



OFFICE OF DISTRICT ATTORNEY  
CHILDREN'S COURT CENTER

# *Milwaukee County*

John T. Chisholm • District Attorney

July 15, 2008

Attorney Anne Sappenfield  
Joint Legislative Council  
1 East Main Street, Suite 401  
P.O. Box 2536  
Madison, WI 53701-2536

RE: Joint Legislative Council's Special Committee on High-Risk Juvenile Offenders

Dear Attorney Sappenfield:

Thank you for inviting me to participate in the panel discussion at the last meeting. I felt somewhat guilty for not providing your staff with something in writing regarding my remarks. Please consider this tardy submission.

There were three components to my presentation. I'll reverse the order of my oral presentation for the purpose of this correspondence.

I concluded my brief remarks with a description of the "Youthful Offender Anti-Recidivism Proposal." A lengthy and detailed description of the proposal is attached. I apologize for not providing it in an electronic format. However, it was written in 1997. The underlying purpose of the proposal was to increase the likelihood that a youthful offender would not re-engage in criminal activity by providing him/her with the opportunity to reduce his/her felony adjudication to a misdemeanor, which would make the juvenile offender eligible for several resources (student loans, subsidized housing opportunities, obtaining professional licensure, etc.) not available to a "felon." A more detailed description of the philosophical underpinning of the proposal is included in the attachment. Please be advised that I have not done any additional research on this proposal since 1997.

Secondly, I believe that increasing the number of offenses under the Serious Juvenile Offender (SJO) law would result in fewer children being waived to adult

court and more youthful offenders being provided resources critically important for success. Many offenders are waived to adult court because there are limited options for those who are charged with the responsibility of community safety. A child with a poor history in the juvenile justice system, or a child who commits a serious offense as he/she approaches his/her seventeenth birthday, may often find themselves facing a possible conviction in adult court. Yet, many would agree that the services available in the juvenile justice system are necessary to enhance the likelihood that the individual will be successfully rehabilitated. The following amendments to serious juvenile offender would promote both interests:

- 1) At a minimum, add the offenses of Second Degree Sexual Assault, §940.225(2), Second Degree Sexual Assault of a Child, §948.02(2), First and Second Degree Reckless Injury, §940.23, and Recklessly Endangering Safety, §941.30(1);
- 2) A juvenile who attempts (§939.32), solicits another to commit (§939.30), or conspires with others (§939.31) to commit any crime listed should be eligible for SJO;
- 3) A juvenile with multiple adjudications of delinquency should be eligible for SJO. Examples might include any juvenile with three felony adjudications, or a juvenile with five prior adjudications, including one felony.

Finally, you may recall that my presentation began with a description of Milwaukee programs intended to promote success for children involved in the juvenile justice system. A list of these programs is attached to this letter. The Delinquency and Court Services Division of Milwaukee County has worked closely with the judiciary, community organizations and law enforcement to provide successful programs to serve the needs of urban youth and families. To a large extent, their continued existence is dependent upon the legislature making certain that any changes to the juvenile justice code be cost neutral for Milwaukee County.

Thank you for giving me an opportunity to appear before the committee. As usual, it was a pleasure to work with your staff.

Respectfully submitted,



Patrick J. Kenney  
Deputy District Attorney  
Milwaukee County Children's Court

**BASIC SHEET ON PROGRAMS**  
**Delinquency and Court Services Division**  
**Milwaukee County Department of Health & Human Services**

County managed community-based programming. These are programs that serve youth as a diversion from entry into the juvenile justice system, as an alternative to detention while court is pending, or as a community-based service following disposition in addition to court-ordered supervision. County Probation and Secure Detention services are excluded.

Community-Based Program	Description
In-Home Monitoring Program	An intensive in-home program for alleged delinquent youth who have not committed a serious offense but are at risk for placement in detention or shelter care without additional supervision and support services. Youth are pending future court appearances. The services are aimed at reducing recidivism and ensuring court appearances.
Shelter Care	State licensed facilities providing short-term, supervised residential programming for youth who may not be returned home pursuant to a court order. Youth are delinquent, pre-delinquent and or juveniles in need of protection or services.
Sex Offender Treatment Program	The Adolescent Sex Offender Treatment Program serves the needs of delinquent youth whose treatment needs can be met in a structured, community-based setting. The program provides various treatment modalities and service options including group, individual, and family counseling by licensed staff.
Day Treatment Program	A non-residential, education program for delinquent youth. This is a partnership between Milwaukee County, community-based agencies, and the Milwaukee Public Schools. Program includes educational services, licensed counseling and support services. Includes educational services for expelled youth.
Probation Services Network	A County operated network of community-based agencies certified to provide a variety of clinical and support services, including gender specific program options. Services are provided on a fee-for-service basis to delinquent youth currently on court ordered supervision. This includes services provided to youth serving detention sanctions.
Serious Chronic Offender Program	This program provides intensive supervision, structured programming and expectations, and support in community-based settings. Youth are typically in the parental home. Many of the delinquent youth present a pattern of re-offense escalating to high-risk behavior. Youth are often found to be appropriate for a correctional placement however they been are allowed to remain in the community contingent upon compliance with supervision and programming. In 2008 a pilot was implemented allowing youth siblings to be served if they are determined in need of prevention programming on a voluntary basis and youth completing the program are allowed access to short-term services to avoid setbacks.

Community-Based Program	Description
Firearm Supervision Program	This program provides intensive supervision, structured programming and expectations, and support in community-based settings. Youth are typically in the parental home. This program targets youth found delinquent of possession of a firearm. The program specifically targets high-risk behavior with programming tailored to the youth's immediate environment. The program also provides funding for vertical prosecution by the District Attorney's Office to ensure timely and consistent processing of firearm cases. In 2008 a pilot was implemented allowing youth siblings to be served if they are determined in need of prevention programming on a voluntary basis and youth completing the program are allowed access to short-term services to avoid setbacks.
Group Home and Foster Care	State licensed homes providing community-based alternative living arrangements for delinquent youth who cannot return home in the immediate future pursuant to a court order. Many of the delinquent youth are experiencing problems within their families, schools, and or in the community.
Wraparound Milwaukee Program	Wraparound Milwaukee serves families and their delinquent youth presenting serious emotional or mental health needs as identified by the juvenile justice system. Youth are at immediate risk of placement in a residential facility, juvenile correctional facility or psychiatric hospital. The program was designed to reduce the use of institutional-based care such as residential care centers and inpatient psychiatric hospitals while providing more services in the community and in the child's home.
Focus Program	A multi-phase program utilizing collaborative efforts of a state licensed residential Type II facility, county probation supervision, and mental health services provided by Wraparound Milwaukee for youth who cannot be returned home in the immediate future pursuant to a court order. Participating delinquent youth have been found to be appropriate for a state correctional placement however they have been allowed to remain in the community contingent upon compliance with supervision and community programming.
First Time Juvenile Offender Program	A diversion program targeting youth referred to the juvenile justice system for a first offense. A structured program that utilizes the tracking and service monitoring services of community-based agencies in conjunction with clinical and support services matched to meet the needs of youth being served.
Prevention Services (This is pass through funding that does not directly serve youth referred to the Juvenile Justice System)	The Delinquency Division funds prevention services for two community-based programs. Safe Alternatives for Youth supports positive community alternatives for youth and Milwaukee Sports Authority supports community-wide infrastructure for youth sports.

# Youthful Offender Anti-Recidivism<sup>1</sup> Proposal (Concept)

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<sup>1</sup> See page 8, Political Concerns

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## ADDENDUMS

- A. 1997 Legislative Draft (specific section, 973.017, pp 23-27)
- B. Language to Update the 1997 Legislative Draft to Comport with Truth-in-Sentencing.
- C. Published Minutes of the Wisconsin District Attorney's Association.
- D. Misdemeanor Matters.

*To have the opportunity for a hit, one has to see the pitch!*

# Introduction

There has been an ongoing social/political movement reflected in the enactment of laws to become tougher on crime. Adult criminal jurisdiction has been lowered to age 17, more crimes have been "felonized," and sentencing schemes toughened. These are legitimate and reasonable responses to the crime problem. This approach has not limited itself to what might be categorized as violent crimes. This proposed idea does not counter any of these policy choices.

After an individual is convicted of a crime he or she faces two types of consequences. There are those that are commonly recognized as attending criminal behavior by the general public---**primary consequences**, viz., probation, incarceration, extended supervision, fines, restitution and loss of driving privileges. Also, following primary consequences, there exist **secondary consequences** for having a felony conviction (including the label itself of being a felon). These secondary consequences can attend a person for the remainder of his or her life. Some of these secondary consequences are statutorily delineated, others are manifested in the loss of employment opportunities, and some are based on perception. This last category, considering the inescapability of the human condition, may be as real, when considering the impact, as the others. ("I'm a felon, what's the difference now?" Or, "Why go to school? I'll never get a good job now.")

All the secondary consequences (whether real or perceived) tend to diminish hope and motivation to rehabilitate. The results of this loss, can mean re-engagement in criminal activity (recidivism). Based on the criminal justice experience, young people are particularly vulnerable to be impacted by these unintended collateral consequences. However, it is the malleability of "youth" and society's ability to appreciate the immaturity of judgment attending youth, which makes them appropriate candidates to consider addressing the secondary consequences associated with their criminal behaviors. This proposal is offered as a means not merely to blunt the unintended effects of secondary consequences for youth, but also to use the potential avoidance of secondary consequences as incentive to rehabilitate. The process created in this proposal to achieve this end serves interests of victims, interests associated with the administration of the criminal justice system, and economic and social interests of our State.



## Driving Thrust

A youth can elect by (1) taking prompt responsibility for his or her conduct (words) and by (2) satisfactorily completing all elements of a felony criminal sentence (actions),

With the consent/approval of the prosecutor and the judge,

To avoid (only) the secondary consequences associated with a felony conviction.

↑↑↑↑↑

(None of the primary consequences associated with criminal behavior--probation, incarceration, extended supervision, fines, restitution and loss of driving privileges--are in any manner diminished.)

