

SA ✓  
new x-refs

2007 - 2008 LEGISLATURE

1526/1  
LRB-0763/1  
RLR:kff.rs  
cjs

MONDAY if possible  
TUE, 900 AM otherwise

2007 BILL

RMMR  
D-Note

Regen.

1 AN ACT *to renumber* 939.50 (1) (a) and 939.50 (3) (a); *to amend* 115.31 (2g),  
2 118.19 (4) (a), 301.048 (2) (am) 2., 302.11 (1), 302.114 (1), 303.065 (1) (b) 2.,  
3 304.02 (5), 304.06 (1) (b), 304.071 (2), 938.355 (4) (b), 938.538 (3) (a) 1m., 939.30  
4 (2), 939.31, 939.32 (1) (a), 939.50 (2), 939.60, 939.619 (2), 939.62 (2m) (a) 2m.  
5 c., 939.62 (2m) (c), 939.63 (1) (b), 939.632 (1) (e) 2., 939.75 (1), 939.75 (2) (b)  
6 (intro.), 939.75 (3), 940.01 (1) (a), 940.01 (1) (b), 940.01 (2) (intro.), 971.17 (1) (c),  
7 972.03, 972.13 (6), 973.01 (3), 973.014 (2), 973.03 (3) (e) 1., 973.09 (1) (c) and  
8 978.07 (1) (c) 1.; and *to create* 301.046 (3) (cm), 302.11 (1w), 304.06 (1t), 939.22  
9 (7), 939.22 (18m), 939.22 (43), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1) (am),  
10 940.01 (1) (bm), 961.335 (1m), 967.02 (1m), 973.0145, 973.0147, 973.15 (2m) (a)  
11 2. c. and 978.07 (1) (c) 1m. of the statutes; **relating to:** death or life

providing a penalty of

**BILL**

1 imprisonment for certain first-degree intentional homicides, granting  
 2 rule-making authority, and providing a penalty. *that is vicious*

***Analysis by the Legislative Reference Bureau***

Under current law, no state crime is punishable by a sentence of death. First-degree intentional homicide (causing the death of another human being or an unborn child with the intent to kill that human being, unborn child, or another, except in the case of a legal abortion) is a Class A felony, punishable by life imprisonment. Unless the defendant is found to be a persistent repeat offender, a court imposing a sentence of life imprisonment must determine whether the defendant will be eligible to petition for release to extended supervision after serving 20 years in prison, after serving a longer period of time in prison, or never. A persistent repeat offender who is sentenced to life imprisonment is not eligible to petition for release to extended supervision.

Also under current law, a court must consider as an aggravating factor when sentencing a person for certain violent offenses or certain offenses resulting in property damage that the defendant acted with intent to influence the policy of a governmental unit or with intent to punish a governmental unit for a prior policy decision.

This bill authorizes a sentence of either death or life imprisonment without the possibility of release to extended supervision for a person 18 years of age or older who commits first-degree intentional homicide with the intent to terrorize. A person acts with intent to terrorize if he or she intends to influence the policy of a governmental unit by intimidation or coercion, intends to affect the conduct of a governmental unit, intends to punish a governmental unit for a prior policy decision, or intends to intimidate or coerce a civilian population.

If a person is convicted for a homicide that is punishable by death, the trial court must convene a separate sentencing proceeding. The defendant has a right to a jury at the sentencing proceeding. Generally, the trial jury will serve at the sentencing proceeding. However, if there was no trial jury or if the trial jury cannot continue to serve, a new jury is selected.

At the sentencing proceeding, the defense may present evidence of mitigating circumstances, including any aspect of the defendant's character, background, or capabilities that bears on his or her culpability for the crime, and the state may present evidence in rebuttal. The rules of evidence that are applicable in a criminal trial apply at the sentencing proceeding. The jury must consider the circumstances of the crime and evidence of mitigating circumstances and decide whether the defendant should be sentenced to death. A mitigating circumstance must be proved only to the satisfaction of an individual juror for the juror to factor the mitigating circumstance into his or her sentencing decision. The jurors are not required to agree on which mitigating factors are applicable in order to decide that a defendant should be sentenced to life imprisonment instead of death. The court must instruct the jury that if the jury does not decide that the defendant should be sentenced to death, the

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court must sentence the defendant to life imprisonment without the possibility of extended supervision. If the jury makes a unanimous decision as to whether the defendant should be sentenced to death or to life imprisonment, the court must ask the jurors collectively if they agree with the decision, and at the request of either party, the court must ask the jurors individually if they agree with the decision. If any juror disagrees, the court must instruct the jury to continue deliberating.

If the jury unanimously decides that the defendant should be sentenced to death, the court must impose a sentence of death. If the jury unanimously decides that the defendant should be sentenced to life imprisonment or cannot make a unanimous decision, the court must sentence the defendant to life imprisonment without the possibility of extended supervision. If the defendant waives his or her right to a sentencing jury the court must consider the circumstances of the crime and the evidence of mitigating circumstances and determine a sentence. If the court acting without a jury sentences a defendant to death, the court must state on the record any mitigating circumstances that it did find. The court may not impose a sentence of death on a person who is mentally retarded and the state may not execute a person who is mentally retarded.

