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## WISCONSIN LEGISLATIVE COUNCIL

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### REVIEW OF CRIMINAL PENALTIES

Room 411 South  
State Capitol

November 12, 2014  
10:00 a.m. - 4:15 p.m.

[The following is a summary of the November 12, 2014 meeting of the Study Committee on the Review of Criminal Penalties. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

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#### Call to Order and Roll Call

Chair Hutton called the committee to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Rob Hutton, Chair; Sen. Fred Risser, Vice Chair; Reps. Mandela Barnes, Adam Neylon, Daniel Riemer, and John Spiros; and Public Members Keith Belzer, Adam Gerol, Judge Scott Horne, Jill Karofsky, Ben Kempinen, Judge David Reddy, Michael Tobin, and Judge Donald Zuidmulder.

COMMITTEE MEMBER EXCUSED: Public Member Edward Bailey.

COUNCIL STAFF PRESENT: Mike Queensland and David Moore, Staff Attorneys.

#### Approval of the Committee's June 24, 2014 Minutes

*Senator Risser moved, seconded by Judge Horne, to approve the minutes of the June 24, 2014 meeting. The motion passed unanimously on a voice vote.*

## Discussion of Committee Assignment

### Recommendations of the Subcommittee on Obsolete Misdemeanors

Representative Neylon, Chair of the Subcommittee on Obsolete Misdemeanors, described the process the Subcommittee used to identify misdemeanors that are obsolete or no longer relevant. Mike Queensland, Staff Attorney, provided additional detail about the Subcommittee's recommendations, which are included in Memo No. 5, *Recommendations of the Subcommittees on Obsolete Misdemeanors and Penalty Alignment and Organization* (November 5, 2014).

Nate Ristow, Legislative Liaison for the Department of Revenue (DOR), testified that DOR identified three obsolete misdemeanor offenses that are not included in the Subcommittee on Obsolete Misdemeanors' recommendations. Mr. Ristow distributed a letter that described these offenses - ss. 70.40 (2), 77.53 (7) and 139.95 (4), Stats. - and explained the rationale for why DOR considers them obsolete or no longer relevant.<sup>1</sup>

*Judge Horne moved, seconded by Representative Spiros, to include the repeal of ss. 70.40 (2) and 139.95 (4) in the Study Committee's recommendation, as it relates to identifying obsolete misdemeanors. The motion passed on a unanimous voice vote.*

The Study Committee then considered whether s. 97.18, Stats., which criminalizes certain conduct related to serving oleomargarine, should remain a crime or be repealed due to obsolescence. Brad Legreid, Director of the Wisconsin Dairy Products Association, testified that the law is not obsolete because it is symbolic of the importance of the dairy industry to Wisconsin. Mr. Legreid indicated that while he opposed a full repeal of the law, he would not oppose changing the penalty for violations of s. 97.18, Stats., to a civil forfeiture. Public Member Gerol suggested that in lieu of the current penalty provided s. 97.18 (6), the penalty provided in s. 97.72 (2), a forfeiture of up to \$1,000, could be applied to violations of the law.

*Mr. Gerol moved, seconded by Judge Horne, to recommend repeal of s. 97.18 (6) and provide that the violations of s. 97.18 may be penalized as provided by s. 97.72 (2). The motion passed unanimously on a voice vote.*

*Representative Spiros moved, seconded by Judge Horne, to recommend approval of LRB-0473/P2, as amended by the earlier Study Committee recommendations related to DOR's request and oleomargarine regulations. The motion passed on a vote of Ayes, 13 (Reps. Hutton, Barnes, Neylon, Riemer, and Spiros; and Public Members Belzer, Gerol, Horne, Karofsky, Kempinen, Reddy, Tobin, and Zuidmulder); Noes, 0; and Absent, 2 (Sen. Risser; and Public Member Bailey).*

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<sup>1</sup> DOR letter to Representative Neylon regarding the Subcommittee on Obsolete Misdemeanors (November 11, 2014). Available at: <http://docs.legis.wisconsin.gov/misc/lc/study/2014/1191>.

## Recommendations of the Subcommittee on Penalty Alignment and Organization

The Subcommittee on Penalty Alignment and Organization was directed to make recommendations about aligning the penalties of misdemeanors so that crimes of similar severity have similar penalties, and to determine whether any unclassified misdemeanors should be classified. In carrying out this assignment, the Subcommittee also identified misdemeanors for the Study Committee to consider making a forfeiture.

Representative Spiros, Chair of the Subcommittee on Penalty Alignment and Organization, described the process used by the Subcommittee to complete its task. David Moore, Staff Attorney, provided additional detail about the Subcommittee's recommendations, which are included in Memo No. 5, *Recommendations of the Subcommittees on Obsolete Misdemeanors and Penalty Alignment and Organization* (November 5, 2014).

Mike Kowalkowski, Staff Attorney, and Tim Gary, Legislative Liaison, of the Department of Natural Resources (DNR) provided input on the Subcommittee's recommendations. Specifically, DNR requested that the following offenses retain their current penalties:

- Section 293.87 (2), relating to false statements in a metallic mining application.
- Section 295.37 (1), relating to false statements in an application relating to oil and gas.
- Section 295.79 (3), relating to false statements in a ferrous mining application.
- Section 299.53 (4) (c) 2., relating to false statements in a use oil fuel notification.
- Section 299.62 (3) (b), relating to second and subsequent violations relating to unlawful transport of oil or hazardous material in bulk on certain waterways.

