.

9 (2) Using the procedure under section 227.24 of the statutes, the department
10 of health and family services may promulgate the rules required under section 51.49
11 (2) of the statutes, as created by this act, for the period before the effective date of the
12 permanent rules required under section 51.49 (2) of the statutes, as created by this
13 act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the
14 statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the
15 department is not required to provide evidence that promulgating a rule under this
16 subsection as an emergency rule is necessary for the preservation of the public peace,
17 health, safety, or welfare and is not required to provide a finding of emergency for a
18 rule promulgated under this subsection.

19 **SECTION 8. Initial applicability.**

20 (1) The treatment of sections 961.47, 961.472, and 961.475 of the statutes first
21 applies to offenses committed on or after the effective date of this subsection.

22 **SECTION 9. Effective date.**

23 This act takes effect on the day after publication, except as follows:

Fix component "effective date E"

(1)

①

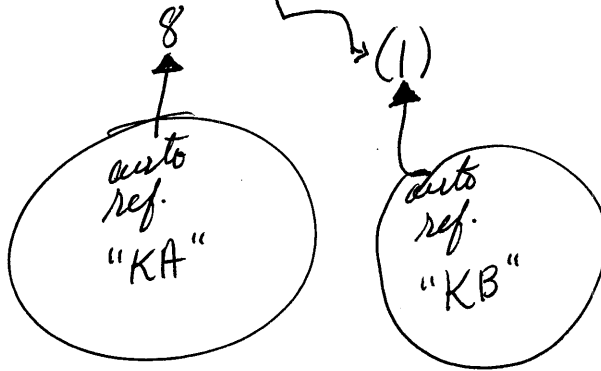
~~Sec~~ The treatment of section 973.105 (2), (3), (4), (5), and (6) (a) of the statutes
and SECTION ~~973.105~~ takes effect on the first day of the 12th month beginning after
publication. *of this act*

2

3

4

(END)



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2444/P1dn
RLR:kmg:cph

August 27, 2003

Rachel Roller:

1. Under the bill, a person who commits a first or second drug possession offense is automatically eligible for probation. The bill does not count convictions for drug possession offenses in other jurisdictions as prior convictions. Should it?
2. Do you want to specify a time frame for prior convictions that count against a person for purposes of eligibility for probation and treatment under the primary route. For example, if a person had two possession offenses when he or she was 20, and then was convicted of possession again at age 40, should the two prior convictions bar him from automatic eligibility?
3. Should a person who has two or more prior drug possession convictions be eligible for probation and treatment under the secondary route? Under the bill, such a person is eligible.
4. Instead of using two or more prior convictions for possession as the bar to automatic eligibility, perhaps you could use a combination of prior convictions and failure in the probation and treatment program.
5. The bill uses Stoiber's list of offenses that trigger automatic eligibility for probation and treatment, including possession of drug paraphernalia related to methamphetamine [s. 961.573 (3)] and making counterfeit drugs [s. 961.43 (1) (b) 1.]. A person who operates a methamphetamine lab or counterfeits drugs does not necessarily use drugs, so it may be more appropriate to make persons who commit these offenses eligible for probation and treatment under the secondary route rather than under the primary route.
6. Under the bill, a court must order a person to be assessed for drug use under the secondary route if the person had a controlled substance that he or she was not authorized to take in his or her blood when he or she committed the offense. Should an assessment also be mandatory if the person has a controlled substance that he or she is authorized to take in his or her blood, for example, morphine or vicodin?
7. We talked about allowing a defense attorney to request that his or her client be assessed for drug use for purposes of eligibility under the secondary route. Under the bill, only the defendant, the district attorney, or the court may seek an assessment.

Allowing a defense attorney to seek an assessment contrary to the wishes of his or her client would interfere with the defendant's right to make decisions regarding the conduct of his or her defense.

8. A defendant is generally charged in the county in which the offense is committed, which is not necessarily the county in which the defendant resides. It would be difficult for a person to participate in treatment provided by a county other than the county in which the person resides. Do you want to include a provision that requires the court in the county where the offense is committed to transfer the case to the offender's county of residence after the conviction is entered? If so, which county should pay for the treatment?

