



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SUBCOMMITTEE ON PENALTY ALIGNMENT AND ORGANIZATION

FROM: David Moore and Michael Queensland, Staff Attorneys

RE: Classification of Unclassified Misdemeanors

DATE: September 19, 2014

At the Subcommittee's August 6, 2014 meeting, the Subcommittee decided to recommend classifying the majority of misdemeanors that are currently unclassified. The Subcommittee adopted a two-step process to develop a proposal for classification: first, Legislative Council staff would assign each unclassified misdemeanor to a class according to the principles the Subcommittee developed; next, the Subcommittee would review these initial classifications and make any adjustments it deems necessary. The preliminary classifications for the Subcommittee's review accompanies this memorandum.

PROCESS FOR PRELIMINARY CLASSIFICATION

In developing the principles to guide the initial classification, the Subcommittee expressed its intention to defer to prior legislative determinations about the severity of offenses, and to organize unclassified misdemeanor offenses by using the three classes currently used in the Criminal Code. These classes and their corresponding penalties are as follows:

- Class A, punishable by a term of imprisonment not to exceed nine months, a fine not to exceed \$10,000, or both.
- Class B, punishable by a term of imprisonment not to exceed 90 days, a fine not to exceed \$1,000, or both.
- Class C, punishable by a term of imprisonment not to exceed 30 days, a fine not to exceed \$500, or both.

The Subcommittee directed that where the current punishment for an unclassified misdemeanor is exactly the same as the penalty prescribed for a particular class of misdemeanors, the crime be placed into that class. Many unclassified misdemeanors, however, have penalties do not fit exactly into the ranges of the three existing classes. The Subcommittee directed that these offenses be classified based on the amount of jail time prescribed under current law, reasoning the amount of jail time indicates legislative determinations about the severity of offenses more clearly than fine amounts. For these offenses, if the amount of jail time corresponded exactly to the amount of jail time prescribed for an existing class, the offense is preliminary placed within that class.

Where the maximum prescribed jail time lies between two existing classes or is greater than nine months, the Subcommittee directed that the crime be placed in the lower class or in Class A, respectively. In developing this principle, Subcommittee members articulated their desire to avoid creating periods of incarceration greater than prior Legislatures had determined were appropriate, and noted that the periods of incarceration provided by each of the classes is generally sufficient to cover most circumstances.

The Subcommittee further directed that misdemeanors that are currently punished by a fine only not be classified because classification would add, as a possible penalty, jail time for offenses the Legislature had previously chosen not to punish by incarceration. Finally, the Subcommittee determined it should avoid altering the penalties for certain offenses that the Legislature has either indicated a strong intent to treat differently than other types of offenses or offenses that may be politically controversial. Therefore, the Subcommittee directed that no changes be made to operating while intoxicated and drug offenses, or crimes related to elections and public officials.

GUIDE TO THE ATTACHED DOCUMENT

The attached document uses the chart contained in the Legislative Reference Bureau's publication STATUTORY MISDEMEANORS IN WISCONSIN (LRB 13-WB-5), which was previously distributed to the committee, and adds two columns to that chart: the columns titled "proposed class" and "notes."

The column titled "proposed class" indicates the class to which the offense has been preliminarily assigned. This column only contains a letter for offenses that are currently unclassified and which could be classified using the principles the Subcommittee developed. In a few cases this column contains a question mark. This indicates that it is not clear how the crime should be handled. In those instances, either the notes column or the addendum (if indicated by the notes column) explains the issue.

The column titled "notes" contains comments that may be relevant to the Subcommittee's review of these preliminary assignments. For efficiency's sake, these comments were generally limited to the following.

- **Same Penalty Range.** This comment means that when the misdemeanor was assigned to a class, the penalty did not change because the current penalty fit exactly into one of the three classes.

- **Fine Only/No Change.** This comment indicates that the misdemeanor is currently punishable by a fine only; therefore, the offense was not classified and the penalty was not altered.
- **Minimums Eliminated.** This means that classification of this offense would eliminate both minimum fines and minimum jail time prescribed by current law.
- **Minimum Fines Eliminated.** This means that classification of this offense would eliminate a minimum fine prescribed by current law.
- **Low Fine Increased.** This comment is used when applying the Subcommittee's classification principles substantially increased an existing fine. No set criteria were used to determine when this comment was used; however, generally it was used when classification increased a fine by several multiples.
- **High Fine Reduced.** This comment indicates that applying the classification principles substantially reduced an existing fine. As with the comment above, no set criteria determined when this was noted, but it generally appears when a fine was reduced by several multiples or when an existing fine was higher than the maximum provided for Class A misdemeanors.
- **Jail Time < Class C.** This means the current jail time prescribed is less than the period for a Class C misdemeanor. The Subcommittee's principles do not prescribe how these crimes should be treated.
- **See Addendum.** This comment was used for circumstances in which the Subcommittee will need to provide additional guidance.

The comments in the notes column are intended to assist the Subcommittee's review of the preliminary classifications by broadly categorizing common effects of applying the classification principles on current penalties and noting where these effects occurred. For example, the comments "Low Fine Increased" and "High Fine Reduced" are generally used where there is currently a significant disparity between the severity of the fine and the severity of the jail time prescribed. Accordingly, these comments may indicate areas in which subcommittee members may wish to give special attention when determining whether the preliminary class assignment appropriately captures the severity of that offense. Similarly, the comment "Same Penalty Range" indicates areas in which adjustment is less likely to be needed because assignment into the proposed class would not change the penalties at all. That said, the comments are neither exhaustive nor intended to confine the Subcommittee's review.

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

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Attachment