

**2005 DRAFTING REQUEST**

**Bill**

Received: **11/15/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Tom Powell**

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

Drafter: **rryan**

May Contact: **SPD**

Addl. Drafters:

Subject: **Criminal Law - sentencing**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.state.wi.us**

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

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Sentence adjustment

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 12/06/2005			_____			S&L
/1		jdye 12/15/2005	jfrantze 12/16/2005	_____	mbarman 12/16/2005		S&L
/2	rryan 12/27/2005	jdye 12/29/2005	pgreensl 01/03/2006	_____	sbasford 01/03/2006	lemery 01/04/2006	

FE Sent For:

**<END>**

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/1		jdyer 12/15/2005	jfrantze 12/16/2005	<del>1/3</del> p8	mbarman 12/16/2005		
FE Sent For:		1/2 12/29 jcd	1/3 p8	<END>			

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/?	rryan	12/15 jld	Jo 12/15	JP 12/16			

FE Sent For:

<END>

## Ryan, Robin

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**From:** Powell, Thomas  
**Sent:** Tuesday, November 15, 2005 12:13 PM  
**To:** Ryan, Robin  
**Subject:** RE: SPD bill drafts

Robin,

I have a little more information on the three bill proposals in hardcopy, which I will send over.

The two public defenders who are helping out on the bills (feel free to call them) are Marla Stephens (516-1232) and Mike Tobin (266-0067)

Tom P.

---

**From:** Ryan, Robin  
**Sent:** Tuesday, November 15, 2005 11:05 AM  
**To:** Powell, Thomas  
**Subject:** SPD bill drafts

FYI Tom, I will be drafting the SPD legislation you sent to Mike Dsida. Do you want one draft or three?

Robin

2. Under section 973.195, defendants sentenced to prison under Truth-in-Sentencing are eligible for a sentence adjustment if sentenced for a Class C-I felony (they must serve at least 85% of a Class C-E felony or 75% of Class F-I). However, a small number of defendants receive prison sentences for misdemeanor offenses, under the repeater law that increases the possible sentence. The statute ought to be amended to read “. . . and 75% for a Class F to I felony and a misdemeanor prison sentence.”

This change would address the gap in the sentence adjustment law. The defendants in question would still have to petition the court, which in turn makes a discretionary decision with input from the prosecutor and victim.



TO: Rep. Terese Berceau  
FROM: Michael Tobin, Trial Division Director,  
Wis. Public Defender Office  
RE: **Section 973.195 Amendment Proposal**  
DATE: November 11, 2005

Thank you for this opportunity to propose minor substantive remedial measures to improve the administration of agency business.

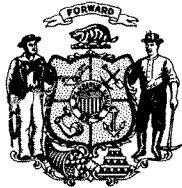
**Short title of measure:** Specify that the sentence adjustment procedure under Truth in Sentencing applies to misdemeanants serving prison sentences.

**Problem with current statutes:** Current law provides that prison inmates sentenced under Truth in Sentencing for Class C-I felonies may apply for a sentence adjustment after serving a specified percentage of their sentences. Sec. 973.195, Stats. However, this statute does not contain any similar provision regarding an inmate serving a prison sentence for a misdemeanor.

**Rationale for change:** Generally, misdemeanors are punishable by a sentence in the county jail, rather than in a prison. See secs. 939.60 (definitions of misdemeanor and felony), 973.02 (sentence of more than one year is to prison), Stats. However, there are circumstances when a misdemeanor may be punished by a prison sentence. See, e.g., sec. 939.62(1)(a), Stats. (repeat misdemeanor offender may be sentenced to two years, in addition to maximum for underlying misdemeanor offense).

**Estimate of fiscal effect:** No substantial savings to any one agency. There are small potential savings to the Department of Corrections for the reduction in bed days associated with the small number of misdemeanants who may be released from prison earlier because of this change. There may be small expenses to the courts and district attorneys related to the processing of petitions for sentence adjustment; however, they may already be receiving petitions or motions for "new factor" sentence modification from the inmates who would be affected by this amendment.

**Lead contact person:** Krista Ginger, Legislative Liaison, 608-264-8572.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4098?

RLR: ^:...

In 12/6/05

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

KMTB

D-Note

Gen. Court ✓

1

AN ACT...; relating to: adjusting prison sentences for misdemeanors. ✓

**Analysis by the Legislative Reference Bureau**

A person sentenced to a term of confinement for a misdemeanor (a crime for which the maximum term of confinement is one year or less) generally serves the term of confinement in a county jail or house of correction. However, a person serving a sentence for a felony in addition to a misdemeanor generally serves the sentence for the misdemeanor in prison, regardless of whether the sentences run concurrently or consecutively. Also, a person serving a sentence for a misdemeanor that has been lengthened to more than one year due to application of a penalty enhancement statute (for example, for a repeat offender) serves the sentence in prison. All sentences to prison consist of a term of confinement in prison followed by a term of extended supervision.

