

2005 DRAFTING REQUEST

Bill

Received: 01/07/2005

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Steinmetz**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sentencing**

Extra Copies: **cmh**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

Pre Topic:

DOA:.....Steinmetz, BB0387 -

Topic:

Probation for misdemeanors

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>
/?	mdsida 01/11/2005	lkunkel 01/11/2005		_____			S&L
/1			rschluet 01/12/2005	_____	mbarman 01/12/2005		S&L
/2	mdsida 01/19/2005	lkunkel 01/19/2005	rschluet 01/20/2005	_____	lnorthro 01/20/2005		S&L
/3	mdsida	kfollett	chaugen	_____	sbasford		

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	01/27/2005	01/27/2005	01/27/2005	_____	01/27/2005		

FE Sent For:

<END>

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/1			rschluet 01/12/2005	_____	mbarman 01/12/2005		S&L
/2	mdsida 01/19/2005	lkunkel 01/19/2005	rschluet 01/20/2005	_____	lnorthro 01/20/2005		

Handwritten notes:
1/3 g/s 1/27 05
OK 1-27
JP 1-27

FE Sent For:

<END>

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Subject: Criminal Law - sentencing

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/?	mdsida 01/11/2005	lkunkel 01/11/2005					S&L
/1			rschluet 01/12/2005		mbarman 01/12/2005		

FE Sent For:

12/mk/19

<END>

2005 DRAFTING REQUEST

Bill

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By/Representing: **Steinmetz**

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Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sentencing**

Extra Copies: **rlr, cmh**

Submit via email: **NO**

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Probation for misdemeanors ✓

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/?	mdsida	/1 lmk 1/10					S&L

FE Sent For:

Handwritten: 12, 5, <END>

[NAME]
Page 6
January 7, 2005

Attachment 3

FY05-07 Statutory Language Cover Sheet

Topic: Misdemeanor Probation Supervision
Tracking Code: BB0387
Team: Tax and Justice (TJ)

Contact: Steinmetz

Agency: DOC

Agency #: 410

January 7, 2005

Page 7 of 7

Attachment 3

**2005-2007 Biennial Budget
Statutory Language Request**

Topic: Misdemeanor Probation Supervision

Current Language

Current language at s. 973.09 (2) sets the statutory term of probation for misdemeanors at "not less than six months nor more than 2 years".

Proposed Change

Reduce the maximum term of probation for Class A misdemeanors to one year.

Reduce the maximum term of probation for Class B and C misdemeanors to six months.

Extend the maximum term of probation for misdemeanors involving domestic violence by one additional year.

Effect of the Change

This change will modify statutes to reduce the maximum term of probation for misdemeanors.

Team:	Tax and Justice (TJ)
Contact:	Steinmetz
Agency:	DOC
Agency #:	410

Dsida, Michael

From: Steinmetz, Jana
Sent: Monday, January 10, 2005 11:38 AM
To: Dsida, Michael
Subject: RE: Language requests

The minimum should disappear.

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

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]
Sent: Monday, January 10, 2005 11:35 AM
To: Steinmetz, Jana
Subject: RE: Language requests

Does the minimum term of probation for the less serious misdemeanors disappear? It's currently 6 months -- the same as the proposed maximum. Or do you want to specify that all initial terms of probation for those offenses are 6 months -- no more, no less?

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

From: Steinmetz, Jana
Sent: Monday, January 10, 2005 9:59 AM
To: Dsida, Michael
Subject: RE: Language requests

Let's leave it alone.

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

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]
Sent: Monday, January 10, 2005 9:58 AM
To: Steinmetz, Jana
Subject: RE: Language requests

what, if anything, should I do with this:

973.09(2)(a)2.

2. If the probationer is convicted of not less than 2 nor more than 4 misdemeanors at the same time, the maximum original term of probation may be increased by one year. If the probationer is convicted of 5 or more misdemeanors at the same time, the maximum original term of probation may be increased by 2 years.

thanks



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1554-2-1
MGD:mk.

today

DOA:.....Steinmetz, BB0387 - Probation for misdemeanors

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

Do NOT Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

Under current law, the initial maximum term of probation for a person convicted of a single misdemeanor is two years. The minimum term of probation is six months. Under this bill, if a person convicted of a Class A misdemeanor for which the maximum term of imprisonment is generally nine months, or an unclassified misdemeanor punishable by a maximum term of imprisonment of nine months or more, the maximum term of probation is one year. The minimum term of probation in such a case remains six months. If a person is convicted of any other type of misdemeanor, the initial maximum term of probation is six months, and there is no minimum term. If, however, the misdemeanor is an act of domestic abuse, the maximum term of probation is increased by one year.

