



## 2001 SENATE BILL 496

March 12, 2002 - Introduced by Senators GEORGE, MOORE and RISSER, cosponsored by Representatives ALBERS, BLACK, YOUNG, POCAN, BOYLE, MILLER and COGGS. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1     **AN ACT to repeal** 46.03 (18) (fm), 961.47, 961.472 and 961.475; **to amend** 20.410  
2           (1) (a), 20.410 (1) (a), 20.410 (1) (b) and 961.438; and **to create** 51.42 (7) (b) 12.,  
3           301.03 (3j), 302.11 (7) (ag), (am) and (ar), 302.113 (9m) and 973.105 of the  
4           statutes; **relating to:** probation and treatment for persons convicted of  
5           possession of certain controlled substances or certain other crimes; treatment  
6           for persons on parole who violate conditions of parole relating to possession of  
7           certain controlled substances or to drug treatment requirements; treatment for  
8           persons on extended supervision who violate conditions of extended  
9           supervision relating to possession of certain controlled substances or to drug  
10          treatment; granting rule-making authority; and making an appropriation.

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### *Analysis by the Legislative Reference Bureau*

#### *Penalties for drug possession offenses*

1. *Current law penalties for drug possession offenses.* Current law prohibits possession of various controlled substances. The maximum penalties for possession of these controlled substances vary from a fine not to exceed \$500 or imprisonment for not more than 30 days or both to a fine not to exceed \$5,000 or imprisonment for

**SENATE BILL 496**

not more than two years or both. The greater penalties are for possession of narcotic drugs or certain nonnarcotic drugs including, methamphetamine, ketamine, and flunitrazepam. For possession of many controlled substances, the maximum penalty is greater for a second or subsequent conviction.

Current law provides that a court may allow a person who is convicted for possession of a controlled substance to participate in treatment for drug dependency as an alternative to sentencing if the offender volunteers to participate in treatment and if a treatment facility agrees to provide treatment. The treatment is for the period of time deemed necessary by the treatment facility, but may not exceed the maximum possible sentence length for the possession offense unless the offender consents to a longer term. At the end of the treatment period, the court may waive sentencing for the drug possession offense. However, if treatment is ineffective or if the offender does not comply with treatment, the court may sentence the person for the drug possession offense.

If a person is convicted for possession of heroin, cocaine, or certain hallucinogens or stimulants, including lysergic acid diethylamide (LSD), phencyclidine (PCP), or methamphetamine, the sentencing court must order that the offender submit to an assessment of the offender's drug dependence to determine whether the offender is appropriate for treatment. The county department that is responsible for providing drug treatment services is responsible for providing the assessment, though the offender is required to pay a fee for the assessment.

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

This bill repeals both the voluntary treatment alternative to sentencing and the conditional discharge alternative.

2. *Eligibility for probation and drug treatment for nonviolent drug possession offenses.* This bill requires that, if a person is convicted of a nonviolent drug possession offense, the person be placed on probation and ordered to participate in drug use intervention services as a condition of that probation, unless certain exceptions apply. The bill defines a "nonviolent drug possession offense" as possession or attempted possession of a controlled substance, except a so-called "date-rape drug," or possession or attempted possession of drug paraphernalia that is used for taking drugs (drug paraphernalia for personal use). If any of the following exceptions applies, the sentencing court is not required to place a nonviolent drug possession offender on probation or order drug use intervention services for that offender:

a. The person has been convicted of, or served a sentence for, a serious felony (the so-called "three strikes" felonies) at any time during the five years prior to committing the nonviolent drug possession offense.

b. The person is convicted in the same proceeding of a crime other than a nonviolent drug possession offense, or is found to have violated a prohibition against

**SENATE BILL 496**

drunk driving for the same act or incident that led to conviction for the nonviolent drug possession offense.

c. The person was incarcerated at the time he or she committed the nonviolent drug possession offense.

d. The person has previously been provided drug use intervention services in connection with a conviction for a nonviolent drug possession offense or while on parole or extended supervision and the court finds by clear and convincing evidence that the person is unamenable to treatment.

e. The person refuses to participate in drug use intervention services.

