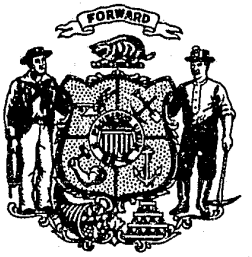

MAJOR CRIME LEGISLATION ENACTED DURING THE SPRING 1994 LEGISLATIVE SESSION (1993 WISCONSIN ACTS 189, 194, 219, 227, 289 AND 441)

Information Memorandum 94-4

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Information Memorandum 94-4*

MAJOR CRIME LEGISLATION ENACTED DURING THE SPRING 1994 LEGISLATIVE SESSION (1993 WISCONSIN ACTS 189, 194, 219, 227, 289 and 441)

INTRODUCTION

This Information Memorandum describes major crime legislation enacted into law during the Spring 1994 Legislative Session (1993 Wisconsin Acts 189, 194, 219, 227, 289 and 441). Rather than describing the Acts in chronological order, the descriptions are organized to highlight Acts directed at repeat serious felony offenders.

Copies of all of the Acts referred to in this Information Memorandum may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

This Memorandum is divided into the following parts:

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* This Information Memorandum was prepared by Shaun Haas, Senior Staff Attorney, Legislative Council Staff.

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PART I

1993 WISCONSIN ACT 289, RELATING TO PERSISTENT SERIOUS FELONY OFFENDERS AND PROVIDING PENALTIES

This Part of the Memorandum analyzes 1993 Wisconsin Act 289, relating to serious felony offenders and providing penalties. **Act 289 took effect on April 28, 1994.**

A. BACKGROUND

1. Penalty Enhancer for Repeat Criminal Offenders

Under current law, a person convicted of a crime may receive an increased term of imprisonment (a penalty enhancer) if he or she is a **repeat criminal offender.** Current law provides that if a person was convicted of one felony or three misdemeanors (on separate occasions) in the five-year period before the current offense, the person is subject to penalty increases that vary from an additional two years to an additional 10 years, depending on the maximum of the current offense and the type of prior offenses [see s. 939.62 (1), (2) and (3), Stats.].

2. Parole Eligibility Determination for Certain Serious Offenders ("Life Means Life" Provision)

Under current law, a person convicted of any crime punishable by life imprisonment must be sentenced to a term of **life imprisonment.** Additionally, when a court sentences a person to life imprisonment, the court is required to make a **parole eligibility** determination regarding the person. This means that the court may decide to allow eligibility to be determined according to a statutory formula, which provides that an inmate serving life imprisonment is **eligible for parole release consideration** by the Parole Commission after serving 20 years. If the inmate complies with prison rules and performs required duties, the parole eligibility date is advanced to 13 years and four months of the time served. In the alternative, the court is authorized to **set a date** for parole eligibility that must be later than the date that the person would be eligible under the statutory formula [s. 973.014, Stats., the so-called "life means life" provision]. Crimes punishable by life imprisonment are: first-degree intentional homicide [s. 940.01, Stats.], treason [s. 946.01, Stats.], kidnapping under certain circumstances [s. 940.31, Stats.], taking hostages [s. 940.305, Stats.], tampering with household products where such tampering causes death to another [s. 941.327 (2) (b) 4, Stats.] and "carjacking" which causes death to another [s. 943.23 (1r), Stats.].

B. 1993 WISCONSIN ACT 289

1. Status as Persistent Repeat Serious Felony Offender Repeater; Life Imprisonment Without Parole

1993 Wisconsin Act 289 creates a so-called "three strikes and you're out" or "three strikes and you're in" provision in the Criminal Code [s. 939.62 (2m), Stats.]. The Act creates a persistent repeater category which provides that, for a person who is a persistent repeater, the term of imprisonment for the felony for which the person presently is being sentenced **is life imprisonment without the possibility of parole.**

Under the Act, a person is subject to this persistent repeater status if:

a. He or she is currently being sentenced for a **serious felony** (as defined in item 2, below) and has had **convictions on two or more separate occasions for serious felonies preceding the current serious felony violation.**

b. Of the two or more prior convictions, at least one conviction must have occurred before the date of the violation of at least one of the other serious felony violations for which the person was previously convicted.

2. Definition of "Serious Felony"

Under Act 289, "**serious felony**" is defined to mean any of the following:

a. Any felony punishable by a maximum prison term of **30 years or more** involving the manufacture or delivery; possession with intent to manufacture or deliver; or conspiracy to manufacture or deliver large quantities of cocaine; cocaine base ("crack"); amphetamine, phencyclidine ("PCP") or methcathinone ("cat"); or heroin. These offenses are set forth in s. 161.41 (1), (1m) and (1x), Stats.

b. First-degree intentional homicide [s. 940.01, Stats.].

c. First-degree reckless homicide [s. 940.02, Stats.].

d. Felony murder [s. 940.03, Stats.].

e. Second-degree intentional homicide [s. 940.05, Stats.].

f. Homicide by intoxicated use of a vehicle [s. 940.09 (1), Stats.].