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:

2 SECTION 1. 939.621 of the statutes is renumbered 939.621 (2) and amended to

3 read:

1 939.621 (2) If a person commits an act of domestic abuse, ~~as defined in s.~~
 2 ~~968.075 (1) (a)~~ and the act constitutes the commission of a crime, the maximum term
 3 of imprisonment for that crime may be increased by not more than 2 years if the crime
 4 is committed during the 72 hours immediately following an arrest for a domestic
 5 abuse incident, as set forth in s. 968.075 (5). The 72-hour period applies whether or
 6 not there has been a waiver by the victim under s. 968.075 (5) (c). The victim of the
 7 domestic abuse crime does not have to be the same as the victim of the domestic abuse
 8 incident that resulted in the arrest. The penalty increase under this section changes
 9 the status of a misdemeanor to a felony.

History: 1987 a. 346; 1995 a. 304.

X
SECTION 2. 939.621 (1) of the statutes is created to read:

11 939.621 (1) In this section, "domestic abuse" has the meaning given in s.
 12 968.075 (1) (a).

X
SECTION 3. 939.621 (3) of the statutes is created to read:

14 939.621 (3) If a person commits an act of domestic abuse, the act constitutes
 15 a misdemeanor, and the court places the person on probation for that misdemeanor,
 16 the maximum original term of probation under s. 973.09 (2) may be increased by one
 17 year.

X
SECTION 4. 973.09 (2) (a) 1. of the statutes is amended to read:

19 973.09 (2) (a) 1. Except as provided in subd. 2. and s. 939.621 (3), for Class A
 20 misdemeanors or unclassified misdemeanors punishable by 9 months of
 21 imprisonment or more, not less than 6 months nor more than 2 years one year.

X
History: 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989 a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289; 1999 a. 9, 58, 69, 186; 2001 a. 16, 104, 109; 2003 a. 33, 121, 139, 141.

SECTION 5. 973.09 (2) (a) 1m. of the statutes is created to read:

INS
2/17

Section#.

(AM) 973.09(1)(a) ✓

(a) Except as provided in par. (c) or if probation is prohibited for a particular offense by statute, if a person is convicted of a crime, the court, by order, may withhold sentence or impose sentence under s. 973.15 and stay its execution, and in either case place the person on probation to the department for a stated period, stating in the order the reasons therefor. The court may impose any conditions which appear to be reasonable and appropriate. The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously. If the court imposes an increased term of probation, as authorized under sub. (2) (a) 2. or (b) 2., it shall place its reasons for doing so on the record.

m s. 939.621(3) ✓



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1554/1

MGD:lmk/rs

DOA:.....Steinmetz, BB0387 - Probation for misdemeanors

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

pls
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⊙ In such a case

Do NOT Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

Under current law, the initial maximum term of probation for a person convicted of a single misdemeanor is two years. The minimum term of probation is six months. Under this bill, if a person convicted of a Class A misdemeanor, for which the maximum term of imprisonment is generally nine months, or an unclassified misdemeanor punishable by a maximum term of imprisonment of nine months or more, the maximum term of probation is one year. The minimum term of probation in such a case remains six months. If a person is convicted of any other type of misdemeanor, the initial maximum term of probation is six months, and there is no minimum term. ~~It, however,~~ the misdemeanor is an act of domestic abuse, the maximum term of probation is ~~increased by one year~~ two years.

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:

2 SECTION 1. 939.621 of the statutes is renumbered 939.621 (2) and amended to

3 read:

Neither of these maximum terms of probation applies, however, if

1 939.621 (2) If a person commits an act of domestic abuse, ~~as defined in s.~~
 2 ~~968.075 (1)(a)~~ and the act constitutes the commission of a crime, the maximum term
 3 of imprisonment for that crime may be increased by not more than 2 years if the crime
 4 is committed during the 72 hours immediately following an arrest for a domestic
 5 abuse incident, as set forth in s. 968.075 (5). The 72-hour period applies whether or
 6 not there has been a waiver by the victim under s. 968.075 (5) (c). The victim of the
 7 domestic abuse crime does not have to be the same as the victim of the domestic abuse
 8 incident that resulted in the arrest. The penalty increase under this section changes
 9 the status of a misdemeanor to a felony.

