





**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

Memo No. 3

TO: MEMBERS OF THE SUBCOMMITTEE ON OBSOLETE MISDEMEANORS OF THE STUDY COMMITTEE ON THE REVIEW OF CRIMINAL PENALTIES

FROM:  David Moore and  Michael Queensland, Staff Attorneys

RE: Materials for Upcoming Meeting

DATE: October 8, 2014

The Subcommittee on Obsolete Misdemeanors has been directed to identify misdemeanor offenses that may be repealed because they are obsolete or no longer relevant. The Subcommittee met on August 6, 2014 to discuss how to carry out this charge.

PROCESS FOR IDENTIFYING OBSOLETE MISDEMEANORS

At its August 6 meeting, the Subcommittee established four criteria to assist it in identifying misdemeanors that might be obsolete or no longer relevant:

- Whether it is still possible to commit the offense.
- Whether the offense is responsive to a problem that still exists.
- The existence of other offenses that prohibit the same conduct.
- The frequency with which the offense is charged.

With respect to the last criterion, the Subcommittee directed staff to work with the Office of the Director of State Courts to identify misdemeanors that have not been charged recently. Because of logistical issues associated with searching the charging history for each of the more than 900 misdemeanors, Representative Neylon later directed that this research be confined to misdemeanors within the Criminal Code using data the courts provided going back three years. A list of misdemeanors within the Criminal Code that, according to a preliminary analysis, were not charged in 2011, 2012, or 2013 is attached to this Memo. [Attachment 1.]

To assist the Subcommittee in identifying misdemeanors outside the Criminal Code that may meet the Subcommittee's criteria, Representative Neylon directed the Subcommittee's staff to solicit input from the state agencies under whose purview they fall. The Subcommittee's staff also assembled a list of misdemeanors not within the Criminal Code but also not necessarily within a particular agency's purview that may meet the Subcommittee's criteria.

AGENCY RECOMMENDATIONS

Eighteen agencies were asked to provide input about whether any misdemeanors within their purview might meet the Subcommittee's criteria for identifying obsolete misdemeanors. So far, 16 agencies have responded. Of these, three agencies identified misdemeanors that may meet the Subcommittee's criteria. Letters from these agencies are attached to this Memo. [Attachments 2, 3, and 4.]

The Department of Agriculture, Trade, and Consumer Protection identified three misdemeanors that it believes meet the Subcommittee's criteria:

- Section 93.21 (Failure by milk contractors to issue required statements).
- Section 93.35 (Weather modification).
- Sections 100.15 and 100.26 (3) (Trading stamps).

The Public Service Commission (PSC) identified two misdemeanors:

- Section 199.105 (3) (Interference with the Citizens Utility Board).
- Section 199.14 (3) (Corrupt practices and conflicts of interest related to the Citizens Utility Board).

Chapter 199 is known as "The Citizens Utility Board Act." According to the PSC, this chapter could be repealed because the Citizens Utility Board has been reorganized as a private nonprofit organization.

The Department of Public Instruction identified one statute in which the prohibited conduct is already prohibited by another statute. That statute is:

- Section 120.13 (35) (b) (1) (Unlawful presence in school buildings that provokes a breach of the peace).

ADDITIONAL MISDEMEANORS FOR THE SUBCOMMITTEE'S REVIEW

Staff also conducted a cursory review of misdemeanors outside the Criminal Code to identify misdemeanors that may meet the Subcommittee's criteria. The offenses staff identified are:

- Section 97.18 (Violations related to oleomargarine).
- Section 134.35 (Time of filing endorsed on telegrams delivered).

- Section 134.36 (Telegraph; divulging message; preference in sending).
- Section 134.37 (Divulging message or forging receipt).
- Section 134.38 (Companies to post copies of s. 134.37).
- Section 134.39 (Fraudulent knowledge of dispatch; injury to wires; interference).
- Section 167.13 (Operation of corn shredders purchased prior to June 12, 1909).
- Section 167.18 (Threshing machine joints to be covered).
- Section 175.09 (2) and (3) (Failure to use standard time).

