



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

Memo No. 7

TO: MEMBERS OF THE STUDY COMMITTEE ON THE PRESERVATION OF BURIAL SITES

FROM: Anna Henning, Senior Staff Attorney, and Amber Otis, Staff Attorney

RE: Penalties for Violations of the Burial Sites Preservation Law

DATE: December 1, 2016

This Memo summarizes statutory penalties for violations of s. 157.70, Stats., the burial sites preservation law. Those statutory penalties were last modified during the 1989 and 1991 Legislative Sessions. The Memo also provides potential options for modifying current law.¹

SUMMARY OF PENALTIES UNDER CURRENT LAW

Under current law, violations of the burial sites preservation law are generally punishable by civil forfeiture. The amount of the forfeiture varies based on the nature of the violation. Additional criminal penalties apply to certain actions taken for commercial gain.

Amounts of Civil Forfeitures

Current law provides for the following civil forfeitures:

- Not less than \$100 nor more than \$1,000 for failing to report a disturbance to a burial site (or contiguous cataloged land).

¹ In addition to the penalties discussed in this Memo, current law also provides for a civil remedy to prevent a disturbance to a burial site. Any person may bring an action for an injunction to prevent further disturbance to a burial site (or cataloged land contiguous to a burial site). A person who is found to have intentionally disturbed a burial site, without authorization from the state, is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving a burial site or reintering human remains in the burial site. [s. 157.70 (8), Stats.]

- Not less than \$500 nor more than \$2,000 for intentional, unauthorized disturbance of an undedicated² and uncataloged burial site for which the person has not received a notice from the Wisconsin Historical Society (WHS) Director.
- Not less than \$1,000 nor more than \$10,000 for intentional, unauthorized disturbance of an uncataloged burial site that has been dedicated or for which the person has received notice from the WHS Director.
- Not less than \$1,000 nor more than \$10,000 for intentional, unauthorized disturbance of a cataloged burial site.

[s. 157.70 (10) (a) to (d), Stats.]

Criminal Penalty Applicable to Disturbances for Commercial Gain

Any person who disturbs a burial site for commercial gain may be fined an amount not to exceed two times the gross value gain or two times the gross loss caused by the disturbance, whichever is greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or imprisoned for one year in the county jail, or both. [s. 157.70 (10) (e), Stats.]

OPTIONS

The committee may wish to consider the following options regarding penalties for violations of the burial sites preservation law:

- Retain the penalties set forth under current law.
- Increase the penalties set forth under current law. If the committee chooses to explore this option, it may wish to consider the following questions:
 - Should the amounts of the civil forfeitures be increased, or should one or more penalties instead be replaced with criminal penalties?
 - If one or more of the penalties is replaced with a criminal penalty, what level of criminal penalty should apply?³
- Modify the penalties in another manner.

AH:AO:ty

Attachment

² An undedicated burial site is a burial site that is not platted as a cemetery. [s. 157.70 (1) (cm), Stats.]

³ The attached excerpt from the "2017-18 Wisconsin Legislator Briefing Book" may prove useful as the committee considers specific penalty options.

Classes of Crimes

Violations of Wisconsin law are categorized as felonies, misdemeanors, or forfeiture offenses. A felony is a crime punishable by imprisonment of one year or more, whereas a misdemeanor is a crime punishable by less than one year of imprisonment. The criminal penalties for felony and misdemeanor offenses include fines, imprisonment, or a combination of the two. A forfeiture offense is not defined as a “crime,” because it is only punishable by a monetary forfeiture. These types of violations are sometimes referred to as “civil offenses.” [s. 939.60, Stats.]

Wisconsin has enacted several major revisions of its system for categorizing and punishing crimes. The state first attempted to create a uniform crime classification system more than 30 years ago. In 1978, legislation went into effect that placed crimes and forfeiture offenses appearing in the Wisconsin Criminal Code into uniform penalty classes. This law created five classes of felonies, three classes of misdemeanors, and four classes of forfeitures.

In 1997, another major revision of the state’s crime classification system was enacted and implemented as part of the system referred to as “Truth-in-Sentencing.” The system increased penalties for all felonies by 50%, or one year, whichever was greater. The provisions of the 1997 law apply to offenses committed on or after December 31, 1999, but before February 1, 2003.

The “Truth-in-Sentencing” system was revised in 2001. This revision provided that crimes committed on or after February 1, 2003, are subject to a revised felony classification system that created nine classes of felonies. One result of the multiple revisions over time is that the applicable penalties for a crime vary, depending upon the date a particular crime was committed.

The classes of misdemeanors¹ and their penalties within the Criminal Code are as follows:

Maximum Penalties for Misdemeanors

Misdemeanor	Fine	Term of Imprisonment
Class A	\$10,000	9 months
Class B	\$1,000	90 days
Class C	\$500	30 days

[s. 939.51, Stats.]

¹ Nearly all of the misdemeanors located within the Criminal Code -- chs. 939 to 951, Stats. -- and all felonies in the statutes (with the exception of three offenses) are “classified.” That is, each offense is assigned to a class that corresponds to a penalty range. Misdemeanors that are codified in the portions of the Wisconsin statutes outside the Criminal Code are not classified. For unclassified offenses, penalties are established separately for each offense.

The classes of felonies and their penalties are as follows:

**Maximum Sentence for Felonies
(Confinement in Prison Plus Parole or Extended Supervision)**

Crimes Committed 2/1/03 and After		Crimes Committed 12/31/99 to 1/31/03		Crimes Committed Before 12/31/99
Class	Sentence	Class	Sentence	Sentence
Class A	Life	Class A	Life	Life
Class B	60 years			
Class C	40 years	Class B	60 years	40 years
Class D	25 years	Class BC	30 years	20 years
Class E	15 years			
Class F	12.5 years	Class C	15 years	10 years
Class G	10 years			
Class H	6 years	Class D	10 years	5 years
Class I	3.5 years	Class E	5 years	2 years

[s. 939.50, Stats.; and s. 939.50, 1997 and 2001, Stats.]

Maximum Fines for Felonies

Class	Crimes Committed 2/1/03 and After	Class	Crimes Committed Before 2/1/03
Class A	N.A.	Class A	N.A.
Class B	N.A.		
Class C	\$100,000	Class B	N.A.
Class D	\$100,000	Class BC	\$10,000
Class E	\$50,000		
Class F	\$25,000	Class C	\$10,000
Class G	\$25,000		
Class H	\$10,000	Class D	\$10,000
Class I	\$10,000	Class E	\$10,000

[s. 939.50, Stats.; and s. 939.50, 2001 Stats.]