g. Aggravated battery [s. 940.19 (2), Stats.].

h. Mayhem [s. 940.21, Stats.].

i. First- or second-degree sexual assault [s. 940.225 (1) or (2), Stats.].

j. Taking hostages [s. 940.305, Stats.].

k. Kidnapping [s. 940.31, Stats.].

l. Causing death by tampering with household products [s. 941.327 (2) (b) 4, Stats.].

m. Arson of buildings; damage of property by explosives [s. 943.02, Stats.].

n. Armed burglary; burglary involving explosives or battery [s. 943.10 (2), Stats.].

o. Use or threat of force or dangerous weapon in a motor vehicle theft ("carjacking" crime created by 1993 Wisconsin Act 92) [s. 943.23 (1g), (1m) or (1r), Stats.].

p. Armed robbery [s. 943.32 (2), Stats.].

q. Assault by prisoners [s. 946.43, Stats.].

r. First- or second-degree sexual assault of a child [s. 948.02 (1) or (2), Stats.].

s. Intentional causation of great bodily harm to a child [s. 948.03 (2) (a) or (c), Stats.]

t. Sexual exploitation of a child [s. 948.05, Stats.].

u. Incest with a child [s. 948.06, Stats.].

v. Child enticement [s. 948.07, Stats.].

w. Soliciting a child for prostitution [s. 948.08, Stats.].

x. Abduction of another's child by force or threat of force [s. 948.30 (2), Stats.].

y. Soliciting a child to commit a Class A felony (i.e., a felony punishable by life imprisonment) or a Class B felony (i.e., now a felony punishable by imprisonment not to exceed **40 years**; see 1993 Wisconsin Act 194, discussed in Part II, A, 2 of this Memorandum [s. 948.35 (1) (b) or (c), Stats.].

z. Use of a child to commit a Class A felony [s. 948.36, Stats.].

aa. The solicitation, conspiracy or attempt to commit a Class A felony [s. 939.30, 939.31 or 939.32, Stats.].

bb. A crime at any time under **federal law or the law of any other state** or, prior to the effective date of the Act, under the law of this state that is **comparable to a crime specified above.**

The Act specifies that it is immaterial that the sentence for a previous conviction or the order for a previous conviction was stayed, withheld or suspended, or that the violator was pardoned, unless the pardon was granted on the grounds of innocence.

The Act also specifies that if a prior conviction is being considered as being covered under item bb, above (violation of comparable federal law or law of another state), the conviction may be counted as a prior conviction only if the court determines, **beyond a reasonable doubt**, that the violation relating to that conviction would constitute a "serious felony," if committed by an adult in this state.

3. Destruction of Case Record if No Parole Eligibility Date

Under **current law**, any case record of a felony punishable by life imprisonment or a related case may be destroyed, after the defendant's parole eligibility date or 50 years after the commencement of the action, whichever occurs later [s. 978.07 (1) (c) 1, Stats.].

Under **Act 289**, if there is **no parole eligibility date** (as is the case with a person sentenced as a persistent repeater under the Act), the district attorney may destroy the case record **after the defendant's death.**

4. Sentencing: Fiscal Impact Study

Act 289 requires the Department of Administration (DOA) to monitor and study sentencing in Wisconsin for the period beginning on June 1, 1995 and ending on June 1, 1997 to assess the **fiscal impact** of the Act on district attorneys, the courts, the Office of the State Public Defender, the Department of Justice and the Department of Corrections. The DOA is required to **report the results** of its study to the Legislature by **August 1, 1997.**

5. Initial Applicability

The Act specifies that it **first applies** to serious felonies committed on or after its effective date, but does not preclude the counting of other serious felonies as prior serious felonies for sentencing a person as a repeater under the new "persistent repeat serious felony offender" provision.

PART II

1993 WISCONSIN ACT 194, RELATING TO THE MAXIMUM TERM OF IMPRISONMENT FOR CLASS B FELONIES; PAROLE ELIGIBILITY FOR PERSONS CONVICTED OF CERTAIN CRIMES; AND ELIGIBILITY FOR MANDATORY RELEASE ON PAROLE FOR PERSONS CONVICTED OF CERTAIN CRIMES

This Part of the Memorandum analyzes 1993 Wisconsin Act 194, relating to the maximum term of imprisonment for Class B felonies; parole eligibility for persons convicted of certain crimes; eligibility for mandatory release on parole for persons convicted of certain crimes; and providing penalties. **Act 194 took effect on April 21, 1994.**

A. CLASS B FELONY PENALTY

1. Background

Currently, Wisconsin uses an indeterminate sentencing system for most crimes. Under an indeterminate sentencing system, the penalties for a crime are expressed in terms of a maximum fine or imprisonment, or both. Upon conviction, the sentencing judge may impose a sentence of a fine or imprisonment, or both, within the statutory range.