(No victim interests will be abridged)

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*In other words (hypothetical advice to a youthful offender):*

*"If you're sorry, want to get on with your life, are willing to immediately accept punishment that is due your crime, handling it appropriately, paying back your victim, etc., (assuming the DA and judge agree), you can get out from under this felony. For all practical purposes, it is your one and only chance."*

## KEY ELEMENTS

1. Prompt assumption of responsibility (guilty/no contest plea).<sup>i</sup>
2. Offender retains right to challenge jurisdiction and 4<sup>th</sup> Amend. issues.<sup>ii</sup>
3. Full range of penalties is maintained.<sup>iii</sup>
4. Cannot be used for armed crimes.<sup>iv</sup>
5. Must be subject to prosecutor's and judge's consent.<sup>v</sup>
6. Can only be used once.<sup>vi</sup>
7. Initial conviction is entered as a felony.<sup>vii</sup>
8. Amendment to a misdemeanor.<sup>viii</sup>
9. (Amendment in #8 to be made "RETROACTIVELY")<sup>ix</sup>

<sup>i</sup> Multiple interest are served by a prompt disposition: (1) The nearer the punishment to the criminal conduct the more likely the association between the two is learned, especially true with young people; (2) It is socially and morally virtuous to assume responsibility for bad behavior; it is not inconsistent with the "right to trial;" (3) Victims have their interests vindicated promptly; (4) Promotes vindicating victim interest without the burden of a victim's involvement in litigation. (5) Prompt resolution decreases government expenses associated with protracted proceedings; (6) Criminal court processes are often intentionally manipulated to test or undermine the ability of the state to prove its case (e.g., break the will of the victim--victim fatigue. (7) Encourages prosecutorial support for passage and subsequent use.

<sup>ii</sup> This provision should not be used to cover or protect unlawful police actions. Jurisdictional objections must be available to maintain the integrity of process.

<sup>iii</sup> If the range of penalties is limited, for example, to probation, the likelihood of it being used automatically is reduced. There are circumstances where some prison may be appropriate, i.e., a necessary component of punishment, so the wrongfulness of the conduct can be appreciated and/or victim or communities interest are vindicated. Victims will not feel that necessary punishment is being subjugated to the interest of the state and/or the youthful offender. Once an offender's entire sentence is completed the victim will have a substantially diminished, if any, interest in the lingering effects associated with having a felony conviction (secondary consequences). This is necessary for prosecutors' support.

<sup>iv</sup> Statutory restrictions against armed offenses is a policy decision to guarantee it will not be used in these situations and provide public confidence that the statute will not be so used.

<sup>v</sup> Having 2 politically responsive branches of government involved in the decision as to the propriety of a youthful offender disposition provides greater assurances of the wisdom of its use. This is necessary for prosecutors' support.

<sup>vi</sup> Extending the opportunity to avoid a felony conviction once, politically is hard enough. The concept is inconsistent with the idea that one should get multiple opportunities.

<sup>vii</sup>Without an initial conviction as a felon, the full range of penalties would not be available. Victims and the community may not perceive their interest as being vindicated.

<sup>viii</sup>This of course is the quintessential aspect of this legislative proposal. It is the motivation of the offender to rehabilitate so as not to re-commit criminal actions either during the course of his or her sentence or subsequent thereto.

<sup>ix</sup>This is parenthetically noted because it is not a part of existing legislative draft (not considered by the WDAA). This concept is listed because this language that would effect the amendment retroactively would promote and support the basic thrust of this proposal and avoid any post-amendment confusion over the offender's record.

What it does: Language that would make the amendment retroactive would mean that the amendment to a misdemeanor is retroactive to the date the original judgment of conviction was entered (for all legal intents and purposes for future interpretation there was no, and is no, felony conviction).

Reason: Without this language, the offender has been historically convicted of a felony, which was later amended to a misdemeanor. How would that be accounted for, for example, by an offender in responding to the question "Have you ever been convicted of a felony?" on an application for employment. The offender would have to state "yes" and then try to explain how the felony was not pardoned or dismissed but now exists as a misdemeanor. By making it a misdemeanor retroactively, the question could be answered "no."

Can this be done? Yes. First there exists in common law, an inherent authority of a court to enter orders *nunc pro tunc* (Lat., then for now). This principle affords courts the inherent power to retroactively correct some legal error or complete some omission in a record with the same effect as if it had occurred on the original date. Second, consider an appeal that reverses a felony conviction; it is recognized that the defendant in this situation could legitimately state they were never convicted. This item (#9) suggests creating a statutory mechanism to reach this result, which can be handled by inserting the word "retroactively." An expressed legislative history in this regard would clarify any ambiguities that might otherwise surface. Alternatively, a statutory subsection defining the effect of "retroactivity" in this section could be created.

Drafting Note: Effective retroactive language would obviate the need to amend the multiple other sections of the statutes as identified by the drafter in the 1997 legislative draft, pp 2-21, *Addendum A*.

# Concerns<sup>1</sup>

## FELON IN POSSESSION OF A FIREARM

If it is a concern that a person with a youthful offender disposition should not possess a firearm, this concern can be readily handled. *Sec. 941.29, Stats.* already proscribes categories of persons from possessing guns who are not felons. All that would be necessary is to list those who have a youthful offender disposition. (Easy and non-controversial)

## HABITUAL CRIMINALITY

If it is a concern that a person with a youthful offender disposition should remain subject to the habitual criminality penalty enhancer, it can be readily handled. To eliminate this concern all that would be necessary would be to amend *Sec. 939.62 Stats.* to use a youthful offender disposition as a predicate, equivalent to a felony conviction, in calculating whether an offender is a habitual criminal. (Easy and non-controversial)

## PRIOR CONVICTION USED AS IMPEACHMENT

Prior convictions can be used as impeachment under *Sec. 906.09 Stats.* Since the amendments are to misdemeanor, and they have the same impeachment value, this is not a concern.

## EMPLOYMENT

Some of the chief secondary consequences of felony convictions are the statutory disabilities as they relate to certain occupations/licensing. Although I believe that it would be best for these disabilities to be eliminated by the natural result of a youthful offender disposition (employment opportunities are important to motivate), an argument could be made that they should remain in particular selective circumstances. An amendment to include the continuation of a disability could be easily accomplished by a reference to a youthful offender disposition to the felony language which otherwise establishes the disability.

## SPILLOVER

Would the statutory imprimatur of a different treatment for felony<sup>2</sup> youthful offenders create a criminal justice environment where young offenders would receive different treatment even outside those cases that are handled under a *Youthful Offender/Anti-Recidivism* law?

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<sup>1</sup> A disposition under the current youthful offender legislative draft does not bar the possession of a firearm, does not become a felony predicate for a habitual criminality, nor does it continue any employment disabilities.

<sup>2</sup> There is of course an existing statutory authority for treating youthful offenders differently for misdemeanors under *Sec. 973.015 Stats.*

## Political Concerns

First: This proposal does not bear a politically attractive, sound bite moniker like "*Truth-in-Sentencing*" or "*Victim's Rights Legislation*." Heretofore, this proposal has been referred to as "Youthful Offender Act." Such a denomination makes it ripe for unwarranted attacks that it is a soft on crime proposal. This is, of course, not true in that all the primary consequences of criminal behavior, such as imprisonment, remain. Moreover, it demands an immediate assumption of responsibility AND requires that the sentence be fully and satisfactory served/completed before there exist the possibility of avoiding the secondary consequences of a felony conviction. This proposal serves multiple interests, such as administration of criminal justice (expediency and expense), victim's interest, etc. However, if there is one overriding interest that is primarily targeted, it is the reduction in recidivism. This proposal would be more accurately described by its title if it made reference to this purpose. With this in mind, the title page of this document bears the captioned: "*Youthful Offender/Anti-Recidivism Proposal*."

Second: This writer has been advised the merits of any potential legislation are automatically blurred by the complexity of the proposal. The concept is simple (*see* "Driving Thrust") yet its implementation, unfortunately, may be unavoidably complex.

## Why Not Just Create a Diversion Law

Defined: Where the case is pended before or after a guilty plea is entered but before the judgment of conviction is entered. The offender is on probation subject to some non-incarceration conditions. If successful following a defined period of time the case is dismissed.

The chief reason why this type of procedure will have very limited effect is that it will be used only rarely because: (1) the full of panoply of penalties is not available, (2) it is politically very risky for prosecutors and for judges.

There may be some value in this concept toward felonies, yet the rarity of its use will mean only nominal system or societal benefits. (For the defender who has this opportunity, it is of great benefit.)

## Envisioned Use and Conclusion

It can reasonably be anticipated, that in a substantial number of cases, a *Youthful Offender Anti-Recidivism* option would be preferred where an offender qualifies and where the felony does not have an overriding serious aspect to it. Certain types of felonies, such as, operating an auto without owner's consent (and other property crimes), fleings and minor drug trafficking, may be, by their nature, the most likely types of offenses where this resolution would be employed. The bottom line is that this type of law would have a real and significant impact.

It is a **win, win and win** situation. The offender wins: Besides learning that there are immediate consequences for criminal behavior (assume prompt responsibility), he or she is left with the opportunity to avoid the secondary consequences of criminal behavior. In effect, by promptly assuming responsibility, accepting and handling the just punishment for a particular offense, there is an ability to gain "civic redemption." The system wins: The prompt assumption of responsibility serves the administration of the criminal justice system. It promotes reasons not to engage in delay or unnecessary litigation (time and expense). Victims are also served by prompt resolutions. Most importantly, the community wins: There are multiple long-term benefits for society. Two that stand out by the establishment of effective incentives that will cause young offenders to leave behind criminal behaviors, are tax dollars savings and a safer community.

# Addendum “A”



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

LRB-1316/P1dn  
JEO:mfd:km

Friday, April 25, 1997

This is a preliminary draft. Because I had to review hundreds of statutes to look for possible interaction between proposed s. 973.017 and current law, it was not always clear to me at this stage of the drafting whether current law needed to be affected or not. Thus, the draft contains provisions that may need to be deleted, depending on your intent; conversely, it may be missing statutory provisions that need to be treated, again depending on your intent. Accordingly, you should review the draft *very carefully* to determine whether it does what you want it to do.