9. Should there be a distinction between the terms drug "use" and drug "abuse"? In other words, is drug use always abuse for purposes of this bill? I used the term drug "use" throughout the bill.

10. Do you want to set a maximum number of days that a court may confine a person in jail as a sanction for a violation of a condition of probation? Under current law, a court may place a person who is on probation in jail for up to one year. The bill specifies that the one-year confinement provision does not apply to the treatment and probation program, but does allow some jail time as a sanction. Theoretically, under the bill, a court could confine a person for up to 364 days as a sanction.

11. Under current law, if a county does not have sufficient funding to provide drug treatment to all persons who need treatment, the county must give priority to pregnant women (*see* s. 51.42 (3) (ar) 4m.). Do you want to mandate full funding of the probation and treatment program. If not, do you want to establish what priority level people in the probation program have versus others who need drug treatment. Do you want to specify how counties should prioritize among people who are participating in the probation and treatment program? During our phone conversation with representatives from the Public Defender's office, one of the representatives expressed concern that the probation and treatment program will get filled up with people who commit lesser offenses, and then the people who commit felonies will not be given sufficient services, so they will fail and will be sent to prison.

12. The bill requires that, in developing a plan to provide services under the probation and treatment program, county departments solicit input from residents of the county. Should counties be required to solicit input from anyone else, for example, treatment providers?

13. We discussed allowing counties to join together to develop a single multicounty treatment program. Under current law, counties may already form joint departments of community programs, so it is not necessary to give counties additional authority.

14. Under the bill, if a person successfully completes probation, the court must both vacate the judgment of conviction and expunge the record of conviction. Further, the vacated conviction cannot be considered as a conviction for any purposes (including as a strike against future eligibility for probation and drug treatment). Are there any circumstances under which you would not want the record of conviction expunged? Do

you want the vacated conviction to remain of record for any purpose? Would you prefer that courts determine whether expunction is appropriate on a case-by-case basis?

15. Under the current law "volunteers in probation" provision (s. 973.11), courts may place people on probation under the supervision of a person other than the Department of Corrections. This serves as a precedent for choosing an entity other than the Department of Corrections to supervise people participating in the probation and treatment program in the city of Milwaukee.

16. This bill does not address funding for treatment. Nor does it specify whether persons who are placed on probation under the bill will be required to pay for any portion of their treatment.

17. The bill repeals current law ss. 961.47, 961.472, and 961.475, the conditional discharge provision for certain first time possession offenses, and the treatment option (including the assessment provision for treatment), all of which are described in the analysis of the bill. Please let me know if you would prefer to modify these provisions rather than repealing them. The current treatment provision under s. 961.475 allows a person to voluntarily enter treatment at his or her own expense and does not require significant court oversight. You may therefore wish to keep this provision because it seems to be of little or no cost to government. If you do keep it, should a person who fails private voluntary treatment be eligible for the probation and treatment program created under the bill?

18. The bill does not provide that a person who is convicted of an attempt to commit an offense is eligible for probation to the same extent as the person would be if he or she had committed the offense. I will add this in the next draft.

19. Following are the major differences between the bill and the Stoiber proposal:

a. Under the bill, a court must place a defendant on probation if he or she commits a simple drug offense or if he or she commits another eligible offense that is drug motivated. Stoiber requires the district attorney's consent to probation, and allows the judge discretion to impose a sentence instead of granting probation.

b. The Stoiber proposal requires the defendant to "promptly assume responsibility" by pleading guilty within 10 days of the charge for a felony and 30 days for a misdemeanor. Under the bill, a defendant is not required to plead guilty — he or she may plead no contest or may even go to trial, and there are no time limits on eligibility for probation and treatment. Also, the bill does not defer motion practice.

c. The Stoiber proposal uses the presentence investigation conducted by the Department of Corrections to evaluate a defendant's drug use. The bill requires that assessments be performed by persons who meet standards established by the Department of Health and Family Services.

d. The Stoiber proposal requires that a person achieve a sustained period of abstinence (9 months suggested) before he or she may successfully complete probation. The bill leaves up to DHFS and the courts what constitutes success.

