



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF CRIMINAL PENALTIES

Legislative Council Conference Room
One East Main Street, Suite 401

December 18, 2014
10:00 a.m. - 1:15 p.m.

[The following is a summary of the December 18, 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>.]

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, Judge Scott Horne, Jill Karofsky, Ben Kempinen, Judge David Reddy, Michael Tobin, and Judge Donald Zuidmulder.

COMMITTEE MEMBER EXCUSED: Public Member Adam Gerol.

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

***ATTENTION:** This was the final meeting of the Study Committee on the Review of Criminal Penalties. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.

Approval of the Committee's November 12, 2014 Minutes

Judge Zuidmulder moved, seconded by Representative Neylon, to approve the minutes of the November 12, 2014 meeting. The motion passed on a unanimous voice vote.

Presentation of Memo No. 6, Options for Legislation

David Moore and Mike Queensland, Staff Attorneys, Legislative Council staff, presented Memo No. 6, *Options for Legislation*. This Memo addressed issues raised at the November 12, 2014, study committee meeting about the authority of law enforcement officers to issue citations for civil forfeitures and the discovery rules that apply in civil forfeiture actions.

The Study Committee decided to follow Judge Reddy's suggestion to direct committee staff to prepare a bill draft that would change current law so that any civil forfeiture action may be initiated by a citation under the procedure provided by s. 778.25, Stats., unless a different procedure is specifically prescribed. The committee also agreed to follow his suggestion that this draft modify current law to provide that the criminal procedure rules of discovery apply to any civil forfeiture proceeding initiated by the procedure under s. 778.25, Stats.

Discussion of Misdemeanor Classification Recommendations

Letter to Representative Rob Hutton, Chair, Study Committee on the Review of Criminal Penalties, from Nate Ristow, Legislative Advisor, Department of Revenue

The Study Committee discussed recommendations made by the Department of Revenue (DOR).¹ Nate Ristow, Legislative Advisor, DOR, was available to answer questions from Study Committee members. Following discussion of DOR's recommendations, there was consensus to modify the recommendations of the Subcommittee on Penalty Alignment and Organization, pertaining to misdemeanor offenses that are enforced by DOR, as follows:

- Retain current law for the following penalties regarding alcohol beverage law violations: ss. 125.28 (5) (d); 125.33 (7) (d); 125.54 (7) (c) 1.; 125.545 (7) (a) and (b); 125.66 (4); 125.69 (4) (d); and 125.69 (b) and (c), Stats.
- Provide that for second or subsequent violations of s. 134.65, Stats., relating to cigarette and tobacco products retailer licenses, where a person was also personally

¹ DOR submitted its recommendations to the Study Committee in a letter dated December 10, 2014. The letter is available on the Study Committee website: <http://docs.legis.wisconsin.gov/misc/lc/study/2014/1191>.

guilty of a failure to exercise due care to prevent the violation, the penalty is a Class C misdemeanor.

- Provide that the penalty for violations of s. 78.73 (3), Stats., relating to licenses issued under ch. 78, *Motor Vehicle and General Aviation Fuel Taxes*, is a Class C misdemeanor.
- Provide that the penalty for violations of s. 139.03 (5) (c), Stats., relating to transporting intoxicating liquor, is a Class B misdemeanor for first offenses and a Class A misdemeanor for second and subsequent offenses.

Memorandum, Subcommittee on Penalty Alignment and Organization Request, From Alex Ignatowski, Department of Health Services

The Study Committee discussed recommendations made by the Department of Health Services (DHS).² Alex Ignatowski, Legislative Liaison, and Dennis Schuh, Deputy Legal Counsel, DHS, were available to answer questions from Study Committee members. Following discussion, there was consensus to modify the recommendations of the Subcommittee on Penalty Alignment and Organization to retain current law for violations of all misdemeanors contained within ch. 49, Stats., *Public Assistance and Children and Family Services*.

Discussion of Delayed Effective Date

Mr. Queensland told the Study Committee the Office of the Director of State Courts had indicated that delaying the effective date of the bill draft would enhance the court system's ability to prepare for the changes the bill draft makes. The Study Committee agreed to delay the effective date of the bill until the first day of the seventh month beginning after publication.

Discussion of Recommendation for Introduction to the Joint Legislative Council

The Study Committee discussed rolling together each of the earlier recommendations into a final bill draft to serve as the Study Committee's recommendation to the Joint Legislative Council. The Study Committee directed staff to prepare a bill draft that includes: (1) the recommendations of the Subcommittees on Obsolete Misdemeanors and Penalty Alignment and Organization, as modified by the Study Committee; (2) the suggested changes to citation procedure and discovery rules for civil forfeitures discussed above; and (3) a delayed effective date.

Representative Spiros moved, seconded by Judge Zuidmulder, to recommend introduction of a bill draft containing these elements. The

² DHS submitted its recommendations to the Study Committee in a memorandum, available on the Study Committee website: <http://docs.legis.wisconsin.gov/misc/lc/study/2014/1191>.

motion passed on a vote of Ayes, 11 (Reps. Hutton, Neylon and Spiros; Sen. Risser; and Public Members Belzer, Horne, Kempinen, Reddy, Tobin, and Zuidmulder); Noes, 2 (Reps. Barnes and Riemer); Absent, 1 (Public Member Gerol); and Not Voting, 1 (Public Member Karofsky).

Other Business

The Study Committee discussed recommendations to be included in the Study Committee's final report to the Joint Legislative Council. Study Committee members suggested that the following issues deserve further study:

- Financial consequences of conviction. (Mr. Kempinen³)
- Expungement and conditional plea authority. (Mr. Kempinen and Mr. Belzer)
- Diversion programs and a victim's right to restitution. (Mr. Kempinen)
- Misdemeanor options for first-offense drug possession. (Mr. Kempinen)
- Criminal sentencing. (Judge Reddy)
- Consolidating or reorganizing regulatory misdemeanors that are similar to general statutes in the Criminal Code. (Mr. Tobin)

Chair Hutton thanked committee members for their participation on the committee and informed them that Legislative Council staff will combine the various recommendations that the Study Committee approved into one bill draft to be distributed to Study Committee members for final approval by a mail ballot.

Adjournment

The meeting was adjourned at 1:15 p.m.

MQ:ksm

³ Mr. Kempinen wrote three memoranda to the Study Committee on the Review of Criminal Penalties which provide more detail about the issues that he recommends the Legislature provide further study. [Available at: <http://docs.legis.wisconsin.gov/misc/lc/study/2014/1191>.]