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

DM:MQ:ksm

Attachments

Statute Section	Summary of Misdemeanor
939.615	Violation of a condition of lifetime supervision
941.38(3)	Violation of a court order to refrain from contacting a criminal gang member
941.40(1)	Disturbing telecommunications or electricity lines by affecting a structure
941.40(2)	Intentional disturbance of telecommunications or electricity lines
941.40(3)	Intentionally causing an electrical connection with telecommunications or electricity lines
942.06	Use of polygraphs and similar tests
942.07	Use of genetics tests
943.45(1)	Theft of telecommunications services
943.455(2)	Theft of commercial mobile services
943.47(2)	Theft of satellite cable programming
943.49(2)(a)	Use of a recording device in a movie theater without written consent
943.62(2)	Unlawful receipt of payments to obtain a loan for another (if the value of the payment does not exceed \$2,500)
943.74(2)	Theft of farm-raised fish
943.76(3)(a)	Infecting livestock with a contagious disease through reckless conduct
943.76(3)(b)	Infecting wild deer with a contagious disease through reckless conduct
943.83	Loan fraud (if the value of the loan does not exceed \$500)
944.21(3)	Obscene material or performance
944.36	Solicitation of drinks by an entertainer or employee of a licensee, permittee, or bartender of a retail alcohol beverage establishment
945.04(1m)	Permitting premises to be used for commercial gambling
945.07(1)	Gambling by participants in a contest
945.08(2)	Agreeing to being bribed as a participant in a contest
946.06(1)(a)	Improper use of the flag
946.15(2)	Public construction contracts at less than full rate (kickbacks)
946.15(4)	Public construction contracts at less than full rate (targeting)
946.16	Judicial officer collecting claims
946.17	Corrupt means to influence legislation; disclosure of interest
946.45(1)	Negligently allowing escape

- 946.50(6) Absconding (if the person was adjudicated delinquent for committing a misdemeanor if committed by an adult)
- 946.67(1) Compounding crime
- 946.71(2) Unlawful use of a license for carrying concealed weapons
- 946.72(2) Tampering with public notices
- 946.74(1) Aiding escape from mental institutions
- 946.75 Denial of right of counsel
- 947.04(1) Drinking in common carriers
- 947.06(3) Intentional failure or refusal to withdraw from an unlawful assembly which the person knows has been ordered to disperse
- 947.07(2) Causing violence or a breach of peace by damaging or destroying a U.S. flag
- 948.50(3) Strip search of a pupil by a school employee
- 948.51(2) Hazing (if the act results in or is likely to result in bodily harm to another)
- 948.63 Receiving property from a child
- 949.165(2) Violations relating to payment to and establishment of escrow accounts
- 949.17(1) Misrepresentation associated with the crime victim compensation program
- 949.37(1) Misrepresentation associated with awards for sexual assault forensic examination compensation
- 951.04 Leading an animal upon a highway from a motor vehicle
- 951.05 Transportation of animals in a cruel manner
- 951.07 Using certain devices on animals to ready them for an exhibition, competition, rodeo, circus, or other performance
- 951.1 Unlawful sale of baby rabbits, chicks, and other fowl
- 951.11 Artificially coloring animals
- 968.255 Intentional violation of strip search requirements
- 968.34(1) Unlawful use of a pen register or trap and trace device
- 968.49 Failure to attend as a grand juror after being lawfully summoned without a sufficient excuse
- 973.05(5)(g) Use by an employer of an assignment for an employee's failure to pay certain fines, surcharges, costs, or fees to discriminate against the employee

- 973.07 Failure to pay a fine, fees, surcharges, or costs or to comply with certain community service work

- 979.01 Violations relating to reporting deaths
- 979.10(4) Unlawful cremation without a permit
- 985.03(2) Causing a legal notice to be published in an ineligible newspaper or failure to cause such legal notice in any newspaper

- 995.67(2) Disclosure by a domestic abuse services organization of the location of certain people to a service recipient



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

September 19, 2014

The Honorable Adam Neylon
Chair, Subcommittee on Obsolete Misdemeanors
P.O. Box 8953
Madison, Wisconsin 53708

Dear Representative Neylon:

Thank you for your letter dated August 27, 2014, in which you requested that the Department of Agriculture, Trade and Consumer Protection ("DATCP") identify misdemeanor offenses for potential repeal due to being obsolete or no longer relevant. We are pleased to have the opportunity to communicate with your subcommittee and Legislative Council staff on this important subject area.

