

SENTENCING AND CRIME CLASSIFICATION IN WISCONSIN

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Wisconsin Sentencing: Historical Perspective

OLD INDETERMINATE SENTENCING SYSTEM

1997 WISCONSIN ACT 283

2001 WISCONSIN ACT 109

2009 WISCONSIN ACT 28

2011 WISCONSIN ACT 38

Indeterminate Sentencing Prior to Truth-in-Sentencing

- ▶ Court sentences defendant to an indeterminate term in prison.
- ▶ Service of the sentence is determined by a combination of statutory regulation and exercise of discretion by parole board/commission.
- ▶ Life Sentences: Eligibility for parole after serving 13+ years.

Indeterminate Sentencing Prior to Truth-in-Sentencing

- ▶ Most Other Sentences:
 - ❑ Eligibility for Parole: After 6 months or 25% of sentence (whichever was greater)
 - ❑ Mandatory Release on Parole: After serving two-thirds (67%) of sentence.

Indeterminate Sentencing Prior to Truth-in-Sentencing

Indeterminate Sentence Example:

- Court sentences defendant to 10 years in prison.
- Inmate is eligible for parole after 2.5 years.
- Inmate reaches “mandatory release” at 6.67 years.
- Inmate is paroled somewhere between 2.5 years and 6.67 years at the discretion of the parole commission/board.

1987 Wisconsin Act 283

Act 283 represents the adoption of a determinate sentencing system for Wisconsin effective December 31, 1999.

Act 283:

- Establishes the blueprint for determinate sentencing.
- Establishes the Criminal Penalties Study Committee to develop implementing legislation in time for the cutover date of 12/31/1999.

Legislative Policies Clear Evident in Act 283

- ▶ Truthful Sentences (*i.e.*, defendant must serve full sentence – both confinement and extended supervision terms – as ordered by the court.
- ▶ Judges shall decide sentences – not the Parole Commission or the Department of Corrections.
- ▶ Stricter supervision of every inmate upon release from prison.

Legislative Policies Clear Evident in Act 283

- ▶ Prompt action when offenders on ES violate terms of supervision.
- ▶ A uniform system for classifying all Wisconsin felonies, including those in the Criminal Code, those not in the Criminal Code, and those in the drug code.

Statutory Charges to Criminal Penalties Study Committee

- ▶ Create a uniform classification system for all felonies, including felonies codified outside of the Criminal Code.
- ▶ Classify each felony and Class A misdemeanor in a manner that places crimes of similar severity into the same classification.
- ▶ Consolidate of all felonies into a single criminal code.

Statutory Charges to Criminal Penalties Study Committee

- ▶ Create a sentencing commission to promulgate advisory sentencing guidelines for use by judges when imposing a bifurcated sentence.
- ▶ Develop temporary advisory sentencing guidelines for use by judges when imposing a bifurcated sentence.
- ▶ Change the administrative rules of the Department of Corrections to ensure that a person who violates a condition of ES is returned to prison promptly and for an appropriate period of time.

2001 Wisconsin Act 109 (“TIS-II”)

- ▶ Act 109 represents the work product of the Criminal Penalties Study Committees as slightly modified by the legislature.
- ▶ Effective Date: February 1, 2003.
- ▶ Includes a new classification system for Wisconsin felonies.
- ▶ Classifies both Criminal Code and non-Criminal Code felonies (including drug offenses) in the new classification system.