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Any sentence of death is subject to automatic appellate review by the Wisconsin Supreme Court. The court that imposes a death sentence sets the execution date. The secretary of corrections designates the executioner and at least 12 witnesses. The execution is by lethal injection. A death sentence may be stayed only by the governor or ~~an appellate court~~ *incident to an appeal.*

This bill applies only to those offenses committed on or after the effective date of the bill.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 115.31 (2g) of the statutes is amended to read:

2 115.31 (2g) Notwithstanding subch. II of ch. 111, the state superintendent shall  
3 revoke a license granted by the state superintendent, without a hearing, if the  
4 licensee is convicted of any Class AA, A, B, C, or D felony under ch. 940 or 948, except  
5 ss. 940.08 and 940.205, for a violation that occurs on or after September 12, 1991, or

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1 any Class E, F, G, or H felony under ch. 940 or 948, except ss. 940.08 and 940.205,  
2 for a violation that occurs on or after February 1, 2003.

3 **SECTION 2.** 118.19 (4) (a) of the statutes is amended to read:

4 118.19 (4) (a) Notwithstanding subch. II of ch. 111, the state superintendent  
5 may not grant a license, for 6 years following the date of the conviction, to any person  
6 who has been convicted of any Class AA, A, B, C, or D felony under ch. 940 or 948,  
7 except ss. 940.08 and 940.205, or of an equivalent crime in another state or country,  
8 for a violation that occurs on or after September 12, 1991, or any Class E, F, G, or H  
9 felony under ch. 940 or 948, except ss. 940.08 and 940.205, for a violation that occurs  
10 on or after February 1, 2003. The state superintendent may grant the license only  
11 if the person establishes by clear and convincing evidence that he or she is entitled  
12 to the license.

13 **SECTION 3.** 301.046 (3) (cm) of the statutes is created to read:

14 301.046 (3) (cm) The prisoner is not awaiting imposition of a death sentence. *execution*

15 **SECTION 4.** 301.048 (2) (am) 2. of the statutes is amended to read:

16 301.048 (2) (am) 2. He or she is a prisoner serving a felony sentence for a felony  
17 that is not punishable by death or life imprisonment and the department directs him  
18 or her to participate in the program. This subdivision does not apply to a prisoner  
19 serving a bifurcated sentence imposed under s. 973.01.

20 **SECTION 5.** 302.11 (1) of the statutes is amended to read:

21 302.11 (1) The warden or superintendent shall keep a record of the conduct of  
22 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),  
23 (1m), (1q), (1w), (1z), (7), and (10), each inmate is entitled to mandatory release on  
24 parole by the department. The mandatory release date is established at two-thirds

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1 of the sentence. Any calculations under this subsection or sub. (1q) (b) or (2) (b)  
2 resulting in fractions of a day shall be rounded in the inmate's favor to a whole day.

3 **SECTION 6.** 302.11 (1w) of the statutes is created to read:

4 302.11 (1w) An inmate who is sentenced to death or life imprisonment under  
5 s. 973.0145 is not entitled to mandatory release on parole under this section.

6 **SECTION 7.** 302.114 (1) of the statutes is amended to read:

7 302.114 (1) An inmate is subject to this section if he or she is serving a life  
8 sentence imposed under s. 973.014 (1g) (a) 1. or 2. An inmate serving a life sentence  
9 under s. 939.62 (2m) ~~or~~ 973.014 (1g) (a) 3., or 973.0145 is not eligible for release to  
10 extended supervision under this section.

11 **SECTION 8.** 303.065 (1) (b) 2. of the statutes is amended to read:

12 303.065 (1) (b) 2. A person serving a life sentence under s. 939.62 (2m) (c) ~~or~~  
13 973.014 (1) (c) or (1g) (a) 3., or 973.0145 or awaiting imposition of a death sentence  
14 may not be considered for work release.

15 **SECTION 9.** 304.02 (5) of the statutes is amended to read:

16 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life  
17 sentence under s. 939.62 (2m) (c) ~~or~~ 973.014 (1) (c) or (1g), or 973.0145 or who is  
18 awaiting imposition of a death sentence is not eligible for release to parole  
19 supervision under this section.

20 **SECTION 10.** 304.06 (1) (b) of the statutes is amended to read:

21 304.06 (1) (b) Except as provided in s. 961.49 (2), 1999 stats., sub. (1m) or (1t),  
22 or s. 302.045 (3), 973.01 (6), or 973.0135, the parole commission may parole an  
23 inmate of the Wisconsin state prisons or any felon or any person serving at least one  
24 year or more in a county house of correction or a county reforestation camp organized  
25 under s. 303.07, when he or she has served ~~25%~~ 25 percent of the sentence imposed

**BILL****SECTION 10**

1 for the offense, or 6 months, whichever is greater. Except as provided in sub. (1t) or  
2 s. 939.62 (2m) (c) or 973.014 (1) (b) or (c), (1g), or (2), the parole commission may  
3 parole an inmate serving a life term when he or she has served 20 years, as modified  
4 by the formula under s. 302.11 (1) and subject to extension under s. 302.11 (1q) and  
5 (2), if applicable. The person serving the life term shall be given credit for time served  
6 prior to sentencing under s. 973.155, including good time under s. 973.155 (4). The  
7 secretary may grant special action parole releases under s. 304.02. The department  
8 or the parole commission shall not provide any convicted offender or other person  
9 sentenced to the department's custody any parole eligibility or evaluation until the  
10 person has been confined at least 60 days following sentencing.

11 **SECTION 11.** 304.06 (1t) of the statutes is created to read:

12 304.06 (1t) The parole commission may not parole an inmate who is sentenced  
13 to life imprisonment or death under s. 973.0145.