In addition, if a person is convicted in the same proceeding of a misdemeanor that is not a crime against life or bodily security, a crime against children, or a crime involving a firearm and the court finds that the person's drug dependence significantly contributed to the commission of that misdemeanor, the court must place the person on probation for that misdemeanor as well. However, if the court does not find that drug dependence significantly contributed to commission of the misdemeanor, the court may sentence the person for the misdemeanor and order that the person serve probation for the nonviolent drug possession offense either concurrently with the sentence for the misdemeanor, or after serving the sentence for the misdemeanor.

The bill provides that a sentencing court may order an offender to undergo an assessment of his or her drug dependence before determining a disposition or sentence for the offender. Any assessments ordered by the court must be completed by a provider who is certified by the department of health and family services (DHFS) to conduct assessments of drug dependence.

3. *Drug use intervention services.* Under the bill, the department of corrections (DOC) must arrange for the provision of any drug use intervention services ordered by the court. Drug use intervention services ordered by the court may consist of drug treatment (including hospitalization, inpatient or outpatient treatment, detoxification, narcotic replacement therapy, transitional residential treatment, or day treatment), drug education, or any other service intended to address a person's drug dependence or drug use. The bill requires that drug treatment services be provided by a certified treatment provider, and requires that DHFS promulgate rules prescribing the standards for drug education ordered as a component of drug use intervention services. If the nonviolent drug possession offender is a medical assistance (MA) or badger care recipient, DOC is required to arrange for a certified MA provider to furnish any court-ordered service that is covered by MA or badger care, as long as such a provider is available. The bill permits DOC to contract with counties to provide the required drug use intervention services.

A court may order drug use intervention services for up to 12 months, or for the length of the probation period, whichever is less. Thirty days before the expiration of a probationer's drug use intervention services, the provider of the services must submit a report to the court recommending whether the person should receive aftercare services. The court may modify the person's probation to require up to six months of aftercare.

**SENATE BILL 496**

4. *Violation of a condition of probation.* Under the bill, if a person on probation for a nonviolent drug possession offense violates a condition of probation that is related to drug use intervention services or if the person commits another nonviolent drug possession offense, the conditions of the person's probation may be modified, but the person's probation may not be revoked unless a hearing examiner or DOC, if the person waives a hearing, finds by clear and convincing evidence that the person is a danger to himself, herself, or others or that the person is unamenable to treatment. The bill provides that a person is unamenable to treatment if the person has repeatedly committed serious violations of service program rules that inhibit the person's ability to function in services; the person has continually refused to participate in services; or the person has asked to be removed from services. If a person violates a condition of probation that is not related to drug use intervention services or a nonviolent drug possession offense, the probation may be revoked.

5. *Expunging the record of a nonviolent drug possession offense.* The bill provides that, if a person successfully completes probation for a nonviolent drug possession offense or a misdemeanor for which the offender's drug dependence was a significant contributing factor, without revocation, the record of the conviction is expunged and the offense for which the person served probation cannot be counted as a prior conviction for subsequent penalty enhancers or for other disabilities or disqualifications related to convictions.

6. *Discretionary treatment.* The bill also grants courts discretion to order DOC to provide drug use intervention services to a person who is convicted of any crime other than a crime against life or bodily security, a crime against children, or a crime involving a firearm, if the sentencing court finds that the person is drug dependent. The court may require that DOC provide drug use intervention services to such a person while he or she is in prison, jail, or otherwise confined, or while the person is on extended supervision or probation.

7. *Payment for services.* Under the bill, a court must order a recipient of an assessment or drug use intervention services to pay, to the extent of his or her ability, for those services that are not covered by private insurance or MA or badger care. DOC must pay for those services that are not covered by insurance, MA, or badger care or paid for by the recipient.

***Parole and extended supervision***

Under current law, a person on parole must comply with a standard set of conditions of parole, including that the person may not commit any crimes. (A person released from prison to supervision under a sentence for a crime committed before December 31, 1999 is placed on parole.) If a parolee violates a condition of parole, for example by committing a crime, the person's parole may be revoked and the person may be returned to prison.