The majority of DATCP's laws are in place to safeguard public health, animal health and commerce. This includes important protections in areas such as food safety, pesticide regulation, business trade practices and consumer affairs. It is important that these laws are enforceable using existing civil and/or criminal penalties to assure compliance. While some of DATCP's laws may not have been recently prosecuted, it is important that DATCP's ability to prosecute and enforce its laws remain in place in the event that an animal disease outbreak or a food safety recall should occur. It is also important that DATCP maintain (apart from the penalties described below) its current civil and criminal penalties to act as deterrents to violating existing laws.

DATCP has undertaken periodic reviews of its laws and administrative rules to determine if changes are needed. Most recently, DATCP completed a comprehensive review of its administrative rules during the 2013-2014 legislative session. Typically, adjustments to our laws and rules are needed due to changes within the industries we regulate, changes in technology, and to conform to changes in federal laws. The most recent elimination of "obsolete" DATCP statutes was enacted this past April (2013 Wis. Act 374) relating to misbranded and adulterated food. Act 374 repealed several of DATCP's laws, including portions of Wis. Stat. ss. 93.01, 97.02, and 97.03, as well as Wis. Stat. ss. 97.47 to 97.50, 97.52, and 97.53 in their entirety. Act 374 also included the repeal of the misdemeanor offense in Wis. Stat. s. 97.46(2) (which was referenced in Brief 13-5, *Statutory Misdemeanors in Wisconsin*). Because DATCP has made the effort to keep its laws current over the years, we believe there are only a few misdemeanor offenses that meet your criteria for repeal:

- (1) **Weather Modification (s. 93.35)**. This section requires licensing of weather modification activities, which include "any activity performed with the intention of producing artificial changes in the composition, motions, and resulting behavior of the atmosphere." See Wis. Stat. s. 93.35(1)(c). The specific misdemeanor offense provision concerning weather modification is in Wis. Stat. s. 93.35(15)(a), which imposes a "fine of not more than \$1,000 or imprisoned for not more than 6 months or both." No one has ever applied for a weather modification license or permit since the regulatory program commenced in the early 1970s, nor has

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DATCP ever issued a violation under this statute. Therefore, DATCP recommends that Wis. Stat. s. 93.35 be repealed in its entirety.

- (2) **Trading Stamps (ss. 100.15 and 100.26(3))**. Wis. Stat. s. 100.15 concerns the regulation of trading stamps. Subsection (1) provides that “[N]o person may use, issue or furnish within this state, in connection with the sale of any goods, any trading stamp or similar device, which entitles the purchaser to procure anything of value in exchange for the trading stamp or similar device.” Based on staff experience, trading stamp programs have not been in use for over thirty years and are unlikely to become popular again because they have been replaced by other types of loyalty programs. DATCP has considered whether it needs to regulate “similar devices” and has concluded that it may be able to do so using other sections of the existing consumer protection laws. The misdemeanor penalty for Wis. Stat. s. 100.15 is listed in Wis. Stat. s. 100.26(3). Consequently, DATCP recommends that Wis. Stat. s. 100.15 and just the portion of Wis. Stat. s. 100.26(3) that references Wis. Stat. s. 100.15 be repealed.
- (3) **Penalty Concerning Failure of Milk Contractors to Issue Required Statements (s. 93.21(1))**. Wis. Stat. s. 93.21(1) is a penalty provision that covers various statutory violations relating to different types of milk contractors (e.g., a creamery, cheese factory, butter factory, condensary or milk receiving plant). One part of the statute generally provides that an owner or manager of a milk contractor who fails to furnish a statement prescribed under Wis. Stat. 93.06(2) to every person from whom milk is purchased or received shall be fined not to exceed \$200 or jailed not more than six months, or both.