I have inserted some 4-star notes (\*\*\*\*NOTE:) in the draft to raise questions or make a point about certain language in the draft. In addition, please note the following when reviewing the draft:

1. Based on the information provided to me with the drafting request, the youthful offender disposition created in this draft restores civil rights to a youthful offender convicted of a felony who successfully completes his or her sentence and also provides for a modification of the judgment of conviction to specify a misdemeanor (rather than a felony) conviction. Is that your intent? Note that this approach raises various practical issues, the most significant of which are the following:

a) A person granted a youthful offender disposition has a felony conviction during the time he or she is serving the sentence or is on probation for the felony. Thus, the person will not have various civil rights during that period. In addition, a statute that provides for any disqualification or disability for a felon will apply to the person during that period. Finally, various events that are triggered simply by being convicted of a felony will apply (for example, ss. 115.31 (2g) and (3), 125.11 (2) and 973.075, stats.). But after the person receives the youthful offender felony discharge by completing his or her sentence, these various disqualifications and disabilities will generally not apply (though see item b), below). Is that your intent?

b) Because proposed s. 973.017 provides that none of the disqualifications or disabilities that attend a felony conviction apply after a youthful offender felony discharge and that all civil rights are restored, certain statutes do not need amending (for example, ss. 6.03 (1) (b), 6.92 (5) (intro.) and (c) and 6.925 (5) (intro.) and (c), stats.). In some situations, discharge under proposed s. 973.017 is treated like a pardon. Finally, in some cases, discharge under proposed s. 973.017 does not affect operation of the statute (for example, see the treatment in the draft of certain provisions of ch. 48). Is it your intent to negate for eligible youthful offenders *all* disqualifications or disabilities?

posed on felons by statute, or just some of those disqualifications or disabilities? Note also that if your goal is *only* to restore civil rights, there may be an easier way to do that than the approach taken in this draft; for instance, it might not be necessary to change the conviction from a felony to a misdemeanor.

c) Not all felony statutes have a misdemeanor counterpart or a "lesser included" misdemeanor. Thus, under certain circumstances, it may be quite confusing to say that a person was convicted of a misdemeanor under (for example) s. 940.225 (2), stats., because the statute provides for only a felony penalty. Does the draft need to deal with this potential problem, or is it enough that the burden will be on a person who receives a youthful offender felony discharge to produce the modified judgment of conviction?

2. This draft covers all felonies. Is that your intent, or do you want to limit it to certain felonies or types of felonies?

3. If a current statute refers, for example, to a person "convicted of a violation of s. 940.225 (2)" or "any offense under s. 940.225 (2)", a person convicted of such a violation who has received a youthful offender felony discharge will still be covered by the statute because whether the violation or offense was a felony or misdemeanor is irrelevant. Is that okay?

4. Proposed s. 973.017 seems aimed in part at offenders with drug or alcohol problems. Do you want to provide for any particular interaction between proposed s. 973.017 and s. 961.47, stats.? Alternatively, do you want to consider expanding s. 961.47, stats.?

5. This draft does not affect any penalty enhancers based on violations of certain statutes. (See, for example, s. 939.623, stats.; see also item 3., above.) However, it does affect penalty enhancers and other sentencing provisions that apply based on previous felony convictions. See ss. 939.62 and 973.0135, stats., as treated by the draft. Is that your intent?

6. This draft does not affect provisions in chs. 301 to 304 relating to prisoners, parolees or probationers, because those persons will still be serving a sentence or on probation and will not yet have received the youthful offender felony discharge.

7. Under this draft, a juvenile waived into adult court will be eligible for a youthful offender disposition if he or she otherwise satisfied the requirements of proposed s. 973.017 (1). Is that your intent?

8. This draft does not and cannot affect the treatment of a person convicted of a felony under federal law or the law of another state. In addition, a person who receives a youthful offender felony discharge under proposed s. 973.017 may still be treated as a felon under certain federal laws or certain laws of other states.

Once you have reviewed the draft, please contact me with any questions or changes. I would also be happy to meet with you to discuss in more detail any issues relating to the draft.

Jefren E. Olsen  
Legislative Attorney  
266-8906



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1     **AN ACT** *to amend* 8.21, 15.64, 17.03 (5), 45.37 (2) (d), 48.415 (5) (a), 48.415 (8),  
2     48.415 (9) (a), 48.415 (9m) (a), 66.053 (1) (b), 111.335 (1) (cg) 1., 111.335 (1) (cg)  
3     2., 111.335 (1) (cg) 3., 111.335 (1) (cm), 125.04 (5) (b), 134.59 (1), 134.59 (2),  
4     134.71 (5) (c), 134.71 (7) (a) 1., 139.34 (1) (c) 1., 139.34 (1) (c) 2., 139.37 (1) (c)  
5     2., 293.37 (2) (e) 1. b., 293.49 (2) (d) (intro.), 293.49 (8), 295.33 (5), 295.35 (5) (c)  
6     (intro.), 304.078, 343.12 (2) (e), 343.315 (2) (a) 4., 343.64 (3), 343.65 (2), 343.66  
7     (2), 343.66 (5), 343.67 (2), 440.26 (2) (c) 2., 440.26 (5m) (a) 2., 440.26 (6) (b),  
8     440.968 (1) (d), 443.11 (1) (f), 454.06 (1) (b), 455.09 (1) (a), 551.23 (19) (c) 1. b.,  
9     551.32 (1) (b), 551.34 (1) (c), 562.045 (1), 562.05 (5) (a) 2., 563.14 (2), 563.27 (1),  
10    563.51 (29) (b), 565.02 (1) (b) 1., 565.02 (2) (c) 1., 565.10 (3) (a) (intro.), 565.25  
11    (3) (a) (intro.), 618.11 (6) (d), 908.03 (22), 939.62 (1) (b), 939.62 (1) (c), 939.62 (2),  
12    939.62 (2m) (b), 941.26 (4) (L), 972.13 (3), 972.13 (6), 973.0135 (1) (a) 2., 973.03  
13    (3) (e) (intro.) and 973.12 (1); and **to create** 139.37 (1) (cm), 941.29 (5) (c) and

1 973.017 of the statutes; **relating to:** special disposition of felonies committed  
2 by certain youthful offenders.

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

This is a preliminary draft. An analysis will be provided in a later draft.

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

3 **SECTION 1.** 8.21 of the statutes is amended to read:

4 **8.21 Declaration of candidacy.** Each candidate, except a candidate for  
5 presidential elector under s. 8.20 (2) (d), shall file a declaration of candidacy, no later  
6 than the latest time provided for filing nomination papers under s. 8.10 (2) (a), 8.15  
7 (1), 8.17 (2), 8.20 (8) (a) or 8.50 (3) (a), or the time provided under s. 8.16 (2) or 8.35  
8 (2) (c). A candidate shall file the declaration with the officer or agency with which  
9 nomination papers are filed for the office which the candidate seeks, or if nomination  
10 papers are not required, with the clerk or board of election commissioners of the  
11 jurisdiction in which the candidate seeks office. The declaration shall be sworn to  
12 before any officer authorized to administer oaths. The declaration shall contain the  
13 name of the candidate in the form specified under s. 8.10 (2) (b) for candidates for  
14 nonpartisan office or s. 8.15 (5) (a) or 8.20 (2) (a) for candidates for partisan office,  
15 and shall state that the signer is a candidate for a named office, that he or she meets  
16 or will at the time he or she assumes office meet applicable age, citizenship, residency  
17 or voting qualification requirements, if any, prescribed by the constitutions and laws  
18 of the United States and of this state, and that he or she will otherwise qualify for  
19 office if nominated and elected. The declaration shall include the candidate's name  
20 in the form in which it will appear on the ballot. Each candidate for state and local

1 office shall include in the declaration a statement that he or she has not been  
2 convicted of any infamous crime for which he or she has not been pardoned and a list  
3 of all felony convictions for which he or she has not been pardoned or has not received  
4 a youthful offender felony discharge under s. 973.017 (4) (d). In addition, each  
5 candidate for state or local office shall include in the declaration a statement that  
6 discloses his or her municipality of residence for voting purposes, and the street and  
7 number, if any, on which the candidate resides. The declaration is valid with or  
8 without the seal of the officer who administers the oath. A candidate for state or local  
9 office shall file an amended declaration under oath with the same officer or agency  
10 if any information contained in the declaration changes at any time after the original  
11 declaration is filed and before the candidate assumes office or is defeated for election  
12 or nomination.

13 SECTION 2. 15.64 of the statutes is amended to read:

14 **15.64 Gaming board; creation.** There is created a gaming board, consisting  
15 of 5 members appointed for 4-year terms. Each member shall be a U.S. citizen and  
16 shall be a resident, as described in s. 6.10 (1), of this state. No person who has been  
17 convicted of or entered a plea of guilty or no contest to a felony or a gambling-related  
18 offense under the laws of this or another state or of the United States may be  
19 appointed as a member unless the person has received a pardon under which the  
20 person's full civil rights have been restored or the person has received a youthful  
21 offender felony discharge under s. 973.017 (4) (d).

22 SECTION 3. 17.03 (5) of the statutes is amended to read:

23 17.03 (5) Whether or not sentenced to imprisonment, the incumbent is  
24 convicted and sentenced by a state or federal court for treason, felony or other crime  
25 of whatsoever nature punishable by imprisonment in any jail or prison for one year

1 or more, or for any offense involving a violation of the incumbent's official oath. A  
2 vacancy so created is not affected by a stay of execution of judgment. Reversal of the  
3 judgment, but not a pardon or a youthful offender felony discharge under s. 973.017  
4 (4)(d), immediately restores the incumbent to office if the term has not expired and  
5 entitles the incumbent to the emoluments of the office for the time the incumbent  
6 would have served in the office but for the judgment.

7 SECTION 4. 45.37 (2) (d) of the statutes is amended to read:

8 45.37 (2) (d) *Crimes*. Has not been convicted of a felony or of a crime involving  
9 moral turpitude or, if so, has either received a youthful offender felony discharge  
10 under s. 973.017 (4)(d) or produced sufficient evidence of subsequent good conduct  
11 and reformation of character as to be satisfactory to the department.

12 SECTION 5. 48.415 (5) (a) of the statutes is amended to read:

13 48.415 (5) (a) That the parent has caused death or injury to a child or children  
14 resulting in a felony conviction, even if the parent has received a youthful offender  
15 felony discharge under s. 973.017 (4)(d).

....NOTE: Does this treatment effect your intent? If so, we will have to decide for  
the next draft whether the treatment is necessary and whether other statutes that refer  
to a "felony conviction" need similar amendment.