Similarly, a person on extended supervision must comply with conditions of extended supervision. (A person released from prison to supervision under a sentence for a crime committed on or after December 31, 1999, is released to extended supervision.) Conditions of extended supervision are set by the sentencing court and DOC, and may include individualized requirements, such as participation in drug

**SENATE BILL 496**

treatment. If a person violates a condition of extended supervision, the person's extended supervision may be revoked and the person may be returned to prison.

The bill provides that, if a person on parole or extended supervision commits a nonviolent drug possession offense, or if a person on extended supervision commits a violation of a condition related to drug treatment, the person's parole or extended supervision, whichever is applicable, may not be revoked for the violation unless one of the following circumstances apply:

a. In the five years prior to the violation, the person either committed or was serving a sentence for a so-called three-strikes offense.

b. The person is serving a sentence for a firearms offense or a drunk driving offense.

c. The person has previously been provided drug use intervention services in connection with a nonviolent drug possession offense or as a condition of parole or extended supervision, and the administrative law judge, or DOC, if the person waives a revocation hearing, finds by clear and convincing evidence that the person is unamenable to treatment.

d. The person refuses to participate in drug use intervention services.

Instead of revoking parole or extended supervision, the administrative law judge, or DOC, if the person waives a revocation hearing, may require that the person participate in drug use intervention services, or if the person is already required to participate in such services, may modify the requirements for participation in drug use intervention services. Before modifying conditions of parole or extended supervision, an administrative law judge, or DOC, if a revocation hearing is waived, may require that the person on parole or extended supervision submit to an assessment of the person's drug use or drug dependence.

Under the bill, DOC must arrange for the provision of drug use intervention services ordered as a condition of parole or extended supervision. The drug use intervention services for parolees and for persons on extended supervision are the same services as those available under the bill for persons placed on probation for a nonviolent drug possession offense. The requirements related to treatment providers and the responsibilities for paying for services are also the same as those provided under the bill for probation.

***Study of drug use intervention services***

The bill requires that DHFS, after consultation with DOC, commission a study of the effects of providing drug use intervention services to nonviolent drug possession offenders and other offenders who are drug dependent. DHFS must issue an interim report two and one-half years after the drug use intervention services provisions of this bill, if enacted as an act, are instituted, and must issue a final report five and one-half years after the provisions are instituted. The bill requires that DOC pay for the study.

**SENATE BILL 496**

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

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

1           **SECTION 1.** 20.410 (1) (a) of the statutes is amended to read:

2           20.410 (1) (a) *General program operations.* The amounts in the schedule to  
3 operate institutions ~~and, to~~ provide field services and administrative services, ~~to~~  
4 provide drug use intervention services under s. 973.105 to persons who are  
5 incarcerated, and for a study of the effects of drug use intervention services provided  
6 under ss. 302.11 (7) (ag), 302.113 (9m), and 973.105. No payments may be made  
7 under this paragraph for payments in accordance with other states party to the  
8 interstate corrections compact under s. 302.25.

9           **SECTION 2.** 20.410 (1) (a) of the statutes, as affected by 2001 Wisconsin Act ...  
10 (this act), is amended to read:

11           20.410 (1) (a) *General program operations.* The amounts in the schedule to  
12 operate institutions, to provide field services and administrative services, and to  
13 provide drug use intervention services under s. 973.105 to persons who are  
14 incarcerated, ~~and for a study of the effects of drug use intervention services provided~~  
15 ~~under ss. 302.11 (7) (ag), 302.113 (9m), and 973.105.~~ No payments may be made  
16 under this paragraph for payments in accordance with other states party to the  
17 interstate corrections compact under s. 302.25.

18           **SECTION 3.** 20.410 (1) (b) of the statutes is amended to read:

19           20.410 (1) (b) *Services for community corrections.* The amounts in the schedule  
20 to provide services related to probation, extended supervision and parole, the  
21 intensive sanctions program under s. 301.048, the community residential

**SENATE BILL 496**

1 confinement program under s. 301.046, programs of intensive supervision of adult  
2 offenders and, minimum security correctional institutions established under s.  
3 301.13, and drug assessments under s. 302.11 (7) (am), 302.113 (9m) (b), or 973.105  
4 (4). No payments may be made under this paragraph for payments in accordance  
5 with other states party to the interstate corrections compact under s. 302.25.