It is DATCP's position that there is the existence of another offense that prohibits the same conduct. The penalty in Wis. Stat. s. 126.87(2) establishes the option of seeking civil or criminal penalties if a milk contractor fails to file periodic reports that are described in Wis. Stat. s. 126.49(2) and Wis. Admin. Code ch. ATCP 100.30. Because the “reports” described in Wis. Stat. s. 126.49(2) are the same documents as the “statements” described in Wis. Stat. s. 93.21(1), DATCP recommends that the portion of Wis. Stat. s. 93.21(1) that reads “who fails to furnish the statement prescribed under Wis. Stat. s. 93.06(2) to every person from whom milk is purchased or received, or” be repealed.

Thank you for allowing us to contribute to your review of misdemeanor offenses. Please contact Legislative Liaison Keeley Moll at (608) 224-5039 with any questions.

Sincerely,



Ben Brancel
Secretary

cc: Mr. Mike Queensland

PUBLIC SERVICE COMMISSION OF WISCONSIN

Memorandum

September 17, 2014

TO: Representative Adam Neylon
Mike Queensland, Staff Attorney

FROM: Cynthia E. Smith, Chief Legal Council

RE: Study Committee on the Review of Criminal Penalties

The purpose of this memorandum is to respond to the request made to Chairperson Montgomery by letter dated August 27, 2014 from the Joint Legislative Council for the Public Service Commission of Wisconsin (Commission) to identify potentially obsolete misdemeanors administered by the Commission.

The enclosed table summarizes my review. In sum, I found two misdemeanor that are obsolete: Wis. Stat. § 199.105(3) and Wis. Stat. § 199.14(3). The Citizens Utility Board has been privatized. As a result, the entire chapter (including the misdemeanor provision noted), but for definition of a Class A utility in Wis. Stat. § 199.03(4) which could added to the definition in Wis. Stat. ch. 196, are obsolete.

As to the remaining misdemeanor provisions identified on the enclosed summary contained Wis. Stat. ch. 196, the Commission has rarely had to exercise the vast majority of its authority under those provisions. However, those misdemeanor provisions apply to offenses which can be committed, the situation intended to be remedied still exists, and there are no other offenses that prohibit the same conduct. Accordingly, those provisions are not obsolete.

Please note that while the Office of Commissioner of Railroads (OCR) is administratively attached to the Commission, the Commission's authority is limited and it does not have control or jurisdiction over substantive matters relating to railroad regulation. Wis. Stat. § 189.02(3m)(a). As a result, I have not included in my analysis a review of misdemeanor provisions within OCR's jurisdiction (Wis. Stat. §§ 192.292m 192,327(8), or 195.286(6)). If you have not already done so, you may wish to consult with OCR regarding those items.

The Commission appreciates the opportunity to provide the Study Committee with its input. If you have questions or require further information, please feel free to contact me.

cs:DL: 00943830

Attachment:

cc: R.J. Pirlot, Executive Assistant to Chairperson Montgomery
Elise Nelson, Legislative Liaison

Statutory Citation	Statutory Provision	Obsolete (Y/N)
Wis. Stat. § 182.0175(3)(b) https://docs.legis.wisconsin.gov/statutes/statutes/182/0175	<i>Misdemeanor.</i> Whoever intentionally removes, moves or obliterates a transmission facilities marking placed by the transmission facilities owner may be fined not more than \$500 or imprisoned for not more than 30 days or both. This paragraph does not apply to an excavator who removes or obliterates markings during an excavation.	N
Wis. Stat. § 196.171(3) https://docs.legis.wisconsin.gov/statutes/statutes/196/171	Any person who directly or indirectly prevents or hinders any officer or agent from entering a premises, or from making an inspection, examination, removal or installation under this section shall be fined not more than \$25 for each offense.	N
Wis. Stat. § 196.525(3) https://docs.legis.wisconsin.gov/statutes/statutes/196/525	Any director, treasurer or other officer or agent of a public utility who makes or votes to authorize a transaction in violation of this section may be fined not more than \$10,000.	N
Wis. Stat. § 196.60(1)(b) https://docs.legis.wisconsin.gov/statutes/statutes/196/60	A public utility or an agent that violates par. (a) shall be deemed guilty of unjust discrimination and shall forfeit not less than \$100 nor more than \$5,000 for each offense. An officer who violates par. (a) shall be fined not less than \$50 nor more than \$2,500 for each offense.	N
Wis. Stat. § 196.604 https://docs.legis.wisconsin.gov/statutes/statutes/196/604	No person may knowingly solicit, accept or receive any rebate, concession or discrimination from a public utility for any service in or affecting or relating to the production, transmission, delivery or	N