Current law also provides a process by which a person serving a sentence for a Class C to I felony may petition for a sentence adjustment under which the remainder of the term of confinement portion of the sentence is converted to time on extended supervision. A person serving a sentence for a Class C to E felony may petition for adjustment after serving 85% of the term of confinement and a person serving a Class F to I felony may petition after serving 75% of the term of confinement. The court must deny the petition if the district attorney who prosecuted the felony or, for certain sex offenses, the victim objects to sentence adjustment. The sentence adjustment process does not apply to misdemeanor sentences.

This bill provides that a person serving a term of confinement in prison for a misdemeanor may petition for sentence adjustment after serving 75% of the term of confinement.

percent

Fix  
Component

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

local  
↓

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

1 SECTION 1. 973.195 (1g) of the statutes is amended to read:

2 973.195 (1g) DEFINITION. In this section, "applicable percentage" means 85%  
3 for a Class C to E felony and 75% for a Class F to I felony or for a misdemeanor.

History: 2001 a. 109.

4 SECTION 2. Initial applicability.

5 (1) This act first applies to persons serving a sentence on the effective date of  
6 this subsection.

7 (END)

d-note  
↓

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

LRB-4098/1dn

RLR:A:...

*JLD*

Representative Berceau:

Please review the initial applicability provision in the bill. It makes the sentence adjustment procedure available to any person serving time in prison for a misdemeanor on the effective date of the bill.

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

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

LRB-4098/1dn  
RLR:jld:jf

December 15, 2005

Representative Berceau:

Please review the initial applicability provision in the bill. It makes the sentence adjustment procedure available to any person serving time in prison for a misdemeanor on the effective date of the bill.

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

**Ryan, Robin**

---

**From:** Powell, Thomas  
**Sent:** Wednesday, December 21, 2005 10:45 AM  
**To:** Ryan, Robin  
**Subject:** FW: Draft of SPD bill Misd S adjustment  
**Attachments:** 05-40981.pdf; 05-40981dn.pdf

Robin,  
I forwarded your SPD draft to Mike Tobin, Krista Ginger and Marla Stephens at SPD. Mike had one possible correction (below)  
Tom Powell

---

**From:** Ginger, Krista [mailto:GingerK@opd.wi.gov]  
**Sent:** Wednesday, December 21, 2005 9:28 AM  
**To:** Powell, Thomas  
**Subject:** FW: Draft of SPD bill Misd S adjustment

Hi Tom: Thanks again for all your help on this. Mike was out of town and sent me an e-mail this morning regarding the requested feedback. I hope this is helpful. Please call us if you need anything else. 266-0087 is the main number. Happy Holidays! Krista

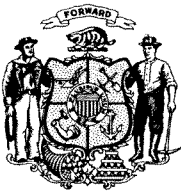
-----Original Message-----

**From:** Tobin, Michael  
**Sent:** Wednesday, December 21, 2005 9:05 AM  
**To:** Ginger, Krista  
**Cc:** Stephens, Marla  
**Subject:** FW: Draft of SPD bill Misd S adjustment

This draft language is fine to accomplish the proposed amendment. However, the sentence in the LRB analysis near the bottom of p. 1, which starts w/ "The court must deny . . .," was called into question by a Wis Supreme Ct decision earlier this year holding that the DA's veto authority under this bill was unconstitutional. Thus, I would recommend either deleting that sentence or adding a reference to the court decision, State v. Stenklyft, 2005 WI 71, PP 82-86.

mt

281 Wis. 2d 484  
4 justices find DA veto  
violates sep of powers -  
interferes with court's  
power to make decision  
on the merits



State of Wisconsin  
2005 - 2006 LEGISLATURE

2  
LRB-4098/1

RLR:jld:jf

Wanted Soon  
In 12/27/05

2005 BILL

RMR

Regen

1 AN ACT *to amend* 973.195 (1g) of the statutes; relating to: adjusting prison  
2 sentences for misdemeanors.

*Analysis by the Legislative Reference Bureau*

A person sentenced to a term of confinement for a misdemeanor (a crime for which the maximum term of confinement is one year or less) generally serves the term of confinement in a county jail or house of correction. However, a person serving a sentence for a felony in addition to a misdemeanor generally serves the sentence for the misdemeanor in prison, regardless of whether the sentences run concurrently or consecutively. Also, a person serving a sentence for a misdemeanor that has been lengthened to more than one year due to application of a penalty enhancement statute (for example, for a repeat offender) serves the sentence in prison. All sentences to prison consist of a term of confinement in prison followed by a term of extended supervision.

Current law also provides a process by which a person serving a sentence for a Class C to a Class I felony may <sup>the court</sup> petition for a sentence adjustment under which the remainder of the term of confinement portion of the sentence is converted to time on extended supervision. A person serving a sentence for a Class C to a Class E felony may petition for adjustment after serving 85 percent of the term of confinement and a person serving a Class F to a Class I felony may petition after serving 75 percent of the term of confinement. The court must deny the petition if the district attorney who prosecuted the felony or, for certain sex offenses, the victim objects to sentence adjustment. The sentence adjustment process does not apply to misdemeanor sentences.





**Emery, Lynn**

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**From:** Powell, Thomas  
**Sent:** Wednesday, January 04, 2006 3:56 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-4098/2 Topic: Sentence adjustment

It has been requested by <Powell, Thomas> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-4098/2 Topic: Sentence adjustment