Felony Classification System

Prior to 2001 Wisconsin Act 109

Class	Maximum Term of Imprisonment	Maximum Amount of Fine
Class A Felony	Life	---
Class B Felony	40 years	---
Class BC Felony	20 years	\$10,000
Class C Felony	10 years	\$10,000
Class D Felony	5 years	\$10,000
Class E Felony	2 years	\$10,000

Felony Classification System: 2001 Wisconsin Act 109

Felony Class	Maximum Confinement	Maximum ES	Maximum Imprisonment	Maximum Fine
A	Life		Life	---
B	40 years	20 years	60 years	---
C	25 years	15 years	40 years	\$100,000
D	15 years	10 years	25 years	\$100,000
E	10 years	5 years	15 years	\$50,000
F	7.5 years	5 years	12.5 years	\$25,000
G	5 years	5 years	10 years	\$25,000
H	3 years	3 years	6 years	\$10,000
I	18 months	2 years	3.5 years	\$10,000

Placing Crimes in New A-I System: Mandatory Release Converter

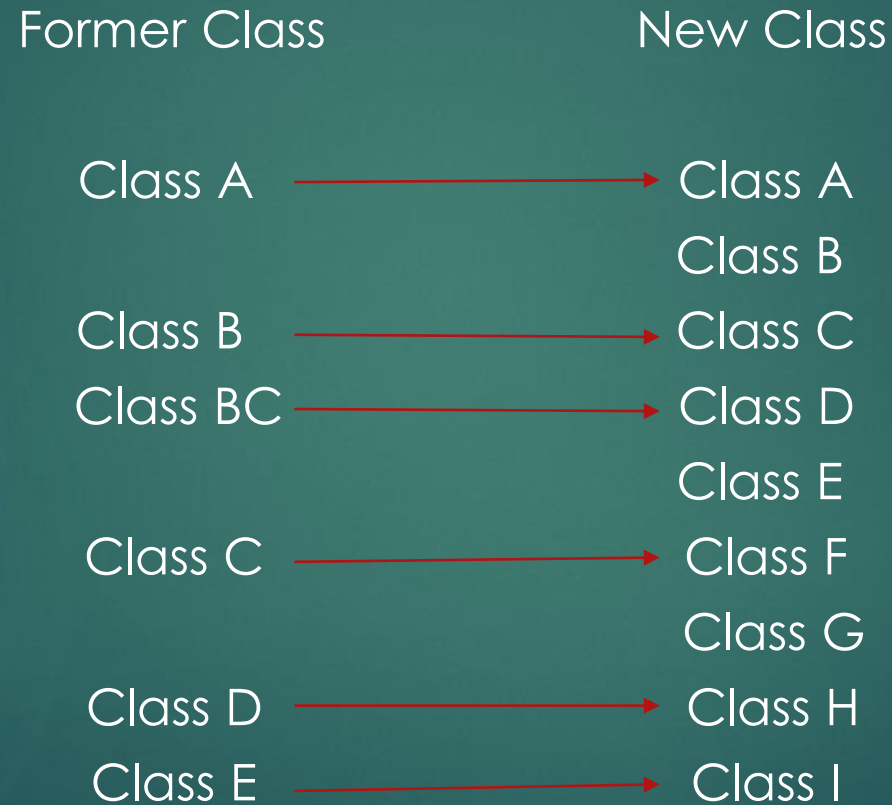
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Crimes were initially placed in new Class A-I System by determining mandatory release (MR) date under prior law when a court imposed the maximum sentence.

Placing Crimes in New A-I System: Mandatory Release (MR) Converter Example

- Under prior law, Burglary was Class C, max. imprisonment 10 years. MR date was $6 \frac{2}{3}$ years. Closest new felony class is Class F, max. initial confinement of $7 \frac{1}{2}$ years.

Conversion from Six to Nine-Class System



Placing Crimes in New A-I System

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Committee debated placement of each crime - 484 felonies and 101 misdemeanors - and movement up or down within new system.

Placing Crimes in New A-I System

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Principal Classification Criterion:

Committee classified felonies to allow sufficient prison time for offender committing the most aggravated form of one count of the offense.

Placing Crimes in New A-I System

Other Classification Principles:

- Show proper deference to judgments already made by legislature about severity of offenses.
- Classify crimes that involve death or serious injury (or the potential for such harm) in higher categories than those involving offenses against property or other non-violent behavior.
- Classify crimes involving similar harms according to the state of mind of the actor at the time of the criminal act.
- Consider available data about sentencing patterns and time actually served under prior law.