10 **SECTION 2.** 939.621 (1) of the statutes is created to read:

11 939.621 (1) In this section, "domestic abuse" has the meaning given in s.
 12 968.075 (1) (a).

13 **SECTION 3.** 939.621 (3) of the statutes is created to read:

14 939.621 (3) If a person commits an act of domestic abuse, the act constitutes
 15 a misdemeanor, and the court places the person on probation for that misdemeanor,
 16 the maximum original term of probation under s. 973.09 (2) may be increased by one
 17 year.⁵

is two

18 **SECTION 4.** 973.09 (2) (a) 1. of the statutes is amended to read:

19 973.09 (2) (a) 1. Except as provided in subd. 2. and s. 939.621 (3), for Class A
 20 misdemeanors or unclassified misdemeanors punishable by 9 months of
 21 imprisonment or more, not less than 6 months nor more than 2 years one year.

to next page

22 **SECTION 5.** 973.09 (1) (a) of the statutes is amended to read:

23 973.09 (1) (a) Except as provided in par. (c) or if probation is prohibited for a
 24 particular offense by statute, if a person is convicted of a crime, the court, by order,
 25 may withhold sentence or impose sentence under s. 973.15 and stay its execution,

1 and in either case place the person on probation to the department for a stated period,
2 stating in the order the reasons therefor. The court may impose any conditions which
3 appear to be reasonable and appropriate. The period of probation may be made
4 consecutive to a sentence on a different charge, whether imposed at the same time
5 or previously. If the court imposes an increased term of probation, as authorized
6 under sub. (2) (a) 2. or (b) 2. or s. 939.621 (3), it shall place its reasons for doing so
7 on the record.

from
prev.
page
8 **SECTION 6.** 973.09 (2) (a) 1m. of the statutes is created to read:

9 973.09 (2) (a) 1m. Except as provided in subd. 2. and s. 939.621 (3), for
10 misdemeanors not covered by subd. 1., not more than 6 months.

11

(END) ✓

Dsida, Michael

From: Steinmetz, Jana
Sent: Tuesday, January 25, 2005 3:10 PM
To: Dsida, Michael
Subject: RE: LRB 1554/2 (Misdemeanant proposal)

Thanks. I will pose that to them.

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

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]
Sent: Tuesday, January 25, 2005 3:01 PM
To: Steinmetz, Jana
Subject: RE: LRB 1554/2 (Misdemeanant proposal)

You could do this:

If a person commits an act of domestic abuse, the act constitutes a misdemeanor, and it is reasonably likely that the person will engage in future acts of domestic abuse, the court may impose an increased term of probation of up to one year, for a maximum original term of probation of up to two years, for that misdemeanor.

This is based in part on ch. 980 cases. You may also want to get rid of "reasonably." I'm not sure that it adds anything substantive.

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

From: Steinmetz, Jana
Sent: Tuesday, January 25, 2005 2:54 PM
To: Dsida, Michael
Subject: RE: LRB 1554/2 (Misdemeanant proposal)

Is there something we could do to get it closer to what they are looking for or is the current language better?

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

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]
Sent: Tuesday, January 25, 2005 2:53 PM
To: Steinmetz, Jana
Subject: RE: LRB 1554/2 (Misdemeanant proposal)

There may be a constitutional problem with this one. Any factor that subjects a person to a more severe criminal penalty must be proven beyond a reasonable doubt. The court could not just make the "reasonable grounds" finding at sentencing. That element would have to be charged and proven as part of the state's case.

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

From: Steinmetz, Jana
Sent: Tuesday, January 25, 2005 2:11 PM
To: Dsida, Michael
Subject: FW: LRB 1554/2 (Misdemeanant proposal)

Mike,

See Jessica's comments below. This one I'm not as sure about. Can you take a look and let me know what you think makes sense? The Governor did mention likelihood of future violence, but I don't see it as being the lynchpin here. Let me know what you think.