14 **SECTION 12.** 304.071 (2) of the statutes is amended to read:

15 304.071 (2) If a prisoner is ~~not eligible~~ ineligible for parole under s. 961.49 (2),  
16 1999 stats., or s. 304.06 (1t), 939.62 (2m) (c), 973.01 (6), 973.014 (1) (c) or (1g), or  
17 973.032 (5), he or she is not eligible for parole under this section.

18 **SECTION 13.** 938.355 (4) (b) of the statutes is amended to read:

19 938.355 (4) (b) Except as provided in s. 938.368, an order under s. 938.34 (4d)  
20 or (4m) made before the juvenile attains 18 years of age may apply for up to 2 years  
21 after the date on which the order is granted or until the juvenile's 18th birthday,  
22 whichever is earlier, unless the court specifies a shorter period of time or the court  
23 terminates the order sooner. If the order does not specify a termination date, it shall  
24 apply for one year after the date on which the order is granted or until the juvenile's  
25 18th birthday, whichever is earlier, unless the court terminates the order sooner.

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1 Except as provided in s. 938.368, an order under s. 938.34 (4h) made before the  
2 juvenile attains 18 years of age shall apply for 5 years after the date on which the  
3 order is granted, if the juvenile is adjudicated delinquent for committing a violation  
4 of s. 943.10 (2) or for committing an act that would be punishable as a Class B or C  
5 felony if committed by an adult, or until the juvenile reaches 25 years of age, if the  
6 juvenile is adjudicated delinquent for committing an act that would be punishable  
7 as a Class AA or A felony if committed by an adult. Except as provided in s. 938.368,  
8 an extension of an order under s. 938.34 (4d), (4h), (4m), or (4n) made before the  
9 juvenile attains 17 years of age shall terminate at the end of one year after the date  
10 on which the order is granted unless the court specifies a shorter period of time or  
11 the court terminates the order sooner. No extension under s. 938.365 of an original  
12 dispositional order under s. 938.34 (4d), (4h), (4m), or (4n) may be granted for a  
13 juvenile who is 17 years of age or older when the original dispositional order  
14 terminates.

15 **SECTION 14.** 938.538 (3) (a) 1m. of the statutes is amended to read:

16 938.538 (3) (a) 1m. If the participant has been adjudicated delinquent for  
17 committing an act that would be a Class AA or A felony if committed by an adult,  
18 placement in a Type 1 juvenile correctional facility or a secured residential care  
19 center for children and youth until the participant reaches 25 years of age, unless the  
20 participant is released sooner, subject to a mandatory minimum period of  
21 confinement of not less than one year.

22 **SECTION 15.** 939.22 (7) of the statutes is created to read:

23 939.22 (7) "Crime that is punishable by death or life imprisonment" means a  
24 crime for which one or more of the possible penalties is death or life imprisonment.

25 **SECTION 16.** 939.22 (18m) of the statutes is created to read:

**BILL****SECTION 16**

1 939.22 (18m) "Intent to terrorize" means intent to influence the policy of a unit  
2 of government by intimidation or coercion, to affect the conduct of a unit of  
3 government by committing a homicide, to punish a unit of government for a prior  
4 policy decision, or to intimidate or coerce a civilian population.

5 **SECTION 17.** 939.22 (43) of the statutes is created to read:

6 939.22 (43) "Unit of government" means the United States, the state, any  
7 county, city, village, or town or any political subdivision, department, division, board,  
8 or agency of the United States, the state, or any county, city, village, or town.

9 **SECTION 18.** 939.30 (2) of the statutes is amended to read:

10 939.30 (2) For a solicitation to commit a crime ~~for which the penalty is that is~~  
11 punishable by death or life imprisonment, the actor is guilty of a Class F felony. For  
12 a solicitation to commit a Class I felony, the actor is guilty of a Class I felony.

13 **SECTION 19.** 939.31 of the statutes is amended to read:

14 **939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4), and  
15 961.41 (1x), whoever, with intent that a crime be committed, agrees or combines with  
16 another for the purpose of committing that crime may, if one or more of the parties  
17 to the conspiracy ~~does~~ do an act to effect its object, be fined or imprisoned or both not  
18 to exceed the maximum provided for the completed crime; except that for a  
19 conspiracy to commit a crime ~~for which the penalty is that is punishable by death or~~  
20 life imprisonment, the actor is guilty of a Class B felony.

21 **SECTION 20.** 939.32 (1) (a) of the statutes is amended to read:

22 939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is that~~  
23 is punishable by death or life imprisonment is guilty of a Class B felony.

24 **SECTION 21.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

25 **SECTION 22.** 939.50 (1) (ag) of the statutes is created to read:



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1 939.50 (1) (ag) Class AA felony.

2 **SECTION 23.** 939.50 (2) of the statutes is amended to read:

3 939.50 (2) A felony is a Class AA, A, B, C, D, E, F, G, H, or I felony when it is  
4 so specified in the statutes.

5 **SECTION 24.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

6 **SECTION 25.** 939.50 (3) (ag) of the statutes is created to read:

7 939.50 (3) (ag) For a Class AA felony, death or life imprisonment without the  
8 possibility of parole or extended supervision, as determined under s. 973.0145.

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9 **SECTION 26.** 939.60 of the statutes is amended to read:

10 **939.60 Felony and misdemeanor defined.** A crime that is punishable by  
11 death or imprisonment in the Wisconsin state prisons is a felony. Every other crime  
12 is a misdemeanor.