6 **SECTION 4.** 46.03 (18) (fm) of the statutes is repealed.

7 **SECTION 5.** 51.42 (7) (b) 12. of the statutes is created to read:

8 51.42 (7) (b) 12. Prescribe standards for drug education programs that serve  
9 persons who are ordered to participate in drug education as a condition of parole  
10 under s. 302.11 (7) (ag), as a condition of extended supervision under s. 302.113 (9m),  
11 or as a condition of probation under s. 973.105.

12 **SECTION 6.** 301.03 (3j) of the statutes is created to read:

13 301.03 (3j) Provide drug assessments and drug use intervention services for  
14 persons convicted of drug-related offenses as provided under s. 973.105, for parolees  
15 who violate conditions of parole that are related to drug possession offenses or drug  
16 treatment, as provided under s. 302.11 (7) (ag), and for persons on extended  
17 supervision who violate conditions of extended supervision that are related to drug  
18 possession offenses or drug treatment, as provided under s. 302.113 (9m).

19 **SECTION 7.** 302.11 (7) (ag), (am) and (ar) of the statutes are created to read:

20 302.11 (7) (ag) Notwithstanding par. (a), if a parolee commits a nonviolent drug  
21 possession offense, as defined in s. 973.105 (1) (g), or violates a condition of parole  
22 concerning drug use intervention services, as defined in s. 973.105 (1) (e), the division  
23 of hearing and appeals, or the department, if the parolee waives a hearing, may not  
24 revoke parole for that violation but may require that the parolee participate in drug  
25 use intervention services as a condition of parole or, if participation in drug use

**SENATE BILL 496****SECTION 7**

1 intervention services is already a condition of parole, may modify the requirements  
2 for participation in drug use intervention services, unless any of the following  
3 applies:

4 1. At any time during the 5 years prior to the date on which the parolee  
5 committed the nonviolent drug possession offense or the violation of a condition of  
6 parole concerning drug use intervention services, the parolee committed or was  
7 serving a sentence for a felony identified under s. 939.62 (2m) (a) 2m. b.

8 2. The parolee is serving a sentence for a firearms offense, as defined in s.  
9 973.105 (1) (f), or for a crime under s. 346.63.

10 3. The parolee has previously been provided drug use intervention services  
11 under this paragraph or s. 302.113 (9m) (a) or 973.105 and the division of hearings  
12 and appeals or the department, whichever is applicable, finds by clear and  
13 convincing evidence that the parolee is unamenable to treatment in accordance with  
14 s. 973.105 (9) or that the person is a danger to himself or herself or others.

15 4. The parolee refuses to participate in drug use intervention services as a  
16 condition of parole.

17 (am) Before making a determination regarding revocation or conditions of  
18 parole under par. (ag), the division of hearings and appeals or the department may  
19 require that a parolee submit to an assessment of his or her use of controlled  
20 substances.

21 (ar) Any assessment required under par. (am) shall meet the conditions for  
22 assessments under s. 973.105 (4). Any drug use intervention services required under  
23 par. (ag) shall meet the conditions for services under s. 973.105 (5).

24 **SECTION 8.** 302.113 (9m) of the statutes is created to read:



**SENATE BILL 496**

1           302.113 **(9m)** (a) Notwithstanding sub. (9) and except as provided under par.  
2 (d), if a person released to extended supervision under this section commits a  
3 nonviolent drug possession offense, as defined in s. 973.105 (1) (g), or violates a  
4 condition of extended supervision concerning drug use intervention services, as  
5 defined in s. 973.105 (1) (e), the division of hearing and appeals, or the department,  
6 if the person on extended supervision waives a hearing, may not revoke extended  
7 supervision for that violation but may require that the person participate in drug use  
8 intervention services as a condition of extended supervision or, if participation in  
9 drug use intervention services is already a condition of extended supervision, may  
10 modify the requirements for participation in drug use intervention services, unless  
11 any of the following applies:

12           1. At any time during the 5 years prior to the date on which the person  
13 committed the nonviolent drug possession offense or the violation of a condition of  
14 extended supervision concerning drug use intervention services, the person  
15 committed or was serving a sentence for a felony identified under s. 939.62 (2m) (a)  
16 2m. b.