DNR also requested that the following offenses not be classified because they contain minimum fines:

- Section 29.604 (5) (a) 1., relating to intentionally taking, transporting, possessing, processing, or selling within the state an endangered or threatened wild animal.
- Section 29.971 (1) (b), relating to violations relating to taking, transporting, acquiring, selling, purchasing, or possessing fish.
- Section 29.971 (11), relating to deer hunting violations.
- Section 29.971 (11g) (a), relating to elk hunting violations.
- Section 29.971 (11m) (a), relating to bear hunting violations.

The Subcommittee's recommendations were that each of these offenses be punished as a Class A misdemeanor.

Chair Hutton also suggested the Study Committee consider retaining current penalties for the following offenses:

- Section 107.02, relating to violation of mining statement requirements.
- Section 107.15 (6) (a), relating to violations of reporting requirements for mineral exploration.
- Section 107.15 (6) (c), relating to violations of confidentiality requirements for mineral exploration.

*Judge Zuidmulder moved, seconded by Judge Horne, to recommend that ss. 107.02, 107.15 (6) (a), 107.15 (6) (c), 293.87 (2), 295.37 (1), 295.79 (3), 299.53 (4) (c) 2., and 299.62 (3) (b) retain current penalties and ss. 29.604 (5) (a) 1., 29.971 (1) (b), 29.971 (11), 29.971 (11g) (a), and 29.971 (11m) (a) be penalized as recommended by the Subcommittee on Penalty Alignment and Organization. The motion passed on a voice vote.*

David Meany, Chief Legal Counsel, of the Department of Agriculture, Trade and Consumer Protection (DATCP) requested that adjustments be made to the Subcommittee's recommendation.<sup>2</sup>

- **Section 94.71 (1) (a) 2., relating to pesticide violations by a private applicator.** The Subcommittee proposed that the penalty for this offense be a Class C misdemeanor. DATCP recommended classifying this penalty as a Class B misdemeanor.
- **Section 94.77 (1), relating to various plant industry violations.** The Subcommittee proposed that the penalty for second and subsequent offenses be a Class B misdemeanor. DATCP recommended classifying the penalty for second and subsequent offenses as a Class A misdemeanor.
- **Section 95.21 (10) (b), relating to refusal of an owner to comply with an order or quarantine.** The Subcommittee proposed that the penalty for this offense be a Class C misdemeanor. DATCP recommended classifying this penalty as a Class B misdemeanor.
- **Section 95.99 (1), relating to various animal health violations.** Under current law, the penalty for a first offense violation is a fine of up to \$1,000 and, for second and subsequent offenses, a fine of \$500 to \$5,000, jail time of up to six months, or both.. The Subcommittee proposed that first offense violations of this offense be penalized as a forfeiture and second and subsequent offenses be punished as a Class B misdemeanor. DATCP recommended that the committee retain current law for first offense violations.

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<sup>2</sup> See DATCP memorandum, *Recommendations of the Subcommittee on Penalty Alignment and Organization* (November 12, 2014). Available at: <http://docs.legis.wisconsin.gov/misc/lc/study/2014/1191>.

*Judge Zuidmulder moved, seconded by Mr. Gerol, to recommend that the Study Committee adopt DATCP's recommendations, except to provide that a violation of s. 95.21 (10) (b) is a Class A misdemeanor. The motion passed on a voice vote.*

Public Member Karofsky described the recommendations of the Department of Justice (DOJ).<sup>3</sup>

*Ms. Karofsky moved, seconded by Representative Spiros, to recommend that current law be retained for ss. 103.18, 103.61 175.05, and 885.11 (3); that the Subcommittee's recommendations be adopted for ss. 29.967 (1) (b), 29.971 (7), 54.62 (8), 93.21 (2) (a), 134.50 (3), 134.60, 169.45 (8) (a) 2; and that the Subcommittee's recommendation for s. 26.20 (9) (b), Stats., be modified to increase the maximum forfeiture to \$10,000. The motion passed on a voice vote.*

The Study Committee also considered input from DOR and the Department of Health Services (DHS) regarding the Subcommittee's recommendations. Mr. Ristow, provided DOR's input<sup>4</sup> on the Subcommittee's recommendations and Alex Ignatowski, Legislative Liaison, and Dennis Schuh, Deputy Legal Counsel, requested that DHS have more time to develop input regarding the Subcommittee's recommendation. The Study Committee requested these agencies to provide more information about their respective positions in advance of the next meeting.

### **Other Business**

Public Member Kempinen requested that the Study Committee discuss other recommendations to be included in the Study Committee's final report to the Joint Legislative Council at the December 18, 2014, meeting. Chair Hutton agreed to consider including recommendations to be included in the final report that either relate to criminal penalties but fall outside the Study Committee's scope or perhaps are within the scope, but the Study Committee does not have enough time to give further consideration.

Mr. Queensland provided a recap of the decisions made by the Study Committee and agreed to pass along the information requested of DOR and DHS to members as soon as it is available.

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<sup>3</sup> See DOJ memorandum, *Recommendations of the Subcommittee on Penalty Alignment and Organization*. Available at: <http://docs.legis.wisconsin.gov/misc/lc/study/2014/1191>.

<sup>4</sup> See DOR memorandum, *Recommendations of the Subcommittee on Penalty Alignment and Organization*. Available at: <http://docs.legis.wisconsin.gov/misc/lc/study/2014/1191>.

## **Adjournment**

The meeting was adjourned at 4:15 p.m.

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