13 **SECTION 27.** 939.619 (2) of the statutes is amended to read:

14 939.619 (2) If a person has one or more prior convictions for a serious violent  
15 crime or a crime that is punishable by death or life imprisonment and subsequently  
16 commits a serious violent crime, the court shall impose a bifurcated sentence under  
17 s. 973.01. The term of confinement in prison portion of a bifurcated sentence imposed  
18 under this subsection may not be less than 3 years and 6 months, but otherwise the  
19 penalties for the crime apply, subject to any applicable penalty enhancement. The  
20 court may not place the defendant on probation.

21 **SECTION 28.** 939.62 (2m) (a) 2m. c. of the statutes is amended to read:

22 939.62 (2m) (a) 2m. c. The solicitation, conspiracy, or attempt, under s. 939.30,  
23 939.31, or 939.32, to commit a Class AA or Class A felony.

24 **SECTION 29.** 939.62 (2m) (c) of the statutes is amended to read:

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1           939.62 (2m) (c) If the actor is a persistent repeater and the actor is not  
2 sentenced to death under s. 973.0145, the term of imprisonment for the felony for  
3 which the persistent repeater presently is being sentenced under ch. 973 is life  
4 imprisonment without the possibility of parole or extended supervision.

5           **SECTION 30.** 939.63 (1) (b) of the statutes is amended to read:

6           939.63 (1) (b) If the maximum term of imprisonment for a felony is more than  
7 5 years or is a life term or the felony is punishable by death, the maximum term of  
8 imprisonment for the felony may be increased by not more than 5 years.

9           **SECTION 31.** 939.632 (1) (e) 2. of the statutes is amended to read:

10           939.632 (1) (e) 2. The solicitation, conspiracy, or attempt, under s. 939.30,  
11 939.31, or 939.32, to commit a Class AA or Class A felony.

12           **SECTION 32.** 939.75 (1) of the statutes is amended to read:

13           939.75 (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b) and (bm),  
14 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g)  
15 (c), (cm), and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25  
16 (1) (c) to (e), "unborn child" means any individual of the human species from  
17 fertilization until birth that is gestating inside a woman.

18           **SECTION 33.** 939.75 (2) (b) (intro.) of the statutes is amended to read:

19           939.75 (2) (b) (intro.) Sections 940.01 (1) (b) and (bm), 940.02 (1m), 940.05 (2g)  
20 and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10  
21 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply  
22 to any of the following:

23           **SECTION 34.** 939.75 (3) of the statutes is amended to read:

24           939.75 (3) When the existence of an exception under sub. (2) has been placed  
25 in issue by the trial evidence, the state must prove beyond a reasonable doubt that

*a crime that is*

*life imprisonment*

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1 the facts constituting the exception do not exist in order to sustain a finding of guilt  
2 under s. 940.01 (1) (b) and (bm), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2),  
3 940.09 (1) (c) to (e) or (1g) (c), (cm), or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b),  
4 940.24 (2) or 940.25 (1) (c) to (e).

5 **SECTION 35.** 940.01 (1) (a) of the statutes is amended to read:

6 940.01 (1) (a) Except as provided in par. (am) or sub. (2), whoever causes the  
7 death of another human being with intent to kill that person or another is guilty of  
8 a Class A felony.

9 **SECTION 36.** 940.01 (1) (am) of the statutes is created to read:

10 940.01 (1) (am) Whoever is 18 years of age or older and with intent to terrorize  
11 and intent to kill another human being causes the death of another human being is  
12 guilty of a Class AA felony.

13 **SECTION 37.** 940.01 (1) (b) of the statutes is amended to read:

14 940.01 (1) (b) Except as provided in par. (bm) or sub. (2), whoever causes the  
15 death of an unborn child with intent to kill that unborn child, kill the woman who  
16 is pregnant with that unborn child, or kill another is guilty of a Class A felony.

17 **SECTION 38.** 940.01 (1) (bm) of the statutes is created to read:

18 940.01 (1) (bm) Whoever is 18 years of age or older and with intent to terrorize  
19 and intent to kill an unborn child, a woman who is pregnant with an unborn child,  
20 or another, causes the death of an unborn child is guilty of a Class AA felony.

21 **SECTION 39.** 940.01 (2) (intro.) of the statutes is amended to read:

22 940.01 (2) MITIGATING CIRCUMSTANCES. (intro.) The following are affirmative  
23 defenses to prosecution under this section which that mitigate the ~~offense~~ offenses  
24 under sub. (1) to 2nd-degree intentional homicide under s. 940.05:

25 **SECTION 40.** 961.335 (1m) of the statutes is created to read:

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1           961.335 (1m) Notwithstanding sub. (1), upon the application of the secretary  
2 of corrections for a permit to obtain a controlled substance for purposes of an  
3 execution under s. 973.0147, the controlled substances board shall issue a permit  
4 under this section.

5           **SECTION 41.** 967.02 (1m) of the statutes is created to read:

6           967.02 (1m) "Crime that is punishable by death or life imprisonment" has the  
7 meaning given in s. 939.22 (7).

8           **SECTION 42.** 971.17 (1) (c) of the statutes is amended to read:

9           971.17 (1) (c) *Felonies punishable by death or life imprisonment*. If a defendant  
10 is found not guilty by reason of mental disease or mental defect of a felony that is  
11 punishable by death or life imprisonment, the commitment period specified by the  
12 court may be life, subject to termination under sub. (5).