Thanks,
Jana

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

From: Clark, Jessica L. DOC
Sent: Monday, January 24, 2005 5:16 PM
To: Steinmetz, Jana
Cc: Nikolay, Robert A. DOC; Raemisch, Rick F DOC
Subject: LRB 1554/2 (Misdemeanant proposal)

Jana,

After reviewing the misdemeanor draft, we have the following suggestion to clarify the new section 939.621(3). The current draft does not include the provision that was discussed that would require a judge to find that a person has an increased propensity for future violence before imposing the higher term of probation. We recommend replacing the current language in Section 3 of the draft with something to the effect of the following:

If a person commits an act of domestic abuse, the act constitutes a misdemeanor, and the court has reasonable grounds to believe that the person may engage in future acts of domestic abuse, the court may impose an increased term of probation of up to one year, for a maximum original term of probation of up to two years, for that misdemeanor.

As you know, Secretary Frank is out of the office on vacation, and will be returning on Wednesday. We would like to reserve the opportunity to discuss this provision further with the Governor's office and/or Secretary Marotta upon Secretary Frank's return.

Please let me know if you have any questions. Thanks!

Jessica Clark

Executive Assistant
Department of Corrections
3099 East Washington Avenue
P.O. Box 7925
Madison, WI 53704
(608) 240-5055 (phone)
(608) 240-3305 (fax)

Dsida, Michael

From: Steinmetz, Jana
Sent: Thursday, January 27, 2005 9:46 AM
To: Dsida, Michael
Subject: RE: LRB 1554/2 (Misdemeanant proposal)

I was afraid of that, but I think they are ok with it. Let me know if you need any clarification of anything.

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

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]
Sent: Thursday, January 27, 2005 9:32 AM
To: Steinmetz, Jana
Subject: RE: LRB 1554/2 (Misdemeanant proposal)

The language won't be a problem with respect to sex crimes and crimes against children, because the statute can simply specify what offenses are covered. But anything else that requires a separate finding -- like a determination that the act involved an "intentional infliction of physical pain, physical injury or illness" (if that is what made the offense a domestic abuse offense under s. 968.075(1)(a)) or a determination that the crime involved the use of a firearm -- would have to be pled in the complaint and proven as part of the state's case under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). (FYI - The original draft suffers from the same problem, but I didn't think of the *Apprendi* issue until looking at it a second time. Sorry about that.)

That doesn't necessarily mean that the language won't work. It just won't work as simply as people might like it to.

Mike

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

From: Steinmetz, Jana
Sent: Thursday, January 27, 2005 8:26 AM
To: Dsida, Michael
Subject: FW: LRB 1554/2 (Misdemeanant proposal)

Mike,

How do you feel about the language below? I have a call in to the Governor's office to see if they are ok with adding the additional crimes. I'll let you tell me how you feel about the other wording.

Thanks,
Jana

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

From: Clark, Jessica L. DOC
Sent: Wednesday, January 26, 2005 6:13 PM
To: Steinmetz, Jana
Cc: Frank, Matthew J. DOC; Raemisch, Rick F DOC; Nikolay, Robert A. DOC; Wong, Donna - Office of Governor Jim Doyle; Casper, Tim - Office of Governor Jim Doyle
Subject: RE: LRB 1554/2 (Misdemeanant proposal)

Jana,

After discussing this further internally, we'd like to propose the following changes to Ch. 973.09(2):

The maximum probationary period for a Class A misdemeanor is not more than one year. The maximum probationary period for Class B, C, and unclassified misdemeanors is not more than 6 months. At sentencing, the judge may extend the probationary term up to a maximum original term of two years if the offense involved domestic abuse, sex crimes, crimes against children, or the offense involved a firearm.

Please let me know if you have any questions about this language. Also, I am cc'ing Donna and Tim on this email. Per my discussions with Donna, they will contact you directly if they have any concerns. Thanks.

Jessica

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

From: Steinmetz, Jana
Sent: Tuesday, January 25, 2005 3:14 PM
To: Clark, Jessica L. DOC
Cc: Frank, Matthew J. DOC; Raemisch, Rick F DOC; Nikolay, Robert A. DOC
Subject: FW: LRB 1554/2 (Misdemeanant proposal)

Jessica,

See the drafter's comments below and let me know what you think.

Thanks,
Jana

There may be a constitutional problem with this one. Any factor that subjects a person to a more severe criminal penalty must be proven beyond a reasonable doubt. The court could not just make the "reasonable grounds" finding at sentencing. That element would have to be charged and proven as part of the state's case.