17           2. The person is serving a sentence for a firearms offense, as defined in s.  
18 973.105 (1) (f), or for a crime under s. 346.63.

19           3. The person has previously been provided drug use intervention services  
20 under this subsection or s. 302.11 (7) (ag) or 973.105 and the division of hearings and  
21 appeals or the department, whichever is applicable, finds by clear and convincing  
22 evidence that the person is unamenable to treatment in accordance with s. 973.105  
23 (9) or that the person is a danger to himself or herself or others.

24           4. The person refuses to participate in drug use intervention services as a  
25 condition of extended supervision.

**SENATE BILL 496****SECTION 8**

1 (b) Before making a determination regarding revocation or conditions of  
2 extended supervision under par. (a), the division of hearings and appeals or the  
3 department may require that a person on extended supervision submit to an  
4 assessment of his or her use of controlled substances.

5 (c) Any assessment required under par. (b) shall meet the conditions for  
6 assessments under s. 973.105 (4). Any drug use intervention services required under  
7 par. (a) shall meet the conditions for services under s. 973.105 (5).

8 (d) The division of hearings and appeals or the department may not modify a  
9 condition of extended supervision under par. (a) if the modification conflicts with a  
10 condition of extended supervision set by a court under s. 973.01 (5).

11 **SECTION 9.** 961.438 of the statutes is amended to read:

12 **961.438 Minimum sentence.** Any minimum sentence under this chapter is  
13 a presumptive minimum sentence. Except as provided in s. 973.09 (1) (d) or 973.105  
14 (2) or (3), the court may impose a sentence that is less than the presumptive  
15 minimum sentence or may place the person on probation only if it finds that the best  
16 interests of the community will be served and the public will not be harmed and if  
17 it places its reasons on the record.

18 **SECTION 10.** 961.47 of the statutes is repealed.

19 **SECTION 11.** 961.472 of the statutes is repealed.

20 **SECTION 12.** 961.475 of the statutes is repealed.

21 **SECTION 13.** 973.105 of the statutes is created to read:

22 **973.105 Probation and treatment for nonviolent drug possession**  
23 **offenders. (1)** In this section:

24 (a) "Approved treatment facility" has the meaning given under s. 51.01 (2).

25 (b) "Drug dependent" has the meaning given in s. 51.01 (8).

**SENATE BILL 496**

1 (c) "Drug paraphernalia for personal use" means any equipment, product, or  
2 material of any kind that is used, designed for use, or primarily intended for use by  
3 a person to inject, ingest, inhale, or otherwise introduce into the person's body a  
4 controlled substance or controlled substance analog in violation of ch. 961, but does  
5 not include items under s. 961.571 (1) (b).

6 (d) "Drug treatment" means inpatient residential drug treatment, outpatient  
7 treatment, day treatment, transitional residential treatment, detoxification, or  
8 narcotic replacement therapy.

9 (e) "Drug use intervention services" means drug treatment, drug education,  
10 vocational assistance, or any other service intended to address a person's drug  
11 dependence or drug use.

12 (f) "Firearms offense" means an offense under s. 941.20, 941.21, 941.23,  
13 941.235, 941.237, 941.26, 941.28, 941.29, or 941.296.

14 (g) "Nonviolent drug possession offense" means an offense, or attempt to  
15 commit an offense, under s. 961.573 (1) that involves drug paraphernalia for  
16 personal use, or an offense, or attempt to commit an offense, under s. 961.41 (3g) (a)  
17 to (e).

18 **(2)** (a) If a person is convicted of a nonviolent drug possession offense, the  
19 sentencing court shall withhold sentence for the offense or impose sentence for the  
20 offense and stay its execution, and shall place the person on probation under s.  
21 973.09 and require that the person participate in drug use intervention services as  
22 a condition of probation for the offense, unless any of the following applies:

23 1. At any time during the 5 years prior to the date on which the person  
24 committed the offense for which he or she is being sentenced, the person committed  
25 or was serving a sentence for a felony identified under s. 939.62 (2m) (a) 2m. b.