RESULTS OF ACT 109

CLASSIFICATION

- All felonies are classified in a single classification system.
- Identification of maximum penalties is simplified.
- Virtually all minimum penalties are eliminated.

OTHER RESULTS OF ACT 109

CLASSIFICATION

Retention of a Limited Number of Criminal Code Penalty Enhancers

- ▶ Habitual criminality
- ▶ Use of a dangerous weapon
- ▶ Violent crime in a school zone
- ▶ Increased penalties for certain domestic abuse offenses
- ▶ Hate crimes

OTHER RESULTS OF ACT 109 CLASSIFICATION

Other Criminal Code penalty enhancers were recharacterized as statutory sentencing aggravators. Judge must consider at sentencing, but such aggravators do not have to be pleaded and proved, and do not add extra prison time.

Examples

- ▶ Commission of crime while identity is concealed
- ▶ Commission of crime while wearing bulletproof garment

RESULTS OF ACT 109 CLASSIFICATION

FINES

- Maximum fines for most offenses are determined according to class placement.
- A few high fine structures from prior law were maintained.

RESULTS OF ACT 109 CLASSIFICATION

PROBATION

Maximum term of probation for a single felony = maximum initial term of confinement for the crime.

RESULTS OF ACT 109 CLASSIFICATION

PROBATION: SPECIAL RULES

- No probation for Class A felonies.
- Maximum term of probation for a Class I felony = 3 years.

Sentencing Options in Felony Cases

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- ▶ Probation (either with a stayed sentence or a withheld sentence)
- ▶ Imprisonment in the State Prisons
- ▶ Imprisonment in the County Jail/House of Correction (Home Detention Option)
- ▶ Imposition of a Fine (if authorized)

Sentencing Options in Felony Cases

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The sentence imposed shall call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant. Accordingly, circuit courts should consider probation as the first alternative. Probation should be the disposition unless confinement is necessary to protect the public, the offender needs correctional treatment available only in confinement, or it would unduly depreciate the seriousness of the offense.

State v. Gallion, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197

Sentence to Imprisonment in State Prisons

Bifurcated sentence required whenever a felon or a misdemeanant is sentenced to prison.

- Exception: Class A Life Imprisonment Felonies.

Sentence to Imprisonment in State Prisons

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Components of Bifurcated Sentence

1. Term of Confinement (Prison)
2. Term of Extended Supervision (ES) in the Community

Sentence to Imprisonment in State Prisons

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Sentencing Terminology

$$\begin{array}{c} \text{Term of } \underline{\text{confinement}} \text{ in prison} \\ + \\ \text{Term of } \underline{\text{extended supervision}} \text{ ("ES")} \\ = \\ \text{Term of } \underline{\text{imprisonment}} \end{array}$$

Sentence to Imprisonment in State Prisons

Sentencing Rules

- Minimum confinement term = 1 year
- Extended Supervision (ES) term must be at least 25% of confinement term

Sentence to Imprisonment in State Prisons

Bifurcated Sentence Example

If 4 year term of confinement,

Must be at least 1 year ES (25% ES rule)

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5 year term of imprisonment

Extended Supervision

- Subject to conditions of court & Department of Corrections
- If offender violates ES condition(s), ES may be revoked & offender may be returned to prison to serve whole ES term or portion thereof

Reduction of Confinement Time

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- ▶ Challenge Incarceration (“Boot Camp”) Program (Wis. Stat. sec. 302.045)
- ▶ Substance Abuse Program (Wis. Stat. sec. 302.05)
- ▶ Compassionate Release for Aged or Infirm Inmates (Wis. Stat. sec. 302.113(9)(g))

Sentence Adjustment under sec. 973.195

OFFENDER MAY PETITION THE
SENTENCING COURT TO “ADJUST”
THE SENTENCE.