You could do this:

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This is based in part on ch. 980 cases. You may also want to get rid of "reasonably." I'm not sure that it adds anything substantive.

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

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If a person commits an act of domestic abuse, the act constitutes a misdemeanor, and the court has reasonable grounds to believe that the person may engage in future acts of domestic abuse, the court may impose an increased term of probation of up to one year, for a maximum original term of probation of up to two years, for that misdemeanor.

As you know, Secretary Frank is out of the office on vacation, and will be returning on Wednesday. We would like to reserve the opportunity to discuss this provision further with the Governor's office and/or Secretary Marotta upon Secretary Frank's return.

Please let me know if you have any questions. Thanks!

Jessica Clark
Executive Assistant
Department of Corrections
3099 East Washington Avenue
P.O. Box 7925

1/27 p/c to Jana re 939.63
J - "use 'using' "
"possessing"



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1554/2-3
MGD:lmk:rs

DOA:.....Steinmetz, BB0387 - Probation for misdemeanors

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

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possessing ✓

Do NOT Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

Under current law, the initial maximum term of probation for a person convicted of a single misdemeanor is two years. The minimum term of probation is six months. Under this bill, if a person convicted of a Class A misdemeanor, for which the maximum term of imprisonment is generally nine months, or an unclassified misdemeanor punishable by a maximum term of imprisonment of nine months or more, the maximum term of probation is one year. The minimum term of probation in such a case remains six months. If a person is convicted of any other type of misdemeanor, the initial maximum term of probation is six months, and there is no minimum term. Neither of these maximum terms of probation applies, however, if the misdemeanor is an act of domestic abuse. In such a case, the maximum term of probation is two years.

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:

2 SECTION 1. 939.621 of the statutes is renumbered 939.621 (2) and amended to

3 read:

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while using a firearm or if the conviction is for

is

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Analysis
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the person committed

1 939.621 (2) If a person commits an act of domestic abuse, ~~as defined in s.~~
 2 ~~968.075 (1) (a)~~ and the act constitutes the commission of a crime, the maximum term
 3 of imprisonment for that crime may be increased by not more than 2 years if the crime
 4 is committed during the 72 hours immediately following an arrest for a domestic
 5 abuse incident, as set forth in s. 968.075 (5). The 72-hour period applies whether or
 6 not there has been a waiver by the victim under s. 968.075 (5) (c). The victim of the
 7 domestic abuse crime does not have to be the same as the victim of the domestic abuse
 8 incident that resulted in the arrest. The penalty increase under this section changes
 9 the status of a misdemeanor to a felony.

10 **SECTION 2.** 939.621 (1) of the statutes is created to read:

11 939.621 (1) In this section, "domestic abuse" has the meaning given in s.
 12 968.075 (1) (a).

13 **SECTION 3.** 939.621 (3) of the statutes is created to read:

14 939.621 (3) If a person commits an act of domestic abuse, the act constitutes
 15 a misdemeanor, and the court places ^athe person on probation for ^athat misdemeanor,
 16 the maximum original term of probation under s. 973.09 (2) is two years. 

17 **SECTION 4.** 973.09 (1) (a) of the statutes is amended to read:

18 973.09 (1) (a) Except as provided in par. (c) or if probation is prohibited for a
 19 particular offense by statute, if a person is convicted of a crime, the court, by order,
 20 may withhold sentence or impose sentence under s. 973.15 and stay its execution,
 21 and in either case place the person on probation to the department for a stated period,
 22 stating in the order the reasons therefor. The court may impose any conditions which
 23 appear to be reasonable and appropriate. The period of probation may be made
 24 consecutive to a sentence on a different charge, whether imposed at the same time
 25 or previously. If the court imposes an increased term of probation, as authorized

and any of
 the following
 apply

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1 under sub. (2) (a) 2. or (b) 2. or s. 939.621 (3), it shall place its reasons for doing so
2 on the record.

3 SECTION 5. 973.09 (2) (a) 1. of the statutes is amended to read:

4 973.09 (2) (a) 1. Except as provided in subd. 2. and s. 939.621 (3), for Class A
5 misdemeanors ~~or unclassified misdemeanors punishable by 9 months of~~
6 ~~imprisonment or more~~, not less than 6 months nor more than 2 years one year.