	<p>furnishing of heat, light, water or power within this state or for any connected service whereby the service is rendered or is to be rendered free or at a rate less than the rate named in the schedules and tariffs in force, or whereby any other service or advantage is received. Any person violating this section shall be fined not less than \$50 nor more than \$5,000 for each offense.</p>	
<p>Wis. Stat. § 196.65(1) & (2) https://docs.legis.wisconsin.gov/statutes/statutes/196/65</p>	<p>(1) An officer of a public utility shall be fined not less than \$100 nor more than \$2,500, or an agent, as defined in s. 196.66 (3) (a), shall be fined not less than \$100 nor more than \$5,000 or an employee of a public utility shall be fined not less than \$100 nor more than \$1,000 for each offense if the officer, agent or employee does any of the following:</p> <p>(a) Fails or refuses to fill out and return any questionnaire required under this chapter.</p> <p>(b) Fails or refuses to answer any question in any questionnaire required under this chapter.</p> <p>(c) Knowingly gives a false answer to any question in any questionnaire required under this chapter.</p> <p>(d) Evades the answer to any question in any questionnaire required</p>	<p>N</p>

	<p>under this chapter, if the answer is within his or her knowledge.</p> <p>(e) Upon proper demand, fails or refuses to exhibit to the commission or any commissioner or any person authorized to examine it any record of the public utility which is in the possession or under the control of the officer, agent or employee.</p> <p>(f) Fails to properly use and keep the system of accounting prescribed by the commission.</p> <p>(g) Refuses to do any act in connection with the system of accounting prescribed by the commission when so directed by the commission or its authorized representative.</p> <p>(2) A penalty of not less than \$500 nor more than \$5,000 shall be recovered from the public utility for each offense under sub. (1) if the officer, agent or employee of the public utility acted in obedience to the direction, instruction or request of the public utility or any general officer of the public utility.</p>	
<p>Wis. Stat. § 196.65(3)(b) & (c) https://docs.legis.wisconsin.gov/statutes/statutes/196/65</p>	<p>(b) An officer of a telecommunications provider shall be fined not less than \$100 nor more than \$2,500, an agent of a telecommunications</p>	<p>N</p>

	<p>provider shall be fined not less than \$100 nor more than \$25,000 or an employee of a telecommunications provider shall be fined not less than \$100 nor more than \$1,000 for each offense if the officer, agent or employee does any of the following:</p> <ol style="list-style-type: none"> 1. Fails or refuses to fill out and return any questionnaire required under s. 196.25 (3). 2. Fails or refuses to answer any question in any questionnaire required under s. 196.25 (3). 3. Knowingly gives a false answer to any question in any questionnaire required under s. 196.25 (3). 4. Evades the answer to any question in any questionnaire required under s. 196.25 (3). 5. Upon proper demand, fails or refuses to exhibit to the commission, or any person authorized to examine records, any record of the telecommunications provider which is in the possession or under the control of the officer, agent or employee. <p>(c) A telecommunications provider shall be fined not less than \$500 nor more than \$25,000 for each violation under par. (b) if the officer, agent or</p>
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	employee of the telecommunications provider acted under the direction or request of the telecommunications provider or any general officer of the telecommunications provider.	
Wis. Stat. § 196.67(3) https://docs.legis.wisconsin.gov/statutes/statutes/196/67	A public utility or an agent, as defined in s. 196.66 (3) (a), violating this section shall be fined not less than \$50 nor more than \$5,000 for each offense. A director or officer of a public utility violating this section shall be fined not less than \$50 nor more than \$2,500 for each offense. An employee of a public utility violating this section shall be fined not less than \$50 nor more than \$1,000 for each offense.	N
Wis. Stat. § 196.69(1) & (2) https://docs.legis.wisconsin.gov/statutes/statutes/196/69	(1) If any person destroys, injures or interferes with any apparatus or appliance owned, in the charge of or operated by the commission or its agent, the person shall be fined not more than \$5,000 or imprisoned for not more than 30 days or both if the person is a public utility or an agent, as defined in s. 196.66 (3) (a), fined not more than \$2,500 or imprisoned for not more than 30 days or both if the person is a director or officer of a public utility, or fined not more than \$1,000 or imprisoned for not more than 30 days or both if the person is an employee of a public utility.	N