13           **SECTION 43.** 972.03 of the statutes is amended to read:

14           **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory  
15 challenges except as otherwise provided in this section. When the crime charged is  
16 punishable by death or life imprisonment, the state is entitled to 6 peremptory  
17 challenges and the defendant is entitled to 6 peremptory challenges. If there is more  
18 than one defendant, the court shall divide the challenges as equally as practicable  
19 among them; and if their defenses are adverse and the court is satisfied that the  
20 protection of their rights so requires, the court may allow the defendants additional  
21 challenges. If the crime is punishable by death or life imprisonment, the total  
22 peremptory challenges allowed the defense shall not exceed 12 if there are only 2  
23 defendants and 18 if there are more than 2 defendants; in other felony cases 6  
24 challenges if there are only 2 defendants and 9 challenges if there are more than 2.  
25 In misdemeanor cases, the state is entitled to 3 peremptory challenges and the

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a crime that is

**BILL**

1 defendant is entitled to 3 peremptory challenges, except that if there are 2  
2 defendants, the court shall allow the defense 4 peremptory challenges, and, if there  
3 are more than 2 defendants, the court shall allow the defense 6 peremptory  
4 challenges. Each side shall be allowed one additional peremptory challenge if  
5 additional jurors are to be selected under s. 972.04 (1).

6 **SECTION 44.** 972.13 (6) of the statutes is amended to read:

7 972.13 (6) The following forms may be used for judgments:

8 STATE OF WISCONSIN

9 .... County

10 In.... Court

11 The State of Wisconsin

12 vs.

13 ....(Name of defendant)

14 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

15 IT IS ADJUDGED That the defendant has been convicted upon the defendant's  
16 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)  
17 (no contest) on the.... day of...., .... (year), of the crime of.... in violation of s.....; and  
18 the court having asked the defendant whether the defendant has anything to state  
19 why sentence should not be pronounced, and no sufficient grounds to the contrary  
20 being shown or appearing to the court.

21 \*IT IS ADJUDGED That the defendant is guilty as convicted.

22 \*IT IS ADJUDGED That the defendant shall be executed by lethal injection.

23 \*IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin  
24 state prisons (county jail of.... county) for an indeterminate term of not more than.....

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1           \*IT IS ADJUDGED That the defendant is ordered to serve a bifurcated  
2 sentence consisting of .... year(s) of confinement in prison and .... months/years of  
3 extended supervision.

4           \*IT IS ADJUDGED That the defendant is placed in the intensive sanctions  
5 program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes  
6 and the following conditions:....

7           \*IT IS ADJUDGED That the defendant is hereby committed to detention in  
8 (the defendant's place of residence or place designated by judge) for a term of not  
9 more than....

10          \*IT IS ADJUDGED That the defendant is placed on lifetime supervision by the  
11 department of corrections under section 939.615 of the Wisconsin Statutes.

12          \*IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the  
13 costs of this action).

14          \*IT IS ADJUDGED That the defendant pay restitution to....

15          \*IT IS ADJUDGED That the defendant is restricted in his or her use of  
16 computers as follows:....

17          \*The.... at.... is designated as the Reception Center to which the defendant shall  
18 be delivered by the sheriff.

19          \*IT IS ORDERED That the clerk deliver a duplicate original of this judgment  
20 to the sheriff who shall forthwith execute the same and deliver it to the warden.

21 Dated this.... day of...., .... (year)

22 BY THE COURT....

23 Date of Offense....,

24 District Attorney....,

25 Defense Attorney....

**BILL**

1 \*Strike inapplicable paragraphs.

2 STATE OF WISCONSIN

3 .... County

4 In.... Court

5 The State of Wisconsin

6 vs.

7 ....(Name of defendant)

8 On the.... day of...., .... (year), the district attorney appeared for the state and  
9 the defendant appeared in person and by.... the defendant's attorney.

10 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

11 IT IS ADJUDGED That the defendant has been found not guilty by the verdict  
12 of the jury (by the court) and is therefore ordered discharged forthwith.

13 Dated this.... day of...., .... (year)

14 BY THE COURT....

15 SECTION 45. 973.01 (3) of the statutes is amended to read:

16 973.01 (3) NOT APPLICABLE TO LIFE OR DEATH SENTENCES. If a person is being  
17 sentenced for a felony that is punishable by life imprisonment or by death, he or she  
18 is not subject to this section but shall be sentenced under s. 973.014 (1g) or 973.0145,  
19 whichever is applicable.

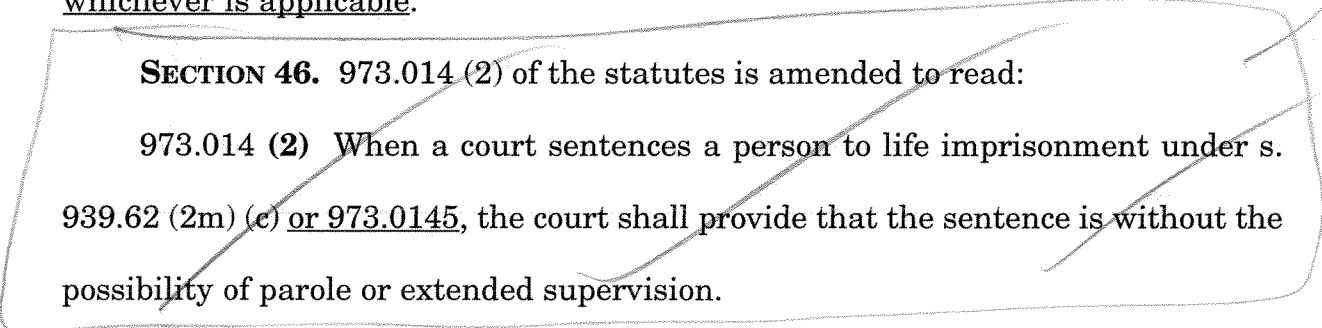
20 SECTION 46. 973.014 (2) of the statutes is amended to read:

21 973.014 (2) When a court sentences a person to life imprisonment under s.  
22 939.62 (2m) (c) or 973.0145, the court shall provide that the sentence is without the  
23 possibility of parole or extended supervision.

24 SECTION 47. 973.0145 of the statutes is created to read:

*a crime that is*

*death or*



**BILL**

**973.0145 Sentence of death or life imprisonment for Class AA felony.**

~~(1) Upon conviction of a defendant of a Class AA felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or to life imprisonment.~~

~~(2) Nothing in this section precludes the state at any time from retracting its decision to seek a sentence of death. If the state chooses not to seek a sentence of death after the defendant has been convicted of a Class AA felony, the court shall sentence the defendant to life imprisonment without the possibility of parole or extended supervision.~~

~~(3) The sentencing proceeding shall be before a jury unless the defendant waives the right to a jury for sentencing. The trial jury shall serve as the sentencing jury unless the trial jury is unable to reconvene for the sentencing hearing, the defendant pleaded guilty, or the defendant waived the right to a jury at trial, in which case the court shall summon a new jury.~~

~~(4) At the sentencing proceeding, the defendant may present evidence relating to any mitigating circumstance and the state may present evidence in rebuttal. The rules of evidence applicable at a criminal trial are applicable at a sentencing proceeding under this section. Following the presentation of evidence, the parties may present summary arguments for and against the penalty sought by the state.~~

~~(5) Mitigating circumstances may include any of the following:~~

~~(a) The defendant has no significant history of prior criminal activity.~~

~~(b) The Class AA felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.~~

~~(c) The defendant was an accomplice in the Class AA felony committed by another person and the defendant's participation was relatively minor.~~

JNS  
16-1

↑ period stays



**BILL**

1 (d) The defendant acted under extreme duress or under the substantial  
2 domination of another person.

3 (e) The capacity of the defendant to appreciate the criminality of his or her  
4 conduct or to conform his or her conduct to the requirements of law was substantially  
5 impaired.

6 (f) The age of the defendant at the time of the crime affected his or her  
7 judgment.

8 (g) The victim was a participant in the defendant's conduct or consented to the  
9 act.

10 (h) Any other factor including aspects of the defendant's character, background,  
11 or capabilities that bear on his or her culpability for the offense.

12 **(6)** All of the following apply to a sentencing proceeding before a jury:

13 (a) The court may not impose a sentence of death unless the jury returns a  
14 unanimous verdict of death.

15 (b) The court shall instruct the jury of all of the following:

16 1. In deliberating a verdict, the jurors must consider the circumstances  
17 surrounding the crime and any mitigating circumstances proved by the defendant.

18 2. A mitigating circumstance need not be found by all members of the jury and  
19 need be proved only to the satisfaction of an individual juror to be considered in the  
20 individual juror's decision.

21 3. The court shall impose a sentence of life imprisonment without the  
22 possibility of parole or extended supervision if the jury does not return a unanimous  
23 verdict of death.

24 (c) If the jury returns a verdict of death, the court shall read the verdict to the  
25 jurors and ask the jurors collectively if they agree with the verdict. Upon the request

**BILL**

1 of either party, the court shall ask each juror individually if he or she agrees with the  
2 verdict. If any juror does not agree with the verdict, the court shall refuse to accept  
3 the verdict and shall direct the jury to continue deliberating. If all the jurors agree  
4 with the verdict, the court shall impose a sentence of death.

5 (d) If the jury returns a verdict of life imprisonment or cannot unanimously  
6 agree on a verdict, the court shall impose a sentence of life imprisonment without the  
7 possibility of parole or extended supervision.

8 (7) All of the following apply to a sentencing proceeding before the court  
9 without a jury:

10 (a) In making a sentencing decision, the court shall consider the circumstances  
11 surrounding the crime and any mitigating circumstances proved by the defendant.

12 (b) If the court imposes a sentence of death, the court shall read the sentence  
13 in open court and state on the record which, if any, mitigating circumstances the  
14 court found.

15 (c) If the court determines that a sentence of death is not appropriate, the court  
16 shall impose a sentence of life without the possibility of parole or extended  
17 supervision.

18 (8) Notwithstanding sub. (6) (c), the court may not impose a sentence of death  
19 on a person who is mentally retarded and the state may not execute a person who is  
20 mentally retarded. In this subsection, "mentally retarded" means having a  
21 significantly subaverage general intellectual functioning accompanied by  
22 significant deficits or impairments in adaptive functioning.

23 (9) If the court imposes a sentence of death, the judgment of conviction and  
24 sentence of death are subject to automatic review by the supreme court within 60  
25 days after certification by the sentencing court of the entire record, unless the

**BILL**

1 supreme court, for good cause shown, extends the time for an additional period not  
2 to exceed 30 days. The review by the supreme court has priority over all other cases  
3 and shall be heard in accordance with rules promulgated by the supreme court.