Sentence Adjustment under sec. 973.195

IF SERVING BIFURCATED
SENTENCE FOR CLASS C, D, OR
E FELONY:

AFTER 85% OF
CONFINEMENT TERM

Sentence Adjustment under sec. 973.195

IF SERVING BIFURCATED
SENTENCE FOR CLASS F, G, H,
OR I FELONY:

AFTER 75% OF
CONFINEMENT TERM

Sentence Adjustment under sec. 973.195

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SENTENCE ADJUSTMENT NOT AVAILABLE
FOR:

- CLASS A FELONIES
- CLASS B FELONIES

Sentence Adjustment under sec. 973.195

GROUNDINGS INCLUDE:

Rehabilitation

Change in law or sentencing
procedure

Sentence in other state/alien

“Interests of justice”

Sentence Adjustment under sec. 973.195

IF COURT GRANTS,
IMPRISONMENT TERM DOES NOT
CHANGE;
REMAINING CONFINEMENT TERM
CONVERTS TO TIME ON ES.

Life Sentences

- Class A Life Imprisonment Felonies: Court must impose life imprisonment.
- Court sets ES eligibility date at time of sentencing:
 - ▶ at 20 years
 - ▶ date > 20 years
 - ▶ defendant not ever ES eligible

Life Sentences

If defendant permitted to apply for ES, burden of proof for release to ES on offender to show by clear and convincing evidence that offender is not a danger to public.

Sentencing the Misdemeanant

Sentencing Options:

- ▶ Imprisonment (if authorized for offense)
- ▶ Fine (if authorized for offense)
- ▶ Probation

Sentencing the Misdemeanant

Probation:

- Ordinary probation term for single Class A misdemeanor: 6-12 months.
- Ordinary probation term for other single misdemeanors: Not more than one year.
- Many exceptions to these rules. See Wis. Stat. sec. 973.09(2).
- Lengthier probation terms authorized when defendant convicted of multiple misdemeanors.

Sentencing the Misdemeanant

Incarceration:

- ▶ Typically a term in the county jail or house of correction. Sentence to home detention possible.
- ▶ Statutory Good Time for inmates in county jail/house of correction/home detention: 25% reduction of jail term for good behavior. Wis. Stat. sec. 302.43.
- ▶ Transfer to home detention from jail/house of correction with electronic monitoring as may be permitted by the sheriff or superintendent of house of correction

Sentencing the Misdemeanant

FINES:

- ▶ Classified misdemeanors in Criminal Code have maximum fines.
- ▶ Unclassified misdemeanors scattered throughout the Statutes typically specify a maximum fine.
- ▶ Many unclassified misdemeanors scattered throughout the Statutes also specify a minimum fine.

Classifying Wisconsin Misdemeanors

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Challenges:

- 930 misdemeanor crimes to contend with
- Broad use of minimum penalties (mostly fines but some imprisonment terms as well)
- Obscure offenses

Classifying Wisconsin Misdemeanors

Opportunities:

- ▶ Global look at whole body of misdemeanor offenses
- ▶ Plot the whole body of misdemeanor crimes in a uniform classification system according to relative seriousness of those crimes
- ▶ Identify misdemeanors that should be removed from the Statutes, reduced to forfeiture offenses, assigned higher or lower misdemeanor penalties, or elevated to felonies.

Classifying Wisconsin Misdemeanors

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Designing a New Misdemeanor Classification System:

- ▶ A new classification system will need many more classes than the simple A, B and C system presently used in the Criminal Code in order to classify more than 900 crimes in the new system.
- ▶ Legislature will need to decide whether to retain and how to deal with minimum penalties (fine or imprisonment).
- ▶ Might some misdemeanors remain unclassified in order to retain special penalty options like minimum penalties?

Classifying Wisconsin Misdemeanors

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Classifying Misdemeanors in a New Classification System:

- ▶ Determine operating principles for moving crimes into the new system.
- ▶ Place crimes in the new system using those operating principles.
- ▶ Adjust the classification of crimes up or down such that the relative seriousness of misdemeanors is appropriated ranked top to bottom.
- ▶ Remember to retain a sufficient maximum penalty to deal with the most serious version of each crime.