16 SECTION 6. 48.415 (8) of the statutes is amended to read:

17 48.415 (8) INTENTIONAL OR RECKLESS HOMICIDE OF PARENT. Intentional or reckless  
18 homicide of a parent, which shall be established by proving that a parent of the child  
19 has been a victim of first-degree intentional homicide in violation of s. 940.01,  
20 first-degree reckless homicide in violation of s. 940.02 or 2nd-degree intentional  
21 homicide in violation of s. 940.05 and that the person whose parental rights are  
22 sought to be terminated has been convicted of that intentional or reckless homicide

1 as evidenced by a final judgment of conviction, even if the person convicted has  
2 received a youthful offender felony discharge under s. 973.017 (4) (d).

....NOTE: Does this treatment effect your intent? If so, we will have to decide for the next draft whether the treatment is necessary and whether other statutes that refer to a "felony conviction" need similar amendment.

3 SECTION 7. 48.415 (9) (a) of the statutes is amended to read:

4 48.415 (9) (a) Parenthood as a result of sexual assault, which shall be  
5 established by proving that the child was conceived as a result of a sexual assault in  
6 violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2) or 948.025. Conception ~~final~~ as  
7 a result of sexual assault as specified in this paragraph may be proved by a final  
8 judgment of conviction, even if the person convicted has received a youthful offender  
9 felony discharge under s. 973.017 (4) (d), or other evidence produced at a fact-finding  
10 hearing under s. 48.424 indicating that the person who may be the father of the child  
11 committed, during a possible time of conception, a sexual assault as specified in this  
12 paragraph against the mother of the child.

....NOTE: Does this treatment effect your intent? If so, we will have to decide for the next draft whether the treatment is necessary and whether other statutes that refer to a "felony conviction" need similar amendment.

13 SECTION 8. 48.415 (9m) (a) of the statutes is amended to read:

14 48.415 (9m) (a) Commission of a serious felony against one of the person's  
15 children, which shall be established by proving that a child of the person whose  
16 parental rights are sought to be terminated was the victim of a serious felony and  
17 that the person whose parental rights are sought to be terminated has been convicted  
18 of that serious felony as evidenced by a final judgment of conviction, even if the  
19 person convicted has received a youthful offender felony discharge under s. 973.017  
20 (4) (d).

....NOTE: Does this treatment effect your intent? If so, we will have to decide for the next draft whether the treatment is necessary and whether other statutes that refer to a "felony conviction" need similar amendment.

1           **SECTION 9.** 66.053 (1) (b) of the statutes is amended to read:

2           66.053 (1) (b) No license or permit may be granted to any person, unless to a  
3           domestic corporation or domestic limited liability company, not a resident of this  
4           state and of the town, village or city in which the license is applied for, nor, subject  
5           to ss. 111.321, 111.322 and 111.335, to any person who has been convicted of a felony,  
6           unless the person has been restored to civil rights or has received a youthful offender  
7           felony discharge under s. 973.017 (4) (d).

8           **SECTION 10.** 111.335 (1) (cg) 1. of the statutes, as created by 1995 Wisconsin Act  
9           461, is amended to read:

10          111.335 (1) (cg) 1. Notwithstanding s. 111.322, it is not employment  
11          discrimination because of conviction record to deny or refuse to renew a license or  
12          permit under s. 440.26 to a person who has been convicted of a felony and has not  
13          been pardoned for that felony or has not received a youthful offender felony discharge  
14          under s. 973.017 (4) (d) for that felony.

15          **SECTION 11.** 111.335 (1) (cg) 2. of the statutes, as created by 1995 Wisconsin Act  
16          461, is amended to read:

17          111.335 (1) (cg) 2. Notwithstanding s. 111.322, it is not employment  
18          discrimination because of conviction record to revoke a license or permit under s.  
19          440.26 (6) (b) if the person holding the license or permit has been convicted of a felony  
20          and has not been pardoned for that felony or has not received a youthful offender  
21          felony discharge under s. 973.017 (4) (d) for that felony.

22          **SECTION 12.** 111.335 (1) (cg) 3. of the statutes, as created by 1995 Wisconsin Act  
23          461, is amended to read:

24          111.335 (1) (cg) 3. Notwithstanding s. 111.322, it is not employment  
25          discrimination because of conviction record to refuse to employ a person in a business



1 licensed under s. 440.26 or as an employe specified in s. 440.26 (5) (b) if the person  
2 has been convicted of a felony and has not been pardoned for that felony or has not  
3 received a youthful offender felony discharge under s. 973.017 (4) (d) for that felony.

4 SECTION 13. 111.335 (1) (cm) of the statutes is amended to read:

5 111.335 (1) (cm) Notwithstanding s. 111.322, it is not employment  
6 discrimination because of conviction record to refuse to employ as an installer of  
7 burglar alarms a person who has been convicted of a felony and has not been  
8 pardoned or has not received a youthful offender felony discharge under s. 973.017  
9 (4) (d) for that felony.

10 SECTION 14. 125.04 (5) (b) of the statutes is amended to read:

11 125.04 (5) (b) *Criminal offenders.* No license or permit related to alcohol  
12 beverages may, subject to ss. 111.321, 111.322 and 111.335, be issued under this  
13 chapter to any person who has habitually been a law offender or has been convicted  
14 of a felony unless the person has been duly pardoned or has received a youthful  
15 offender felony discharge under s. 973.017 (4) (d).

16 SECTION 15. 134.59 (1) of the statutes is amended to read:

17 134.59 (1) No person may intentionally hire as a burglar alarm installer a felon  
18 who has not been pardoned or has not received a youthful offender felony discharge  
19 under s. 973.017 (4) (d). Any person engaged in the business of installing burglar  
20 alarms may request the department of justice to do a criminal history search on any  
21 person whom that person hires or proposes to hire as a burglar alarm installer.

....NOTE: Does this treatment effect your intent?

22 SECTION 16. 134.59 (2) of the statutes is amended to read:

23 134.59 (2) No person engaged in the business of installing burglar alarms may  
24 intentionally allow a felon who has not been pardoned or has not received a youthful

1 offender felony discharge under s. 973.017 (4) (d) to have access to individual burglar  
2 alarm installation records.

....NOTE: Does this treatment effect your intent?

3 SECTION 17. 134.71 (5) (c) of the statutes is amended to read:

4 134.71 (5) (c) A statement as to whether the applicant has been convicted  
5 within the preceding 10 years of a felony or within the preceding 5 years of a  
6 misdemeanor, statutory violation punishable by forfeiture or county or municipal  
7 ordinance violation in which the circumstances of the felony, misdemeanor or other  
8 offense substantially relate to the circumstances of the licensed activity and, if so,  
9 the nature and date of the offense ~~and~~, the penalty assessed and whether the  
10 applicant received a youthful offender felony discharge under s. 973.017 (4) (d).

....NOTE: Should a felony count only as a misdemeanor if a youthful offender felony discharge was given for the felony? If so, this section may need amending to provide for that result. Also, numerous other references in the statutes to misdemeanor convictions may have to be treated to specify that they include felonies for which a youthful offender felony discharge was given.

11 SECTION 18. 134.71 (7) (a) 1. of the statutes is amended to read:

12 134.71 (7) (a) 1. The applicant, including an individual, a partner, a member  
13 of a limited liability company or an officer, director or agent of any corporate  
14 applicant, has not been convicted within the preceding 10 years of a felony for which  
15 he or she has not received a youthful offender felony discharge under s. 973.017 (4)  
16 (d) or within the preceding 5 years of a misdemeanor, statutory violation punishable  
17 by forfeiture or county or municipal ordinance violation in which the circumstances  
18 of the felony, misdemeanor or other offense substantially relate to the circumstances  
19 of being a pawnbroker, secondhand jewelry dealer, secondhand article dealer or  
20 secondhand article dealer mall or flea market owner.

....NOTE. See the ....NOTE following the treatment of s. 134.71 (5) (c).

21 SECTION 19. 139.34 (1) (c) 1. of the statutes is amended to read:

1           139.34 (1) (c) 1. The person has been convicted of a misdemeanor, not involving  
2           chs. 340 to 349, at least 3 times. For purposes of this subdivision, a conviction for a  
3           felony not involving chs. 340 to 349 for which the person received a youthful offender  
4           felony discharge under s. 973.017 (4) (d) is a misdemeanor conviction.

      ....NOTE: Does this treatment effect your intent? If it does, we need to determine  
      whether it is necessary. Compare the ....NOTE following the treatment of s. 134.71 (5) (c).

5           SECTION 20. 139.34 (1) (c) 2. of the statutes is amended to read:

6           139.34 (1) (c) 2. The person has been convicted of a felony, unless he or she has  
7           been pardoned or he or she has received a youthful offender felony discharge under  
8           s. 973.017 (4) (d).

9           SECTION 21. 139.37 (1) (c) 2. of the statutes is amended to read:

10          139.37 (1) (c) 2. Has been convicted of a felony, unless he or she has been  
11          pardoned or he or she has received a youthful offender felony discharge under s.  
12          973.017 (4) (d);

13          SECTION 22. 139.37 (1) (cm) of the statutes is created to read:

14          139.37 (1) (cm) For purposes of par. (c) 1., a conviction for a felony not involving  
15          chs. 340 to 349 for which the person received a youthful offender felony discharge  
16          under s. 973.017 (4) (d) is a misdemeanor conviction.

      ....NOTE: See the ....NOTE following the treatment of s. 139.34 (1) (c) 1.

17          SECTION 23. 293.37 (2) (e) 1. b. of the statutes is amended to read:

18          293.37 (2) (e) 1. b. A felony conviction of the applicant, a related person or an  
19          officer or director of the applicant for a violation of a law for the protection of the  
20          natural environment arising out of the operation of a mining site in the United  
21          States, unless the applicant, related person, officer or director received a youthful  
22          offender felony discharge under s. 973.017 (4) (d).

