

## 2007 DRAFTING REQUEST

### Bill

Received: **01/16/2007**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Jennifer Esser**

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

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sentencing**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Death Penalty

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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 03/19/2007	csicilia 03/19/2007		_____			S&L Crime
/1			pgreensl 03/19/2007	_____	lparisi 03/19/2007	lparisi 03/20/2007	

FE Sent For: @ intro.  
3-27-2007

<END>

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FE Sent For:

<END>

## Ryan, Robin

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**From:** Hanaman, Cathlene  
**Sent:** Tuesday, January 09, 2007 3:39 PM  
**To:** Ryan, Robin  
**Subject:** FW: Death Penalty Draft

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**From:** Esser, Jennifer  
**Sent:** Tuesday, January 09, 2007 3:21 PM  
**To:** Nelson, Robert P.; Hanaman, Cathlene  
**Cc:** Van Ess, Thomas  
**Subject:** Death Penalty Draft

Hi,

I just spoke to Sen. Lasee and he would like to see his usual bill to reinstate the death penalty re-introduced. I know over the years it has taken on a number of forms with certain crimes included and excluded depending on the session.

In light of 2005 SJR 5 passing at the ballot he would like to see something drafted that reinstates the death penalties for cases involving a first degree intentional homicide that is vicious and is supported by DNA evidence. He said that determining whether the crime is "vicious" will need to be determined by a jury.

I think that this bill has a long way to go before introduction, but if you get something drafted this will allow him to think about what else he would like added to this draft.

You each had a hand in drafting the 2002 (SB 2) and 2005 (SJR 5) respectively, so I thought I'd first start with you.

Thanks for your help in advance.

Jen  
Office of Sen. Lasee

*e-mailed copy of  
Sen. Lasee's 03-04  
bill as a model  
and research bulletin  
DP (Summer '06) on*

## Ryan, Robin

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**From:** Esser, Jennifer  
**Sent:** Thursday, March 08, 2007 12:32 PM  
**To:** Ryan, Robin  
**Cc:** Van Ess, Thomas  
**Subject:** RE: death penalty

Hi Robin,

We got Alan to commit to what he wants to see in the draft. If you have any questions, please feel free to call Tom & I after lunch.

He would like to see the death penalty reinstated in the State of Wisconsin for cases involving a person convicted of a first-degree intentional homicide that is vicious and nature and the conviction is supported by DNA evidence.

He is also supportive of having the death penalty for cases involving a person convicted of a first-degree intentional homicide that is vicious in nature where there is no DNA evidence. I know that he received a lot of feedback last session from folks who mentioned that there is not always DNA evidence with every crime, so he needs to ensure that the penalty is still an available option for prosecutors in these cases.

I know that it is the prosecutors who decide whether or not to have a penalty phase of the trial, but it is the jurors who make the decision in the penalty phase. I'm hoping you can work the fact that jurors will be deciding the fate in the penalty phase.

Tom, if I've left anything out, please jump in.

Thanks so much, Robin.

Jen  
Office of Sen. Lasee

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**From:** Ryan, Robin  
**Sent:** Wednesday, February 07, 2007 9:51 AM  
**To:** Esser, Jennifer  
**Subject:** death penalty

Jennifer,  
Here is Sen. Lasee's bill from the 03-05 session as well as a link to the article on the death penalty.

<< File: 03s0009/1 >>

This is the link to the death penalty paper I mentioned -- it is the first paper on the list. Pages 3 to 7 review the legal requirements for a death penalty statute, and include a discussion about using "heinous" as an aggravating factor.  
<http://www.legis.state.wi.us/lrb/pubs/researchbull.htm>

Robin

LRB-1526

Call to Jennifer 3/13/07

(1) May judge overturn jury recommendation of death?

(2) FYI - I intend to leave it to courts to determine what constitutes mental retardation and to determine the process for determining mental retardation.

(3) Went doc to write rules on lethal injection  
could specify areas doc must address, for ex:  
- who admins drugs  
- which drugs  
- amts.  
- generally, the protocol

(4) Since DNR not a determinant I don't plan on including any reference to DNR in bill

## Ryan, Robin

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**From:** Esser, Jennifer  
**Sent:** Wednesday, March 14, 2007 12:14 PM  
**To:** Ryan, Robin  
**Cc:** Van Ess, Thomas  
**Subject:** RE: Death Penalty Draft

Hi Robin,

I spoke to him, and he said the following things:

- (1). Please include in your draft the ability for a judge to overturn a jury sentence, as he feels that if the jury makes an egregious error, that the judge needs to have the ability to overturn it.
- (2). He told me that there needs to be a DNA reference in the draft. The reason being is that that reference was in the statewide referendum. He said that there has to be a mention that DNA testing is required when practical. He understands that not all cases will have DNA evidence available for jurors, and in these instances the jury can still recommend death. I don't know how you draft this—you might need to get creative.
- (3). In regards to having DOC promulgate rules on the protocol of lethal injections, he said not to worry about including this.

You might have follow up questions after you read this, feel free to call. Tom & I will be in meetings pretty much up until 3:30 just so you know.

Take care,

Jen

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**From:** Ryan, Robin  
**Sent:** Tuesday, March 13, 2007 4:19 PM  
**To:** Esser, Jennifer  
**Subject:** RE: Death Penalty Draft

Jen,

I'll give you an update tomorrow afternoon.

Robin

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**From:** Esser, Jennifer  
**Sent:** Tuesday, March 13, 2007 3:48 PM  
**To:** Ryan, Robin  
**Cc:** Van Ess, Thomas  
**Subject:** Death Penalty Draft

Hi Robin,

I know you guys are swamped over there. Is there anyway, we can get a draft of our death penalty bill done by next Tuesday? I think Alan is planning on having a press availability to announce his proposal, etc. and he will need a draft to possibly pass out to press.

Thanks and hope this doesn't throw you off totally.

Take care,