4 (B) (11) (10) The court that imposes a sentence of death shall set the date for execution.  
5 The defendant shall be committed to the Wisconsin state prisons pending the  
6 execution of the death sentence.

7 (B) (12) (11) The execution of a death sentence shall be by lethal injection.

8 **SECTION 48.** 973.0147 of the statutes is created to read:

9 **973.0147 Execution of death sentence; stay of execution.** The secretary  
10 of corrections shall designate the executioner who shall provide a person subject to  
11 a death sentence with an intravenous injection of one or more substances in a lethal  
12 quantity. A person is immune from civil or criminal liability for his or her acts or  
13 omissions, in good faith, in regard to a lawful execution under this section. The  
14 secretary may not direct a physician to be present or require a physician to announce  
15 when death has occurred. A physician may certify the death after a person, other  
16 than a physician, has determined or pronounced death. The secretary shall  
17 designate 12 citizens to witness the execution. The convicted person may request  
18 that certain additional people be allowed to witness the execution. The secretary  
19 shall grant any such reasonable request. The secretary may allow representatives  
20 of the news media to witness the execution under rules of the department. No other  
21 persons may be allowed to witness the execution. The execution of a death sentence  
22 may be stayed only by the governor or incident to an appeal.

23 **SECTION 49.** 973.03 (3) (e) 1. of the statutes is amended to read:

24 973.03 (3) (e) 1. A crime which is a Class AA, A, B, or C felony.

25 **SECTION 50.** 973.09 (1) (c) of the statutes is amended to read:

**BILL**

**SECTION 50**

*a crime that is*

1 973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable  
2 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

3 **SECTION 51.** 973.15 (2m) (a) 2. c. of the statutes is created to read:

4 973.15 (2m) (a) 2. c. A sentence of death or life imprisonment under s. 973.0145.

5 **SECTION 52.** 978.07 (1) (c) 1. of the statutes is amended to read:

6 978.07 (1) (c) 1. Any Except if subd. 1m. applies, any case record of a felony  
7 punishable by life imprisonment or a related case, after the defendant's parole  
8 eligibility date under s. 304.06 (1) or 973.014 (1) or date of eligibility for release to  
9 extended supervision under s. 973.014 (1g) (a) 1. or 2., whichever is applicable, or 50  
10 years after the commencement of the action, whichever occurs later. If there is no  
11 parole eligibility date or no date for release to extended supervision, the district  
12 attorney may destroy the case record after the defendant's death.

13 **SECTION 53.** 978.07 (1) (c) <sup>1m.</sup> of the statutes is created to read:

14 978.07 (1) (c) 1m. Any case record of a felony <sup>that is a crime that is</sup> punishable by death or life  
15 imprisonment under s. 973.0145 or a related case, 20 years after the person's death,  
16 or 50 years after the commencement of the action, whichever occurs later.

17 (END)

**2007-2008 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1526/lins  
RLR:.....

**Ins A:**

This bill allows a penalty of death for a first-degree intentional homicide that is vicious. If the state intends to seek a death sentence for a first-degree intentional homicide, the state must provide notice of intent to seek a death sentence as part of the court filing that charges the first-degree intentional homicide.

For a death penalty case, the court must hold a sentencing hearing separate from the trial. The defendant has a right to a jury at the sentencing hearing. Generally, the trial jury will serve at the sentencing hearing. However, if the trial was held without a jury or if the trial jury cannot continue to serve, a new jury must be selected. If the defendant waives the right to a jury for the sentencing hearing the hearing will be held before the court alone.

At the sentencing hearing, the parties may present evidence relating to the nature of the offense, deoxyribonucleic acid (DNA) evidence related to the offense, the history and background of the defendant, and any mitigating circumstances. The jury may not recommend and the court may not impose a sentence of death unless it finds that the offense was vicious. The jury and court must consider any DNA evidence related to the offense and any mitigating circumstances in determining whether a sentence of death is appropriate. If the sentencing hearing is before a jury, the court must instruct the jury that a mitigating circumstance need not be found by all members of the jury and need only be proved to the satisfaction of an individual juror in order to be considered in the individual juror's sentencing recommendation. Further, if the defendant is a persistent repeat offender and thus not eligible for release to extended supervision, the court must instruct the jury that if it does not recommend a sentence of death the defendant will be imprisoned for life without the possibility of release.

If the jury unanimously recommends a sentence of death, the <sup>the court</sup> (judge) must impose a sentence of death unless the court finds that a sentence of death is not appropriate, in which case the court must impose a sentence of life imprisonment. If the jury does not unanimously recommend a sentence of death, the court must impose a sentence of life imprisonment. The court may not sentence to death a person who is mentally retarded.

**Ins 9-8:**

**SECTION 1.** 939.50 (3) (a) of the statutes is amended to read:

939.50 (3) (a) For a Class A felony, life imprisonment, except the penalty for a violation of s. 940.01 (1) is death or life imprisonment.

**Ins 12-7:** ✓

**SECTION 2.** 971.01 (3) of the statutes is created to read:

971.01 (3) If the information charges an offense under s. 940.01, the information shall contain a statement as to whether the state seeks a sentence of death for the offense. ✓

**Ins 16-1:**

16-1

(1) If a defendant is convicted of an offense under s. 940.01 and the information charging the offense included a statement that the state seeks a sentence of death for the offense, the court shall conduct a separate sentencing hearing under this section to determine whether the defendant shall be sentenced to death or life imprisonment.