	(2) Any public utility permitting a violation of this section shall forfeit not more than \$5,000 for each offense.	
Wis. Stat. § 199.105(3) https://docs.legis.wisconsin.gov/statutes/statutes/199/105	A person who violates this section may be fined not more than \$1,000. Each such violation shall constitute a separate and continuing violation of this chapter. A person who knowingly and willfully violates this section may be imprisoned not more than 6 months.	Y
Wis. Stat. § 199.14(3) https://docs.legis.wisconsin.gov/statutes/statutes/199/14	Any person who knowingly and willfully violates this section may be fined not more than \$1,000 or imprisoned not more than 6 months or both.	Y

Queensland, Michael

From: Jenkins, Janet A. DPI <Janet.Jenkins@dpi.wi.gov>
Sent: Tuesday, September 09, 2014 9:16 AM
To: Rep.Neylon; Queensland, Michael
Subject: Obsolete Misdemeanors

Dear Rep. Neylon and Attorney Queensland:

I am writing on behalf of the Wisconsin Department of Public Instruction in response to Rep. Neylon's letter dated August 27, 2014. In that letter, Rep. Neylon requested the department to go through the list of misdemeanors provided to determine whether any of the offenses in that list that fall within the department's jurisdiction are obsolete. The department administers Chapters 115-121 of the Wisconsin Statutes. There are six misdemeanors on the Legislative Reference Bureau's list of misdemeanors. They are:

1. 115.31(7) – Failure by a school administrator to report various crimes or acts committed by an employee of an educational agency to the state superintendent of public instruction;
2. 118.03(4) – Unlawful textbook pricing;
3. 118.15(5)(a)1.a. – Compulsory school attendance violation (first offense);
4. 118.15(5)(a)1.b. – Compulsory school attendance violation (second offense);
5. 118.20(5) – Discrimination against applicants for teaching or administrative positions; and
6. 120.13(35)(b)(1) – Unlawful presence in school buildings that provokes a breach of the peace.

In the department's opinion none of these laws are obsolete within the meaning set forth in your August 27 letter. Please know that in expressing this opinion, the department does not know how frequently offenses such as "unlawful textbook pricing" or "unlawful presence in school buildings that provokes a breach of the peace" are charged. Local school districts would most likely bring any violation of these statutes to the attention of the local law enforcement authorities, not to the attention of the parties.

With respect to the offense of "unlawful presence in school buildings that provokes a breach of the peace", another offense, disorderly conduct under Wis. Stat. § 947.01, encompasses all the elements of Wis. Stat. § 120.13(35)(b)(1), except that of "unlawful presence." Put another way, disorderly conduct, defined below, is a broader statute in that it covers many more types of conduct. It states:

947.01 Disorderly conduct.

(1) Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

(2) Unless other facts and circumstances that indicate a criminal or malicious intent on the part of the person apply, a person is not in violation of, and may not be charged with a violation of, this section for loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried.

Disorderly conduct is frequently charged by prosecutors in many different situations. The maximum penalty for disorderly conduct is the same as the maximum penalty for "unlawful presence in school building"

Therefore, unless the legislature wishes to retain the much narrower scope of Wis. Stat. § 120.13(35)(b)(1), I believe the statute is obsolete given the existence of Wis. Stat. § 947.01.

If you have any questions, please do not hesitate to contact me.

Respectfully,

Janet Jenkins
Chief Legal Counsel
WI Department of Public Instruction
608-266-9332
janet.jenkins@dpi.wi.gov