**SENATE BILL 496****SECTION 13**

1           2. The person is convicted of another crime other than a nonviolent drug  
2 possession offense in the same proceeding.

3           3. The person is found to have violated s. 346.63 or an ordinance that is in  
4 conformity with s. 346.63 for the same act or incident or series of acts or incidents  
5 that resulted in conviction for the nonviolent drug possession offense.

6           4. The person was incarcerated under a sentence for another crime when he or  
7 she committed the nonviolent drug possession offense.

8           5. The person has previously been provided drug use intervention services  
9 under this section or s. 302.11 (7) (ag) or 302.113 (9m) and the court finds by clear  
10 and convincing evidence that the person is unamenable to treatment in accordance  
11 with sub. (9).

12           6. The person refuses to participate in drug use intervention services as a  
13 condition of probation.

14           (b) Notwithstanding par. (a) 2., if the other crime under par. (a) 2. is a  
15 misdemeanor other than a misdemeanor under ch. 940 or 948 or s. 346.63, or a  
16 misdemeanor firearms offense, the sentencing court shall withhold sentence for the  
17 nonviolent drug possession offense, or impose sentence for the nonviolent drug  
18 possession offense and stay its execution, place the person on probation under s.  
19 973.09 for the nonviolent drug possession offense, and order that the person  
20 participate in drug use intervention services as a condition of probation for the  
21 nonviolent drug possession offense. If the court finds that the person is drug  
22 dependent and that the person's drug dependence significantly contributed to the  
23 commission of the misdemeanor, the court shall place the person on probation under  
24 s. 973.09 for that misdemeanor and require that the person participate in drug use  
25 intervention services as a condition of probation for the misdemeanor. If the court

**SENATE BILL 496**

1 determines that the person is not drug dependent, or that the person is drug  
2 dependent but the drug dependence did not significantly contribute to the  
3 commission of the misdemeanor, the court may place the person on probation for the  
4 misdemeanor as provided under sub. (3). If the court does not place the person on  
5 probation for the misdemeanor, the court shall determine whether the person shall  
6 serve probation for the nonviolent drug possession offense concurrently with the  
7 sentence for the misdemeanor or consecutively to the sentence for the misdemeanor.

8 (3) If a person is convicted of a crime, other than felony under ch. 940 or 948  
9 or s. 346.63, or a felony firearms offense, is not eligible for mandatory probation and  
10 drug use intervention services under sub. (2), and is found by the sentencing court  
11 to be drug dependent, the sentencing court may order that the department provide  
12 the person drug use intervention services. The court may order that the department  
13 provide the services to the person while he or she is on probation, while the person  
14 is incarcerated in prison or in a county jail, while the person is otherwise confined,  
15 or while the person is on extended supervision.

16 (4) (a) Before determining a disposition under sub. (2) or (3), a court may order  
17 an offender to submit to an assessment of his or her use of controlled substances. The  
18 court shall designate an approved treatment facility that is certified by the  
19 department of health and family services to provide assessment services to conduct  
20 any assessment ordered under this paragraph. The court may order that the  
21 treatment facility provide a proposed plan for drug use intervention services. The  
22 treatment facility shall submit an assessment report to the court within 14 days of  
23 the order for an assessment. Upon receipt of the report, the court shall provide a copy  
24 to the offender or his or her attorney. At the request of the treatment facility, the

**SENATE BILL 496****SECTION 13**

1 court may extend the time for submitting a report by not more than 20 additional  
2 workdays.

3 (b) If the court orders an assessment under par. (a) for an offender who is a  
4 medical assistance or badger care recipient, the court shall order that the assessment  
5 be provided by a provider who is certified as a medical assistance provider, if a  
6 certified provider is available. If the medical assistance or badger care recipient is  
7 enrolled in a health care maintenance organization, the court shall order that the  
8 assessment be provided by a provider who is an employee of the health maintenance  
9 organization or with whom the health care maintenance organization contracts for  
10 services, if such a provider is available.

11 (5) (a) The department is responsible for providing, or securing the provision  
12 of, any drug use intervention services ordered under this section. Drug treatment  
13 ordered under this section must be provided by an approved treatment facility.