7 SECTION 6. 973.09 (2) (a) 1m. of the statutes is created to read:

8 973.09 (2) (a) 1m. Except as provided in subd. 2. and s. 939.621 (3), for
9 misdemeanors not covered by subd. 1., not more than 6 months.

10

(END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1554/3ins
MGD:.....



1

analysis INSERT

, for having nonconsensual sexual contact with another person, or for a misdemeanor under chapter 948 of the statutes (which covers certain crimes against children)

2

3

INSERT 2/16

4

(a) The person committed the misdemeanor while using a firearm.

5

(b) The misdemeanor is an act of domestic abuse.

6

(c) The misdemeanor is a violation of s. 940.225 (3m) or ch. 948.

possessing ✓



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1554/3
MGD:lmk&cs:ch

DOA:.....Steinmetz, BB0387 - Probation for misdemeanors

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CRIMES

Under current law, the initial maximum term of probation for a person convicted of a single misdemeanor is two years. The minimum term of probation is six months. Under this bill, if a person is convicted of a Class A misdemeanor (for which the maximum term of imprisonment is generally nine months), the initial maximum term of probation is one year. The minimum term of probation in such a case remains six months. If a person is convicted of any other type of misdemeanor, the initial maximum term of probation is six months, and there is no minimum term. Neither of these maximum terms of probation applies, however, if the person committed the misdemeanor while possessing a firearm or if the conviction is for an act of domestic abuse, for having nonconsensual sexual contact with another person, or for a misdemeanor under chapter 948 of the statutes (which covers certain crimes against children). In such a case, the initial maximum term of probation is two years.

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.** 939.621 of the statutes is renumbered 939.621 (2) and amended to
2 read:

3 939.621 (2) If a person commits an act of domestic abuse, ~~as defined in s.~~
4 ~~968.075 (1) (a)~~ and the act constitutes the commission of a crime, the maximum term
5 of imprisonment for that crime may be increased by not more than 2 years if the crime
6 is committed during the 72 hours immediately following an arrest for a domestic
7 abuse incident, as set forth in s. 968.075 (5). The 72-hour period applies whether or
8 not there has been a waiver by the victim under s. 968.075 (5) (c). The victim of the
9 domestic abuse crime does not have to be the same as the victim of the domestic abuse
10 incident that resulted in the arrest. The penalty increase under this section changes
11 the status of a misdemeanor to a felony.

12 **SECTION 2.** 939.621 (1) of the statutes is created to read:

13 939.621 (1) In this section, “domestic abuse” has the meaning given in s.
14 968.075 (1) (a).

15 **SECTION 3.** 939.621 (3) of the statutes is created to read:

16 939.621 (3) If a court places a person on probation for a misdemeanor and any
17 of the following apply, the maximum original term of probation under s. 973.09 (2)
18 is two years:

19 (a) The person committed the misdemeanor while possessing a firearm.

20 (b) The misdemeanor is an act of domestic abuse.

21 (c) The misdemeanor is a violation of s. 940.225 (3m) or ch. 948.

22 **SECTION 4.** 973.09 (1) (a) of the statutes is amended to read:

23 973.09 (1) (a) Except as provided in par. (c) or if probation is prohibited for a
24 particular offense by statute, if a person is convicted of a crime, the court, by order,
25 may withhold sentence or impose sentence under s. 973.15 and stay its execution,

1 and in either case place the person on probation to the department for a stated period,
2 stating in the order the reasons therefor. The court may impose any conditions which
3 appear to be reasonable and appropriate. The period of probation may be made
4 consecutive to a sentence on a different charge, whether imposed at the same time
5 or previously. If the court imposes an increased term of probation, as authorized
6 under sub. (2) (a) 2. or (b) 2. or s. 939.621 (3), it shall place its reasons for doing so
7 on the record.

8 **SECTION 5.** 973.09 (2) (a) 1. of the statutes is amended to read:

9 973.09 (2) (a) 1. Except as provided in subd. 2. and s. 939.621 (3), for Class A
10 misdemeanors, not less than 6 months nor more than ~~2 years~~ one year.

11 **SECTION 6.** 973.09 (2) (a) 1m. of the statutes is created to read:

12 973.09 (2) (a) 1m. Except as provided in subd. 2. and s. 939.621 (3), for
13 misdemeanors not covered by subd. 1., not more than 6 months.

14 (END)