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

Rachel Roller
Phone call
8/28/03
revisions to 2444/P1

Responses to d-note:

- ✓ #1. do count offenses from other jurisdictions
- ✓ #2. 10 years
- ✓ #3. should be eligible under secondary route
- ✓ #4. 1st or 2nd offense, automatically eligible, for third or subsequent offense, if received treatment before than ineligible under primary route
- ✓ #5. change meth. labs to secondary route
- ✓ #6. No automatic assessment, DA, defendant, or court may request assessment
- ✓ #8. Do transfer case, have county of residence pay – Rachel will check with SPD on whether this is sensible
- ✓ #9. Use “abuse” versus “use”
- ✓ #10. For 1st sanction, not more than 1 month, for 2nd, not more than 3 months.
- ✓ #11. First priority for persons facing more than 24 months confinement, 2nd priority for person facing more than 12 months confinement. Also keep current priority for pregnant women
- #12. Create a committee. Rachel will send info. on members and who appoints.
- ✓ #14. Give discretion to court to review expunction on a case-by-case basis
- ✓ #16. Add provision that if person has private insurance, insurance must pay for the covered services
- ✓ #17. Keep 961.475, if fails private voluntary treatment, then get a shot at county run treatment system.
- ✓ #19. Add requirement that a minimum of 9 months abstinence is required
- ✓ Other: Add a requirement that DOC and DHFS assess the program 18 months after it is started and then annually thereafter.

✓ Add attempt

Ryan, Robin

From: Roller, Rachel
Sent: September 02, 2003 12:11 PM
To: Ryan, Robin
Subject: Community Corrections Board Language

Hi Robin:

I hope this isn't too much to ask with the short notice, but would you be able to draft up some bullet points regarding the bill? Sara in Roessler's office is going to ask the same of her bill when she meets today with Mike Dsida. I was brainstorming the best way to approach a discussion with Roessler and WISDOM tomorrow and having a structured document (i.e., bullet points) may be the best way to ensure a discussion. This would also lessen the need for you to be present at the meeting. Let me know if this is too much of an imposition. Thanks!

As promised, I'm forwarding ideas to be added to Senator Moore's TIP bill. Some of this bill language was taken from Wyoming legislation:

A county may establish, or two (2) or more counties may agree to establish jointly, a community corrections board in accordance with this act.

A corrections board shall consist of nine (9) members. When two (2) or more counties have agreed to establish a corrections board, the county executive of each participating county shall appoint members as provided in the agreement of the counties. The corrections board shall be composed of:

- ✓ One (1) district judge designated by the chief justice of the Wisconsin Supreme Court; ✓
- ✓ One (1) either the corresponding county District Attorney or a prosecuting attorney appointed by the DA;
- ✓ One (1) municipal law enforcement officer appointed by the Chief executive of a municipality;
- ✓ One (1) either the corresponding county Sheriff or a county law enforcement officer appointed by the Sheriff;
- ✓ One (1) probation and parole officer appointed by the Department of Corrections; and
- ✓ One (1) Public Defender from the corresponding county;

Three lay citizens, no more than two (2) of whom shall be from the same county if the corrections board is established by two (2) or more counties. If the community corrections board is established for a county in which a community college (or technical college? or public university?) is located, one (1) of the four (4) lay citizen members shall be a representative of the community college.

Members of community corrections boards shall serve for rotating terms of four (4) years. Of the members first appointed, one-third (1/3) shall be appointed for two (2) years, one-third (1/3) for three (3) years and one-third (1/3) for four (4) years.

Members of a corrections board shall serve without compensation.

A majority of the corrections board constitutes a quorum. All actions of the corrections board shall be approved by a majority of those present at the meeting.

A corrections board shall annually elect from its members a chairman to preside at meetings and a secretary to maintain the records.

Please let me know if you have any questions or concerns regarding the information in this email. Thanks, again!

Rachel

*Phone call from Rachel
- make board 11 members &
include a former drug abuser who has successfully
completed treatment*

Ryan, Robin

From: Roller, Rachel
Sent: September 03, 2003 8:51 AM
To: Ryan, Robin

How does this sound?

"One recovered drug abuser who has successfully completed a treatment program."