23          SECTION 24. 293.49 (2) (d) (intro.) of the statutes is amended to read:

1           293.49 (2) (d) (intro.) That the applicant, a related person or an officer or  
2 director of the applicant has, within 10 years before the application is submitted,  
3 been convicted of more than one felony, other than a felony for which a youthful  
4 offender felony discharge was given under s. 973.017 (4) (d), for violations of laws for  
5 the protection of the natural environment arising out of the operation of a mining site  
6 in the United States, unless one of the following applies:

7           **SECTION 25.** 293.49 (8) of the statutes is amended to read:

8           293.49 (8) No operator may engage a general contractor or affiliate to operate  
9 a mining site if the general contractor or affiliate has been convicted of more than one  
10 felony, other than a felony for which a youthful offender felony discharge was given  
11 under s. 973.017 (4) (d), for violation of a law for the protection of the natural  
12 environment arising out of the operation of a mining site in the United States within  
13 10 years before the issuance of the operator's permit, unless the general contractor  
14 or affiliate receives the department's approval of a plan to prevent the occurrence in  
15 this state of events similar to the events that directly resulted in the convictions.

16           **SECTION 26.** 295.33 (5) of the statutes is amended to read:

17           295.33 (5) No person holding an oil or gas exploration or production license may  
18 engage a general contractor or affiliate to operate an oil or gas exploration or  
19 production site if the general contractor or affiliate has 2 or more felony convictions,  
20 other than a felony for which a youthful offender felony discharge was given under  
21 s. 973.017(4)(d), for violation of a law for the protection of the natural environment  
22 arising out of the operation of an oil or gas exploration or production site in the  
23 United States within 10 years before the issuance of the person's license, unless the  
24 general contractor or affiliate receives the department's approval of a plan to prevent

1 the occurrence in this state of events similar to the events that directly resulted in  
2 the convictions.

3 **SECTION 27.** 295.35 (5) (c) (intro.) of the statutes is amended to read:

4 295.35 (5) (c) (intro.) That the applicant, a related person or an officer or  
5 director of the applicant has, within 10 years before the application is submitted, 2  
6 or more felony convictions, other than a felony for which a youthful offender felony  
7 discharge was given under s. 973.017 (4) (d). for violations of laws for the protection  
8 of the natural environment arising out of the operation of an oil or gas exploration  
9 or production site in the United States, unless one of the following applies:

10 **SECTION 28.** 304.078 of the statutes is amended to read:

11 **304.078 Civil rights restored to convicted persons satisfying sentence.**

12 Every person who is convicted of a crime obtains a restoration of his or her civil rights  
13 by serving out his or her term of imprisonment or otherwise satisfying his or her  
14 sentence. The Except for a person granted a youthful offender felony discharge  
15 under s. 973.017 (4) (d), the certificate of the department or other responsible  
16 supervising agency that a convicted person has served his or her sentence or  
17 otherwise satisfied the judgment against him or her is evidence of that fact and that  
18 the person is restored to his or her civil rights. The department or other agency shall  
19 list in the person's certificate rights which have been restored and which have not  
20 been restored. A judgment of conviction modified under s. 973.017 (4) (d) is evidence  
21 that a person granted a youthful offender felony discharge under s. 973.017 (4) (d)  
22 has satisfied the conditions of his or her youthful offender disposition and has  
23 obtained a restoration of all of his or her civil rights. Persons who served out their  
24 terms of imprisonment or otherwise satisfied their sentences prior to August 14,  
25 1947, are likewise restored to their civil rights from and after September 25, 1959.

1       SECTION 29. 343.12 (2) (e) of the statutes is amended to read:

2       343.12 (2) (e) Subject to ss. 111.321, 111.322 and 111.335, has not been  
3 convicted of a felony, other than a felony for which a youthful offender felony  
4 discharge was given under s. 973.017(4) (d), or offense against public morals in this  
5 state, including a conviction under the law of a federally recognized American Indian  
6 tribe or band in this state for an offense which, if the person had been convicted of  
7 the offense under the laws of this state, would have constituted a felony or offense  
8 against public morals, or in another jurisdiction, within the past 5 years.

9       SECTION 30. 343.315 (2) (a) 4. of the statutes is amended to read:

10       343.315 (2) (a) 4. Using a motor vehicle in the commission of a felony in this  
11 state, other than a felony for which a youthful offender felony discharge was given  
12 under s. 973.017 (4) (d) but including a violation of a law of a federally recognized  
13 American Indian tribe or band in this state for an offense therein which, if the person  
14 had been convicted of the offense under the laws of this state, would have constituted  
15 a felony, or in another jurisdiction.

16       SECTION 31. 343.64 (3) of the statutes is amended to read:

17       343.64 (3) Subject to ss. 111.321, 111.322 and 111.335, the applicant or any  
18 officer, director, stockholder, partner or any person directly interested in the business  
19 has been convicted of a felony, unless the person so convicted has been duly pardoned  
20 or has received a youthful offender felony discharge under s. 973.017 (4) (d);

21       SECTION 32. 343.65 (2) of the statutes is amended to read:

22       343.65 (2) The applicant has failed to furnish satisfactory evidence of the facts  
23 required of the applicant, has not held a license to drive a motor vehicle within this  
24 state for the past year, has not had a driving record satisfactory to the secretary, or,  
25 subject to ss. 111.321, 111.322 and 111.335, has been convicted of a felony and has not

1 been duly pardoned or has not received a youthful offender felony discharge under  
2 s. 973.017 (4) (d).

3 SECTION 33. 343.66 (2) of the statutes is amended to read:

4 343.66 (2) Subject to ss. 111.321, 111.322 and 111.335, the licensee or any  
5 partner, member, manager or officer of the licensee has been convicted of a felony,  
6 other than a felony for which a youthful offender felony discharge was given under  
7 s. 973.017 (4) (d);

8 SECTION 34. 343.66 (5) of the statutes is amended to read:

9 343.66 (5) Subject to ss. 111.321, 111.322 and 111.335, the licensee has  
10 knowingly employed, as an instructor, a person who has been convicted of a felony,  
11 other than a felony for which a youthful offender felony discharge was given under  
12 s. 973.017 (4) (d), or has retained such a person in such employ after knowledge of  
13 his or her conviction; or

14 SECTION 35. 343.67 (2) of the statutes is amended to read:

15 343.67 (2) Subject to ss. 111.321, 111.322 and 111.335, the licensee has been  
16 convicted of a felony, other than a felony for which a youthful offender felony  
17 discharge was given under s. 973.017 (4) (d);

18 SECTION 36. 440.26 (2) (c) 2. of the statutes, as affected by 1995 Wisconsin Act  
19 461, is amended to read:

20 440.26 (2) (c) 2. An individual who has been convicted in this state or elsewhere  
21 of a felony and who has not been pardoned or has not received a youthful offender  
22 felony discharge under s. 973.017 (4) (d) for that felony is not eligible for a license  
23 under this section.

24 SECTION 37. 440.26 (5m) (a) 2. of the statutes, as created by 1995 Wisconsin Act  
25 461, is amended to read:

1           440.26 (5m) (a) 2. The individual has not been convicted in this state or  
2 elsewhere of a felony, unless he or she has been pardoned or has received a youthful  
3 offender felony discharge under s. 973.017 (4) (d) for that felony.

4           **SECTION 38.** 440.26 (6) (b) of the statutes, as created by 1995 Wisconsin Act 461,  
5 is amended to read:

6           440.26 (6) (b) Subject to the rules promulgated under s. 440.03 (1), the  
7 department shall revoke the license or permit of any person who has been convicted  
8 of a felony in this state or elsewhere and who has not been pardoned or has not  
9 received a youthful offender felony discharge under s. 973.017 (4) (d) for that felony.

10          **SECTION 39.** 440.968 (1) (d) of the statutes is amended to read:

11          440.968 (1) (d) Been convicted of a felony, subject to ss. 111.321, 111.322 and  
12 111.335, or been for which he or she has not received a youthful offender felony  
13 discharge under s. 973.017 (4) (d). A certified copy of the record of conviction is  
14 conclusive evidence of the conviction.

15          (e) Been adjudicated mentally incompetent by a court of competent  
16 jurisdiction, a certified copy of the ~~record of conviction or~~ adjudication of  
17 incompetency to be conclusive evidence of such ~~conviction or~~ incompetency.

18          **SECTION 40.** 443.11 (1) (f) of the statutes is amended to read:

19          443.11 (1) (f) Conviction of a felony, subject to ss. 111.321, 111.322 and 111.335,  
20 or adjudication for which he or she has not received a youthful offender felony  
21 discharge under s. 973.017 (4) (d). A certified copy of the record of conviction is  
22 conclusive evidence of the conviction.

23          (g) Adjudication of mental incompetency by a court of competent jurisdiction,  
24 a certified copy of the ~~record of conviction or~~ adjudication of incompetency to be  
25 conclusive evidence of such ~~conviction or~~ incompetency.



1           SECTION 41. 454.06 (1) (b) of the statutes is amended to read:

2           454.06 (1) (b) Subject to ss. 111.321, 111.322 and 111.335, the applicant  
3 presents evidence satisfactory to the examining board that the applicant has not  
4 been convicted of a felony committed while engaged in the practice of barbering or  
5 cosmetology or, if he or she was convicted of such a felony, that he or she has received  
6 a youthful offender felony discharge under s. 973.017 (4) (d).

7           SECTION 42. 455.09 (1) (a) of the statutes is amended to read:

8           455.09 (1) (a) Subject to ss. 111.321, 111.322 and 111.335, ~~is a felon~~ has been  
9 convicted of a felony for which he or she has not received a youthful offender felony  
10 discharge under s. 973.017 (4) (d).

11          SECTION 43. 551.23 (19) (c) 1. b. of the statutes is amended to read:

12          551.23 (19) (c) 1. b. The person has been convicted of any felony or misdemeanor  
13 in connection with the offer, sale or purchase of any security or franchise, or any  
14 felony involving fraud or deceit, including but not limited to forgery, embezzlement,  
15 obtaining money under false pretenses, larceny or conspiracy to defraud. This subd.  
16 1. b. does not apply to any felony for which the person has received a youthful offender  
17 felony discharge under s. 973.017 (4) (d).

18          SECTION 44. 551.32 (1) (b) of the statutes is amended to read:

19          551.32 (1) (b) An application under par. (a) shall contain whatever information  
20 the division by rule requires concerning the applicant's form and place of  
21 organization, proposed method of doing business and financial condition, the  
22 qualifications and experience of the applicant, including, in the case of a  
23 broker-dealer or investment adviser, the qualifications and experience of any  
24 partner, officer, director or controlling person, any injunction or administrative order  
25 or conviction of a misdemeanor involving securities and any conviction of a felony,

1 other than a felony for which the person has received a youthful offender felony  
2 discharge under s. 973.017 (4) (d). and any other matters which the division  
3 determines are relevant to the application. The division may by rule or order require  
4 an applicant for an initial license to publish an announcement of the application in  
5 one or more specified newspapers published in this state.