14 (b) If the department is required under this section to provide a health service  
15 or benefit specified under s. 49.46 (2) to an offender who is a medical assistance or  
16 badger care recipient, the department shall arrange for that health service or benefit  
17 to be provided by a provider who is certified as a medical assistance provider, if a  
18 certified provider is available. If the medical assistance or badger care recipient is  
19 enrolled in a health care maintenance organization, the department shall arrange  
20 for the health service or benefit to be provided by a provider who is an employee of  
21 the health maintenance organization or with whom the health care maintenance  
22 organization contracts for services, if such a provider is available.

23 (c) Subject to the requirements under par. (a) and (b), the department may  
24 contract with an appropriate county department under s. 51.42 to provide drug use  
25 intervention services under this section.

**SENATE BILL 496**

1           **(6)** If a person is placed on probation under sub. (2) or (3) and ordered to  
2 participate in drug use intervention services as a condition of probation, the services  
3 may not be for longer than 12 months or the length of the probation, whichever is  
4 shorter. By 30 days before the expiration of the services, the service provider shall  
5 submit a report to the sentencing court recommending whether the person receiving  
6 drug use intervention services should participate in aftercare services. Prior to the  
7 completion of a person's probation, the sentencing court may modify the conditions  
8 of a person's probation to require that the person participate in up to 6 months of  
9 aftercare services upon completion of drug use intervention services.

10           **(7)** Notwithstanding s. 973.09 (4) (a), a person placed on probation under sub.  
11 (2) may not be confined in a county jail, Huber facility, work camp, or tribal jail as  
12 a condition of probation.

13           **(8)** (a) Notwithstanding s. 973.10 (2), if a person placed on probation under sub.  
14 (2) or (3) commits a nonviolent drug possession offense or violates a condition of  
15 probation concerning drug use intervention services, the division of hearings and  
16 appeals or, if the probationer waived his or her right to a hearing, the department  
17 may modify the conditions of probation, but may not revoke probation unless a  
18 hearing examiner or the department, whichever is applicable, finds by clear and  
19 convincing evidence that the person is unamenable to treatment as provided under  
20 sub. (9) or is a danger to himself or herself or to others. If the probationer violates  
21 a condition of probation that is not related to drug use intervention services, the  
22 department or the division of hearings and appeals may revoke probation as  
23 provided under s. 973.10 (2).

24           (b) Upon the request of a person who is the subject of a determination  
25 concerning amenability to treatment under par. (a), the treatment provider

**SENATE BILL 496****SECTION 13**

1 responsible for providing the person treatment under this section shall submit a  
2 report to the department or the division of hearings and appeals, whichever is  
3 applicable, regarding the person's amenability to treatment. The treatment provider  
4 may testify regarding the person's amenability to treatment at any revocation  
5 proceeding under par. (a).

6 **(9)** (a) A person is unamenable to treatment if any of the following applies:

7 1. The person has repeatedly committed serious violations of drug use  
8 intervention service rules that inhibit the person's ability to participate in the  
9 services.

10 2. The person has continually refused to participate in drug use intervention  
11 services ordered under this section or s. 302.11 (7) (ag) or 302.113 (9m) (a).

12 3. The person has asked to be removed from drug use intervention services  
13 ordered under this section or s. 302.11 (7) (ag) or 302.113 (9m) (a).

14 (b) The department of health and family services may promulgate rules for  
15 determining whether a person is unamenable to treatment under this subsection.

16 **(10)** When a court orders probation under sub. (2) for a nonviolent drug  
17 possession offense or a misdemeanor, other than a misdemeanor under ch. 940 or 948  
18 or s. 346.63, or a misdemeanor firearms offense, the court shall order that the record  
19 of conviction for that offense be expunged upon successful completion of the  
20 probation, including satisfaction of any restitution ordered under s. 973.20. A person  
21 successfully completes probation if the person completes the term of probation  
22 without revocation of the probation. Upon successful completion of probation, the  
23 department shall issue a certificate of discharge and shall forward the certificate to  
24 the court of record, which shall expunge the record of conviction. Disqualifications  
25 or disabilities imposed by law upon conviction of a crime, including the additional



**SENATE BILL 496**

1 penalties imposed for 2nd or subsequent convictions under s. 961.48, do not apply to  
2 a conviction that has been expunged under this subsection.