(2) If at any time before the court pronounces sentence, the state decides not to seek a sentence of death, the court shall sentence the defendant to life imprisonment under s. 973.014. *may not impose a sentence of death.*

(3) The sentencing hearing shall be before a jury unless the defendant waives the right to a jury for sentencing. The trial jury shall serve as the sentencing jury unless the trial jury is unable to reconvene for the sentencing hearing, the defendant pleaded guilty, or the defendant waived the right to a jury at trial, in which case the court shall summon a new jury.

(4) The parties may present evidence relating to the nature of the offense, the history and background of the defendant, and any mitigating circumstances, as well as deoxyribonucleic acid evidence related to the offense.

*notifies the court that it no longer seeks a sentence of death*

(5) Mitigating circumstances may include any of the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The offense was committed by more than one individual and the defendant's participation in the commission of the offense was relatively minor.

(d) The defendant acted under extreme duress or under the substantial domination of another person.

(e) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

(f) The age of the defendant at the time of the offense affected his or her judgment.

(g) The victim was a participant in the defendant's conduct or consented to the act.

(h) Any other factor bearing on a defendant's culpability for the offense.

(6) The court shall instruct the jurors that a mitigating circumstance need not be found by all members of the jury and need only be proved to the satisfaction of an individual juror in order to be considered by the juror in making a sentence recommendation. If the defendant is ineligible for extended supervision under s. 939.62 (2m) (c), the court shall inform the jurors that if the jury does not recommend imposition of a sentence of death the defendant will be sentenced to life imprisonment without the possibility of release to extended supervision.

(a) (7) The court may not impose a sentence of death unless the jury or, if the hearing is before the court without a jury, the court finds that the offense was vicious.

<sup>(b)</sup>  
^ The jury and court shall consider any deoxyribonucleic acid evidence that is related to the offense or the absence of any such deoxyribonucleic acid evidence and shall consider evidence of mitigating circumstances in determining whether a sentence of death is appropriate.

(8) (a) If the jury unanimously <sup>that</sup> recommends a sentence of death, the court shall impose a sentence of death, except if the court finds that a sentence of death is not appropriate the court shall impose a sentence of life imprisonment under s. 973.014. ✓

(b) If the jury does not unanimously recommend a sentence of death or, if the hearing is before the court without a jury, the court shall impose a sentence of life imprisonment under s. 973.014. ✓

(9) The court may not impose a sentence of death on a person who is mentally retarded.

9 (c) If the hearing is before the court without a jury, the court shall consider the factors described under sub. (7)(b) and impose a sentence of death or life imprisonment under s. 973.014.



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

LRB-1526/1dn

RLR:.....

gjs

Senator Lasee:

The U.S. Supreme Court has held that a death penalty statute must narrow the class of people who may be executed so that only the worst of the worst are sentenced to death. Courts may determine that the narrowing factor in this bill, that the first-degree homicide is vicious, is unconstitutionally vague because it could apply to almost any first-degree homicide and therefore does not adequately narrow the class of persons eligible for the death penalty. Some state death penalty statutes do use a description of the offense as a narrowing factor, for example that the crime was heinous, atrocious, or cruel, but these statutes generally provide further direction as to why the crime is heinous, atrocious, or cruel, for example because it involved torture or more force than necessary to cause death. You may wish to add a further description of what makes a homicide vicious.

This bill does not specify a protocol for lethal injections or require that DOC promulgate the protocol by rule. I used the lethal injection language from the death penalty bill you introduced in the 2003-04 session (Senate Substitute Amendment 1 to Senate Bill 2) in this bill. It specifies that DOC may not require a physician to be present at executions or to pronounce death. Courts have stayed executions in some states over the last several years in response to arguments that the lethal injection protocols used by those states result in cruel and unusual punishment. People challenging the executions argue that the protocols for lethal injection do not ensure that the person being executed is adequately anesthetized before the drug to stop the person's heart is administered, so the person may feel searing pain but can not alert the executioners because he or she has been paralyzed by a drug used to stop breathing. You may wish to require DOC to promulgate rules for lethal injections so that the protocol may be reviewed before an execution is scheduled.

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov

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

LRB-1526/1dn  
RLR:cjs:pg

March 19, 2007

Senator Lasee:

The U.S. Supreme Court has held that a death penalty statute must narrow the class of people who may be executed so that only the worst of the worst are sentenced to death. Courts may determine that the narrowing factor in this bill, that the first-degree homicide is vicious, is unconstitutionally vague because it could apply to almost any first-degree homicide and therefore does not adequately narrow the class of persons eligible for the death penalty. Some state death penalty statutes do use a description of the offense as a narrowing factor, for example that the crime was heinous, atrocious, or cruel, but these statutes generally provide further direction as to why the crime is heinous, atrocious, or cruel, for example because it involved torture or more force than necessary to cause death. You may wish to add a further description of what makes a homicide vicious.

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Robin Ryan  
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**Parisi, Lori**

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**From:** Esser, Jennifer  
**Sent:** Tuesday, March 20, 2007 9:08 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-1526/1 Topic: Death Penalty PLEASE RUSH DRAFT

**\*\*\* PLEASE RUSH THE DRAFT—THANK YOU\*\*\*\*\***

Please Jacket LRB 07-1526/1 for the SENATE.