6 SECTION 45. 551.34 (1) (c) of the statutes is amended to read:

7 551.34 (1) (c) Subject to ss. 111.321, 111.322 and 111.335, has been convicted,  
8 within the past 10 years, of any misdemeanor involving a security or any aspect of  
9 the securities business, or any felony, other than a felony for which the person has  
10 received a youthful offender felony discharge under s. 973.017 (4) (d);

11 SECTION 46. 562.045 (1) of the statutes is amended to read:

12 562.045 (1) The person has been convicted in a state or federal court of a felony,  
13 other than a felony conviction for an offense under subs. (3) to (6), for which he or she  
14 has not been ~~pardoned~~ granted a pardon under which his or her full civil rights are  
15 restored or for which he or she has not received a youthful offender felony discharge  
16 under s. 973.017 (4) (d).

17 SECTION 47. 562.05 (5) (a) 2. of the statutes is amended to read:

18 562.05 (5) (a) 2. The person has been convicted of a felony within 20 years  
19 preceding the date of application in a state or federal court for which he or she has  
20 not been pardoned and restored to full civil rights or for which he or she has not  
21 received a youthful offender felony discharge under s. 973.017 (4) (d), or the person  
22 has been charged with the violation of a state or federal law which is a felony if that  
23 charge has not been dismissed or settled in any other way.

24 SECTION 48. 563.14 (2) of the statutes is amended to read:

1           563.14 (2) The supervising member and member responsible for the proper  
2 utilization of gross receipts are active members of the applicant organization who,  
3 subject to ss. 111.321, 111.322 and 111.335, have never been convicted of a felony or,  
4 if convicted, have received a pardon, have received a youthful offender felony  
5 discharge under s. 973.017 (4) (d) or have been released from parole or probation for  
6 at least 5 years.

7           **SECTION 49.** 563.27 (1) of the statutes is amended to read:

8           563.27 (1) Subject to ss. 111.321, 111.322 and 111.335, a person convicted of a  
9 felony who has not received a pardon, has not received a youthful offender felony  
10 discharge under s. 973.017 (4) (d) or has not been released from parole or probation  
11 for at least 5 years.

12           **SECTION 50.** 563.51 (29) (b) of the statutes is amended to read:

13           563.51 (29) (b) Subject to ss. 111.321, 111.322 and 111.335, has never been  
14 convicted of a felony or, if convicted, has been pardoned, received a youthful offender  
15 felony discharge under s. 973.017 (4) (d) or released from probation or parole for at  
16 least 5 years.

17           **SECTION 51.** 565.02 (1) (b) 1. of the statutes is amended to read:

18           565.02 (1) (b) 1. A felony, other than a felony conviction for an offense under  
19 subds. 2. to 4., during the immediately preceding 10 years, unless the person has  
20 been pardoned or has received a youthful offender felony discharge under s. 973.017  
21 (4) (d).

22           **SECTION 52.** 565.02 (2) (c) 1. of the statutes is amended to read:

23           565.02 (2) (c) 1. A felony, other than a felony conviction for an offense under  
24 subd. 2. or 3., during the immediately preceding 10 years, unless the person has been

1 pardoned or has received a youthful offender felony discharge under s. 973.017 (4)  
2 (d).

3 **SECTION 53.** 565.10 (3) (a) (intro.) of the statutes is amended to read:

4 565.10 (3) (a) (intro.) Notwithstanding s. 111.321, no lottery retailer contract  
5 may be entered into with a person if, during the immediately preceding 10 years, the  
6 person has been convicted of, or entered a plea of guilty or no contest to, any of the  
7 following, unless the person has been pardoned or has received a youthful offender  
8 felony discharge under s. 973.017 (4) (d):

9 **SECTION 54.** 565.25 (3) (a) (intro.) of the statutes is amended to read:

10 565.25 (3) (a) (intro.) No contract for a major procurement may be entered into  
11 with a person if, during the immediately preceding 10 years, the person has been  
12 convicted of, or entered a plea of guilty or no contest to, any of the following, unless  
13 the person has been pardoned or has received a youthful offender felony discharge  
14 under s. 973.017 (4) (d):

15 **SECTION 55.** 618.11 (6) (d) of the statutes is amended to read:

16 618.11 (6) (d) All administrative or criminal actions, orders or proceedings to  
17 which it or any of its directors or principal officers have been subjected on account  
18 of an alleged violation of any law governing insurance operations in any jurisdiction  
19 during the preceding 10 years, or not involving insurance operations if it is a felony  
20 for which the director or officer has not received a youthful offender felony discharge  
21 under s. 973.017 (4) (d);

22 **SECTION 56.** 908.03 (22) of the statutes is amended to read:

23 908.03 (22) JUDGMENT OF PREVIOUS CONVICTION. Evidence of a final judgment,  
24 entered after a trial or upon a plea of guilty (but not upon a plea of no contest),  
25 adjudging a person guilty of a felony as defined in ss. 939.60 and 939.62 (3) (b), to

1 prove any fact essential to sustain the judgment, but not including, when offered by  
2 the state in a criminal prosecution for purposes other than impeachment, judgments  
3 against persons other than the accused and not including felonies for which the  
4 person received a youthful offender felony discharge under s. 973.017 (4) (d). The  
5 pendency of an appeal may be shown but does not affect admissibility.

6 SECTION 57. 939.62 (1) (b) of the statutes is amended to read:

7 939.62 (1) (b) A maximum term of more than one year but not more than 10  
8 years may be increased by not more than 2 years if the prior convictions were for  
9 misdemeanors and by not more than 6 years if the prior conviction was for a felony.  
10 A felony conviction for which a person receives a youthful offender felony discharge  
11 under s. 973.017 (4) (d) is a misdemeanor conviction for purposes of this paragraph.

12 SECTION 58. 939.62 (1) (c) of the statutes is amended to read:

13 939.62 (1) (c) A maximum term of more than 10 years may be increased by not  
14 more than 2 years if the prior convictions were for misdemeanors and by not more  
15 than 10 years if the prior conviction was for a felony. A felony conviction for which  
16 a person receives a youthful offender felony discharge under s. 973.017 (4) (d) is a  
17 misdemeanor conviction for purposes of this paragraph.

18 SECTION 59. 939.62 (2) of the statutes is amended to read:

19 939.62 (2) The actor is a repeater if the actor was convicted of a felony during  
20 the 5-year period immediately preceding the commission of the crime for which the  
21 actor presently is being sentenced, or if the actor was convicted of a misdemeanor on  
22 3 separate occasions during that same period, which convictions remain of record  
23 and unreversed. It is immaterial that sentence was stayed, withheld or suspended,  
24 or that the actor was pardoned, unless such pardon was granted on the ground of  
25 innocence. In computing the preceding 5-year period, time which the actor spent in

1 actual confinement serving a criminal sentence shall be excluded. A felony  
2 conviction for which a person receives a youthful offender felony discharge under s.  
3 973.017 (4) (d) is a misdemeanor conviction for purposes of this subsection.

4 SECTION 60. 939.62 (2m) (b) of the statutes is amended to read:

5 939.62 (2m) (b) The actor is a persistent repeater if he or she has been convicted  
6 of a serious felony on 2 or more separate occasions at any time preceding the serious  
7 felony for which he or she presently is being sentenced under ch. 973, which  
8 convictions remain of record and unreversed and, that of the 2 or more previous  
9 convictions, at least one conviction must have occurred before the date of violation  
10 of at least one of the other felonies for which the actor was previously convicted. It  
11 is immaterial that the sentence for a previous conviction was stayed, withheld or  
12 suspended, or that he or she was pardoned, unless the pardon was granted on the  
13 ground of innocence. The term of imprisonment for the felony for which the  
14 persistent repeater presently is being sentenced under ch. 973 is life imprisonment  
15 without the possibility of parole. A serious felony conviction for which a person  
16 receives a youthful offender felony discharge under s. 973.017 (4) (d) does not count  
17 as a conviction for purposes of this paragraph.

18 SECTION 61. 941.26 (4) (L) of the statutes is amended to read:

19 941.26 (4) (L) Any person who has been convicted of a felony in this state or has  
20 been convicted of a crime elsewhere that would be a felony if committed in this state  
21 who possesses a device or container described under par. (a) is subject to a Class A  
22 misdemeanor. This paragraph does not apply if the person has received a pardon or  
23 a youthful offender felony discharge under s. 973.017 (4) (d) for the felony or crime.

24 SECTION 62. 941.29 (5) (c) of the statutes is created to read:

1           941.29 (5) (c) Has received a youthful offender felony discharge under s.  
2           973.017 (4) (d) with respect to the felony specified in sub. (1).

3           **SECTION 63.** 972.13 (3) of the statutes is amended to read:

4           972.13 (3) A judgment of conviction shall set forth the plea, the verdict or  
5           finding, the adjudication and sentence, ~~and~~ a finding as to the specific number of  
6           days for which sentence credit is to be granted under s. 973.155 and whether the  
7           defendant has received a youthful offender felony discharge under s. 973.017 (4) (d).  
8           if applicable. If the defendant is acquitted, judgment shall be entered accordingly.

9           **SECTION 64.** 972.13 (6) of the statutes is amended to read:

10          972.13 (6) The following forms may be used for judgments:

11          STATE OF WISCONSIN

12          .... County

13          In.... Court

14          The State of Wisconsin

15          vs.

16          ....(Name of defendant)

17          UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

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

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

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

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

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

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

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

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

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

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

18 Dated this.... day of...., 19...

19 BY THE COURT....

20 Date of Offense....,

21 District Attorney....,

22 Defense Attorney....

23 \*Strike inapplicable paragraphs.

24 STATE OF WISCONSIN

25 .... County



In.... Court

The State of Wisconsin

vs.

....(Name of defendant)

On the.... day of...., 19.., the district attorney appeared for the state and the defendant appeared in person and by.... the defendant's attorney.

UPON ALL THE FILES, RECORDS AND PROCEEDINGS

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

Dated this.... day of...., 19...

BY THE COURT....