3 (11) (a) If a person who is ordered under this section to submit to an assessment  
4 or participate in drug use intervention services is enrolled in a private insurance  
5 plan that is required under s. 632.89 to cover such services, or otherwise covers such  
6 services, the insurer shall pay for any assessment or drug use intervention service  
7 ordered under this section that is covered by the insurance plan.

8 (b) If a medical assistance or badger care recipient is ordered under this section  
9 to submit to an assessment or participate in drug use intervention service that is a  
10 health care service or other benefit described under s. 49.46 (2), the department of  
11 health and family services shall pay for the assessment service as provided under s.  
12 49.46 (2).

13 (c) The court shall order any person who receives an assessment or drug use  
14 intervention service under this section to pay, to the extent of the person's ability, for  
15 the cost of the assessment or service that is not covered under par. (a) or (b).

16 (d) From the appropriation under s. 20.410 (1) (b), the department shall pay for  
17 assessments ordered under sub. (4) that are not paid for under par. (a), (b), or (c), and  
18 shall pay for drug use intervention services ordered under this section for persons  
19 on probation that are not paid for under par. (a), (b), or (c). From the appropriation  
20 under s. 20.410 (1) (a), the department shall pay for drug use intervention services  
21 ordered under this section for persons who are incarcerated that are not paid for  
22 under par. (a), (b), or (c).

23 (12) The department of health and family services, after consultation with the  
24 department of corrections, shall commission a study of the results of drug use  
25 intervention services provided under this section and under ss. 302.11 (7) (ag) and

**SENATE BILL 496****SECTION 13**

1 302.113 (9m) (a). By the first day of the 31st month after the effective date of this  
2 subsection .... [revisor inserts date], the department of health and family services  
3 shall issue an interim report on results from the first 2 years of drug use intervention  
4 services. By the first day of the 67th month after the effective date of this subsection  
5 .... [revisor inserts date], the department of health and family services shall issue a  
6 final report on results from the first 5 years of drug use intervention services. The  
7 department of health and family services shall submit the reports required under  
8 this subsection to the governor, the majority leader of the senate, the speaker of the  
9 assembly, and the cochairpersons of the joint committee on finance.  
10 Notwithstanding the purposes for which money is appropriated under s. 20.410 (1)  
11 (a), all costs incurred in commissioning the study and issuing the reports required  
12 under this subsection shall be paid from the appropriation to the department of  
13 corrections under s. 20.410 (1) (a).

**SECTION 14. Nonstatutory provisions.**

14  
15 (1) The department of health and family services shall apply to the center for  
16 substance abuse treatment of the substance abuse and mental health services  
17 administration in the federal department of health and human services or any other  
18 appropriate agency for a grant to fund the drug use intervention services ordered  
19 under section 302.11 (7) (ag), 302.113 (9m) (a), or 973.105 of the statutes, as created  
20 by this act, from the effective date of this subsection to the first day of the 37th month  
21 beginning after the effective date of this subsection.

**SECTION 15. Initial applicability.**

22  
23 (1) The treatment of sections 46.03 (18) (fm), 961.47, 961.472, 961.475, and  
24 973.105 of the statutes first applies to offenses committed on the effective date of this  
25 subsection, but persons sentenced on or after the effective date of this subsection for

**SENATE BILL 496**

1 offenses committed before the effective date of this subsection may choose to be  
2 sentenced in accordance with section 973.105 of the statutes.

3 **SECTION 16. Effective date.** This act takes effect on the first day of the 6th  
4 month beginning after publication except as follows:

5 (1) The treatment of sections 51.42 (7) (b) 12. and 973.105 (9) (b) of the statutes  
6 and SECTION 14 of this act take effect on the day after publication.

7 (2) The treatment of section 20.410 (1) (a) (by SECTION 2) of the statutes takes  
8 effect on the first day of the 67th month beginning after the effective date of this  
9 subsection.

10 (END)