STATE OF WISCONSIN

.... County

In.... Court

The State of Wisconsin

vs.

....(Name of defendant)

UPON ALL THE FILES, RECORDS AND PROCEEDINGS

IT IS ADJUDGED That the defendant was convicted upon the defendant's plea of guilty (no contest) on the .... day of ..... (year), of the crime of .... in violation of s..... which is a felony; that the defendant was determined to be eligible for a youthful offender disposition under section 973.017 of the Wisconsin Statutes; that the defendant has successfully completed the sentence imposed by this court on the .... day of ..... (year), by fulfilling the terms and conditions of that sentence; that it will

1 benefit the defendant and society will not be harmed to grant the defendant a  
2 youthful offender disposition/discharge.

3 IT IS ORDERED that the defendant's judgment of conviction for the felony  
4 violation of s. .... is modified to be a conviction for a misdemeanor; and

5 IT IS FURTHER ORDERED that all of the civil rights of the defendant lost as  
6 a result of the felony conviction are hereby restored.

7 Dated this.... day of..... (year).

8 BY THE COURT....

9 District Attorney....

10 Defense Attorney....

11 SECTION 65. 973.0135 (1) (a) 2. of the statutes is amended to read:

12 973.0135 (1) (a) 2. The person's conviction under subd. 1. remains of record and  
13 unreversed and the person has not received a youthful offender felony discharge  
14 under s. 973.017 (4) (d) for the conviction.

15 SECTION 66. 973.017 of the statutes is created to read:

16 **973.017 Youthful offender disposition; discharge of felony convictions.**

17 (1) At the request of a defendant charged with a felony and with the agreement of  
18 the district attorney, the court may order that the defendant be granted a youthful  
19 offender disposition if all of the following apply:

20 (a) The defendant had not attained the age of 21 years at the time that he or  
21 she committed the felony.

22 (b) The defendant did not commit the felony while possessing, using or  
23 threatening to use a dangerous weapon.

24 (c) The defendant has not previously been convicted of a felony in this state or  
25 another state or under federal law.

1 (d) The defendant has not previously been given a youthful offender disposition  
2 under this section.

3 (2) (a) A court may order a youthful offender disposition for a defendant who  
4 is eligible under sub. (1) if, except as provided in par. (b), the defendant enters a plea  
5 of guilty or no contest to the felony no later than 30 days after the date that the  
6 information is filed under s. 971.01.

7 (b) A court may extend the period for entering a plea of guilty or no contest  
8 under par. (a) upon agreement of the defendant and district attorney or upon a  
9 motion by the defendant based on good cause. For purposes of this paragraph, good  
10 cause does not include the time needed to resolve a motion concerning the  
11 jurisdiction of the court or the admissibility of evidence.

12 (c) In a case in which a motion concerning the jurisdiction of the court or the  
13 admissibility of evidence is pending and the defendant, the district attorney and the  
14 court agree to proceed with a youthful offender disposition, the court shall accept the  
15 defendant's plea of guilty or no contest as provided under par. (a) subject to the  
16 resolution of the pending motion and the defendant may not be sentenced until the  
17 resolution of the pending motion.

18 (3) (a) A defendant granted a youthful offender disposition under this section  
19 is subject to the penalties prescribed for the crime. If the court sentences the  
20 defendant to imprisonment in the Wisconsin state prisons, the court shall impose  
21 conditions of parole for the defendant as provided under pars. (b) and (c). If the court  
22 does not sentence the person to imprisonment in the Wisconsin state prisons, the  
23 court shall place the defendant on probation under s. 973.09 and shall impose  
24 conditions of probation as provided in pars. (b) and (c).

1 (b) A court shall impose all of the following conditions on the parole or probation  
2 of a defendant who is granted a youthful offender disposition:

3 1. That the defendant participate in an alcohol or other drug abuse assessment  
4 and, if appropriate, in a treatment program recommended or provided by the  
5 department.

6 2. That the defendant maintain gainful employment or attend school or other  
7 education or occupational training programs.

8 3. That the defendant not use or possess a controlled substance in violation of  
9 ch. 961.

10 (c) In addition to the conditions specified in par. (b), the court may impose any  
11 other reasonable and appropriate conditions on the parole or probation of a  
12 defendant who is granted a youthful offender disposition.

13 (d) In addition to the conditions imposed by a court under pars. (b) and (c), the  
14 department may impose any reasonable and appropriate conditions on the parole or  
15 probation of a defendant who is granted a youthful offender disposition.

16 (4) (a) In this subsection, "successfully completed his or her sentence under this  
17 section" means that a defendant granted a youthful offender disposition under this  
18 section has not been convicted of a subsequent offense, has not had his or her  
19 probation or parole revoked and has satisfied the conditions of probation or parole  
20 imposed by the court or the department.

21 (b) Upon completion of the probation or parole of a defendant who is granted  
22 a youthful offender disposition, the department shall prepare a report concerning  
23 whether the defendant has successfully completed his or her sentence under this  
24 section. The department shall file the report with the sentencing court and shall  
25 send a copy of the report to the defendant and the district attorney.

1 (c) Upon receiving a report filed under par. (b), the court shall schedule a  
2 hearing concerning whether the defendant has successfully completed his or her  
3 sentence under this section and whether the defendant will benefit and society will  
4 not be harmed by a modification of the judgment of conviction under par. (d). At a  
5 hearing under this paragraph, the department, the defendant and the district  
6 attorney may present relevant evidence.

7 (d) If the court determines after a hearing under par. (c) that the defendant has  
8 successfully completed his or her sentence under this section and that the defendant  
9 will benefit and society will not be harmed, the court shall modify the judgment of  
10 conviction entered in the case at the time of the defendant's plea to specify that the  
11 defendant was granted a youthful offender disposition under this section, that the  
12 defendant successfully completed his or her sentence under this section, that the  
13 felony conviction is discharged and that, notwithstanding the statute prescribing the  
14 offense for which the defendant was convicted, the defendant has been convicted of  
15 a misdemeanor. A defendant who receives a discharge of a felony conviction under  
16 this paragraph obtains a restoration all of his or her civil rights and may not be  
17 subject to any disqualification or disability ordinarily resulting from a conviction for  
18 a felony.

19 SECTION 67. 973.03 (3) (e) (intro.) of the statutes is amended to read:

20 973.03 (3) (e) (intro.) ~~-A- Except as provided in s. 973.017, a court may not~~  
21 provide that a defendant perform community service work under this subsection if  
22 the defendant is being sentenced regarding any of the following:

23 SECTION 68. 973.12 (1) of the statutes is amended to read:

24 973.12 (1) Whenever a person charged with a crime will be a repeater or a  
25 persistent repeater under s. 939.62 if convicted, any applicable prior convictions may

1 be alleged in the complaint, indictment or information or amendments so alleging at  
2 any time before or at arraignment, and before acceptance of any plea. The court may,  
3 upon motion of the district attorney, grant a reasonable time to investigate possible  
4 prior convictions before accepting a plea. If the prior convictions are admitted by the  
5 defendant or proved by the state, he or she shall be subject to sentence under s.  
6 939.62 unless he or she establishes that he or she received a youthful offender felony  
7 discharge under s. 973.017 (4) (d) or was pardoned on grounds of innocence for any  
8 crime necessary to constitute him or her a repeater or a persistent repeater. An  
9 official report of the F.B.I. or any other governmental agency of the United States or  
10 of this or any other state shall be prima facie evidence of any conviction or sentence  
11 therein reported. Any sentence so reported shall be deemed prima facie to have been  
12 fully served in actual confinement or to have been served for such period of time as  
13 is shown or is consistent with the report. The court shall take judicial notice of the  
14 statutes of the United States and foreign states in determining whether the prior  
15 conviction was for a felony or a misdemeanor.

16 **SECTION 69. Effective date.**

17 (1) This act takes effect on July 1, 1997, or on the day after publication,  
18 whichever is later.

....NOTE: This draft has a delayed effective date to avoid having to double-draft  
certain provisions. The effective date can be changed if you wish.

19 (END)

# Addendum “B”

**973.017 Youth offender disposition; discharge of felony conviction.**

(1) At the request of a defendant charged with a felony and with the agreement of the district attorney, the court may order that the defendant be granted a youthful disposition:

.....

(3)(a) A defendant granted a youthful offender disposition under this section is subject to the penalties prescribed for the crime. If the court imposes a bifurcated sentences upon the defendant to imprisonment in the Wisconsin state prisons pursuant to s. 973.01, the court shall impose the conditions of ~~parole~~ extended supervision for the defendant as provided under pars. (b) and (c). . . .

(b) A court shall impose all of the following conditions on the ~~parole~~ extended supervision or probation of a defendant who is granted a youthful offender disposition: . . . \_

(c) In addition to the conditions specified in par. (b), the court may impose any other reasonable and appropriate conditions on the ~~parole~~ extended supervision or probation of a defendant who is granted a youthful offender disposition.

(d) In addition to the conditions imposed by a court under pars. (b) and (c), the department may impose any reasonable and appropriate conditions



on the ~~parole~~ extended supervision or probation of a defendant who is granted a youthful disposition.

(4)(a) In this subsection, “successfully completed his or her sentence under this section” means that a defendant granted a youthful offender disposition under this section has not been convicted of a subsequent offense, has not had his or her probation or ~~parole~~ extended supervision revoked and has satisfied the conditions of probation or ~~parole~~ extended supervision imposed by the court or the department.

(b) Upon completion of the probation or ~~parole~~ extended supervision of a defendant who is granted a youthful offender disposition, the department shall prepare a report concerning whether the defendant has successfully completed his or her sentence under this section. . . .

# Addendum “C”

## WDAA Executive Board Meeting

[The following is a summary of the meeting of the Executive Board of the Wisconsin District Attorneys Association (WDAA) that was held on October 9, 1998.]

Stuart Morse introduced personnel from the State Budget Office and the Legislative Fiscal Bureau. Mr. Morse introduced Cindy Archer, the team leader from the State Budget Office and Andrew Statz, a new first level budget analyst. Mr. Morse also introduced Barbara Zabawa, a first level budget analyst from the Legislative Fiscal Bureau. Ms. Archer stated her appreciation of continued district attorney feedback in budgetary matters. She noted that the upcoming budget will be a challenge, as the Governor has requested that all state agency requests show no more than a 0% increase over last budget in FY 2000 and a 1% increase for FY 2001. She noted that with advance commitments taken into account, essentially all of the projected state GPR revenue growth anticipated for the next state biennium is already spent. Ms. Archer noted that district attorneys would once again not be subject to the mandatory 5% base reduction exercise in this budget. The State Budget Office will be meeting with Department of Administration Secretary Mark Bugher in November and the Governor in December to develop the district attorneys' portion of the Governor's budget request to the Legislature. Ms. Archer expressed the need for district attorneys to maintain a single voice that can be consulted on issues affecting district attorneys across the state. Ms. Archer planned to continue to request feedback from district attorneys on relevant budgetary and public policy decisions via the WDAA and the State Prosecutors Office. The Board discussed its budgetary concerns stemming from the "truth in sentencing" legislation and the victims' rights legislation.

Allison Poe from the Bureau of Justice Information Systems discussed steps being taken to deal with the "Year 2000" problem. Ms. Poe felt that there were serious concerns involved with the Y2K problem, but felt that counties and prosecutors could probably avoid major difficulties by dealing with things well enough in advance. Ms. Poe stressed the need for counties to develop plans for dealing with the problem on a broad scale. These included potential problems at the courthouse and in the community. Power systems may be susceptible to problems if they

rely on imbedded chips not programmed to handle the year 2000. Ms. Poe noted that BJIS will be working to assure that DOJ-provided systems and networks are compliant, but encouraged district attorneys to be aggressive in their administrative roles to meet with county technology consultants to make sure that local systems are compliant. Emergency plans should be created to address the possibility that problems will arise regardless of preventive measures. The Governor has made the Y2K problem his number one administrative priority. Ms. Poe noted that she will be sending a letter to district attorneys across the state to find out where they are in terms of dealing with the problem, and hopes to speak at the Winter Conference to answer questions. Ms. Poe also asked for volunteers to serve as representatives on the Governor's Public Safety Committee dealing with the Y2K problem. Elma Anderson volunteered, and the Board recommended Bruce Landgraf from Milwaukee and Adam Gerol from Ozaukee.

Mary Burke informed the Board that the first release of the Department of Justice brief bank is in the final stages of testing. Ms. Burke hoped to have the brief bank available by the first of the year. The Board discussed the possible format of the brief bank and determined that it would likely be best to release the service sooner rather than later, with the hope that improvements could be made gradually. The current service provides for a search engine similar to that in Westlaw. The DOJ is currently working on ensuring the security of the program. There are questions about access to the server by defense attorneys. Any briefs available are technically public record, but the organization and search properties could be confidential.

Mr. Morse updated the Board on the status of the hiring-above-the-minimum standards. Mr. Morse stated that a draft had been submitted to the Department of Employment Relations with amendments suggested at the last Board meeting. DER responded with a call asking for more information and time to analyze the proposal. The Board voted to wait for DER to respond to the proposal. Mr. Morse also informed the Board that Cellular One decided not to provide a service contract for prosecutors because of potential conflicts with existing contracts with counties.

Scott Horne delivered a report from the Resource Committee, which met on October 8. Mr. Horne

noted that district attorneys from around the state were invited to attend the meeting to provide information on the need for new positions that went beyond the needs expressed in the numerical data provided earlier on caseloads. There was still doubt about which caseload standard the state might rely upon in determining district attorney resource needs. The two options were 1411 and 1227 hours. The WDAA has stressed that 1227 hours available is much more representative of actual capabilities. Mr. Horne stressed that with the new requirements for communicating with victims and the truth-in-sentencing legislation, there are additional time obligations on prosecutors. The Board discussed the need to make resource recommendations based upon the desire to have full-time, professional prosecutors. The Board discussed the request from Oconto County to add a .5 position to make their assistant district attorney a full-time prosecutor. Oconto County has just added a second court, and the presence of a second full-time prosecutor would assist in covering court appearances. The Board approved the motion to support the addition in their budget proposal. The Board approved the other position requests that were discussed at the Resource Committee meeting.

Mr. Horne updated the Board on the status of four-year terms for district attorneys. Mr. Horne and Paul Bucher had recently met with several sheriffs to discuss the status of the sheriffs' push for a four-year term. The sheriffs have made a request to gain access to money they provided when the district attorneys and sheriffs determined to work together to obtain four-year terms. The Board voted to return the sheriffs' money to support their move toward a four-year term, with a recognition that the sheriffs have agreed to provide financial support for the district attorneys in the final stages of their push for a four-year term. The Board noted that the success of the district attorney four-year term would likely depend in some part upon the success of the sheriffs. The sheriffs have also sought support from district attorneys on other fronts. These included visits to the local editorial board, letters to the editor, local press

conferences, endorsements, and perhaps even financial support from county officers. Mr. Horne planned to send a memo outlining these requests for support to district attorneys across the state.

Pat Kerney updated the Board on action in the Legislative Committee. Mr. Kerney discussed the proposed youthful offender legislation. The legislation provides that a juvenile convicted of a felony may, if certain criteria are met, petition the court after completion of the sentence to have the felony essentially redefined as a misdemeanor. The conviction did not have to occur in the juvenile system, and adults up to the age of 21 at the time of the offense are eligible for the program. The program requires a plea, and the prosecutor has to consent to the possible application of the program at the time of the plea. The district attorney has the power to oppose the change after the sentence has been completed, and the defendant has the burden of raising the issue of the change after the sentence. The proposed legislation would not be allowed for crimes involving a dangerous weapon or for anyone with a prior felony. The Board discussed the proposed legislation and moved unanimously to support it.

Ruth Bachman reminded the Board that the State Bar would be meeting on November 11 to discuss several important proposed changes. The meeting was open to all Bar members and Ms. Bachman encouraged all prosecutors to attend. Mr. Bucher informed the Board that he recently attended the State Bar Government Lawyers section, and the section expressed a desire to have prosecutors become more involved. The section sought to have someone attend a WDAA Executive Board Meeting to establish greater communication with prosecutors. The Board discussed the common interests that the section may have with prosecutors, and the possibility that the section could help in obtaining prosecutor resources in the future.

The next WDAA Executive Board Meeting was scheduled for Friday, November 6.

# Addendum “D”

# Misdemeanor

## I. Misdemeanor Records of a Youthful Offender Disposition.

Youthful offender dispositions herein are referred to as **YOD**.

Following the amendment from a felony to a misdemeanor, the record of this under the 1997 legislative draft remains of record for the life of the person. Continuing the benefit derived from an offender's prospects of avoiding the secondary consequences of criminal behavior will further militate against recidivism without an attending risk to the community. A mechanism to achieve this continuation of incentive is the offer of a potential for expungement at the some more distant<sup>1</sup> point in the future, e.g., 10 years. This is consistent with the concept of Wisconsin's current youthful disposition section for misdemeanors, *Sec. 973.015*, (see, *Section II* of this *Addendum*) and is the logical extension of a YOD.

A section could be added to a *Youthful Offender/Anti-Recidivism* act, which would read:

*(X)(1.) A person who has received a youthful offender disposition may after the expiration of 10 years from the date of the amendment to a misdemeanor, petition the circuit court for the county in which the youthful offender disposition was entered for an order expunging<sup>2</sup> the youthful offender misdemeanor record.*

*(2.) A person will not be eligible for an order under this section, if the person anywhere in the United States at any time since the entry of the original youthful offender disposition has been convicted of any crime or has been convicted of an ordinance violation that was related to a controlled substance or driving while under the influence of an intoxicant. The petition for this order must be accompanied by a sworn affidavit containing a statement evidencing the quality of character supportive of expungement and indicating that the petitioner was not convicted of any crimes or ordinances identified in this subsection.*

*(3.) The circuit court may conduct a hearing. If the court determines that it is not harmful to the community, it shall enter an order expunging the youthful offender misdemeanor record.*

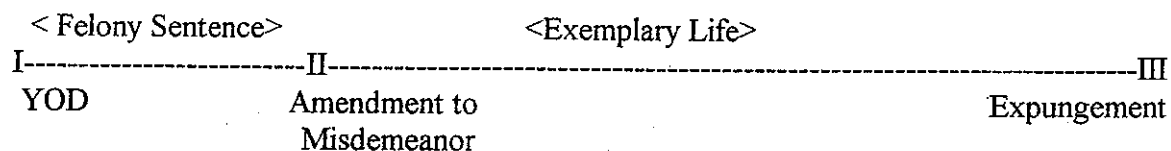
The ultimate expungement would remove any lingering disabilities that may exist if the concerns identified on page 7 resulted in additions to the proscription against the possession of firearms or employment restrictions. (The habitual criminality concern

<sup>1</sup> Should be "more distant" than *Sec. 973.015* expungement because the underlying conduct was more severe, initially a felony.

<sup>2</sup> The expungement should have the same effect as discussed in the last paragraph of *Section II* of this *Addendum*.

would be irrelevant because of the passage of time.) This lifting of the proscriptions would occur more than 10 years from after the original YOD. Maturity (if only by chronological age) in and of itself reduces the likelihood of re-engagement in criminal activity . This maturation (aging) taken with the more than 10 years of living a “good” life should be sufficient proof that the removal of any lingering disabilities will not harm the community.

An illustration of an example may be instructive:



Satisfaction of felony sentence of "x" years, plus an exemplary life of 10 years  
= Clear Record/No disabilities.

Although the final benefit to the offender is not obtained for more than 10 years, the offender benefits in the interim from the hope that is maintained and the motivation it cultivates. For society, the benefit begins immediately when the incentive acts to re-orient an offender's lifestyle to one that is more civilly responsible.

## II. Wisconsin's Current Misdemeanor "Youthful Offender" Law

Currently Wisconsin permits expunging a youthful offender's misdemeanor record:

### *973.015 Misdemeanors, special disposition.*

*(1) When a person is under the age of 21 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum penalty is imprisonment for one year or less in the county jail, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition.*

*(2) A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation. Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record.*

This existing law is completely consistent with the proposed *Youthful Offender/Anti-Recidivism* proposal. There does exist an ambiguity about what is meant by expungement: Do the provisions of Sec. 973.015 that authorize expunging a record, permit an offender who has his or her record expunged to assert on a job application that he or she was never convicted of a crime? It is probably the legislative intent, but it should be set forth expressly.