For purposes of the crimes specified in the Criminal Code [chs. 939 to 948, Stats.], a **penalty classification system** has been established [see ss. 939.50, 939.51 and 939.52, Stats.]. Five classifications (Class A, B, C, D and E) apply to felonies under the Criminal Code, with imprisonment penalties ranging from life imprisonment (Class A felony) to two years (Class E felony).

Currently, a person who is convicted of a **Class B felony** may be imprisoned **for not more than 20 years.** Class B felonies currently include first-degree reckless homicide [s. 940.02, Stats.], second-degree intentional homicide [s. 940.05, Stats.], mayhem [s. 940.21, Stats.], first-degree sexual assault [s. 940.225 (1), Stats.], taking hostages under certain circumstances [s. 940.305, Stats.], kidnapping under certain circumstances [s. 940.31, Stats.], arson of buildings [s. 943.02, Stats.], armed burglary [s. 943.10 (2), Stats.], "carjacking" [s. 943.23 (1g) and (1m), Stats.], armed robbery [s. 943.32 (2), Stats.], first-degree sexual assault of a child under the age of 13 years [s. 948.02 (1), Stats.], abduction of a child by force or threat of force [s. 948.30 (2), Stats.] and solicitation of a child to commit a felony under certain circumstances [s. 948.35 (1) (b), Stats.].

2. Class B Felony Penalty Under Act; Initial Applicability

Under Act 194, a person convicted of a Class B felony may be imprisoned **for not more than 40 years.** This increased penalty **first applies** to offenses occurring on the effective date of the Act.

B. PAROLE ELIGIBILITY DETERMINATION

1. Background

Under current law, a person serving a sentence in a state prison usually has three possible ways of being released on parole: discretionary parole release, special action parole release and mandatory parole release. An inmate reaches the **mandatory** parole release date, which is set by statute at 2/3rds of the sentence imposed, if this date is not extended by the failure of the inmate to comply with prison rules or perform required duties [s. 302.11, Stats.]. The **special action** parole release system enables the DOC to "relieve crowding in the state prisons" by releasing nonassaultive prisoners to parole supervision [s. 304.02, Stats.]. The **discretionary** parole release system allows the Parole Commission to parole a prison inmate when he or she has served 25% of the sentence imposed for most crimes, or six months, whichever is greater [s. 304.06 (1) (b), Stats.].

The statutory formula for discretionary parole release, that is applicable to most crimes, is inapplicable to persons convicted of any crime punishable by life imprisonment. When a court sentences a person to **life imprisonment**, the court is required to make a **parole eligibility determination** regarding the person. This means that the court may decide to allow parole eligibility to be determined according to a **statutory formula**, which provides that an inmate serving life imprisonment is eligible for parole release consideration by the Parole Commission after serving **20** years. If the inmate complies with prison rules and performs required duties, the parole eligibility date is advanced to **13 years and four months** of the time served. In the alternative, the court is authorized to **set a date** for parole eligibility that must be later than the date that the person would be eligible under the statutory formula [s. 973.014, Stats.; the so-called "life means life law"]. For example, the court could set a parole eligibility date of 70 years.

2. Parole Eligibility Determination Under Act 194

Act 194 allows a court to set the date on which certain "prior offenders" who are convicted of "serious felonies" will be eligible for discretionary parole release consideration by the Parole Commission. The Act uses the definition of "serious felony" that is contained in Act 289, relating to sentences for persistent repeat felony offenders, as described in Part I, B, 2 of this Memorandum. The Act **defines "prior offender"** to mean a person who has previously been convicted of a serious felony and was sentenced to more than one year imprisonment as a result of that conviction.

Under the Act, when sentencing a prior offender for a serious felony, a judge may either: (a) order that the person is eligible for discretionary parole according to the **statutory formula**; or (b) **set a date on which the inmate is eligible for discretionary parole release consideration.**

If the court chooses to set a parole eligibility date, the court may not set a date that occurs before the person would be eligible for discretionary parole under the statutory formula or a date that occurs after the person would be eligible for mandatory parole release.

3. Initial Applicability

The authority of a court to set the discretionary parole eligibility date for certain repeat offenders **first applies** to "serious felonies" committed on or after the effective date of the Act, but does not preclude the counting of other serious felonies, regardless of when those felonies occurred, for the purpose of determining the offender's status as a "prior offender."

C. PRESUMPTIVE MANDATORY RELEASE

1. Background

Under current law, a person serving a sentence in a state prison **is entitled to mandatory release** on parole after serving 2/3rds of the sentence, except that a person who violates prison regulations or refuses or neglects to perform required or assigned duties is subject to an extension of the date on which he or she is entitled to mandatory release. In addition, a person serving a life sentence is **not entitled** to mandatory release and a person serving a sentence of imprisonment for a crime punishable by a minimum sentence is **not entitled** to mandatory release until he or she has served that minimum sentence.

2. Presumptive Mandatory Release Under Act 194

Act 194 makes mandatory release **presumptive** for a person who is serving a sentence for a "serious felony." Serious felonies covered under this provision of Act 194 are the same as the felonies included in the definition of "serious felony" under the persistent repeat felony offender provision of Act 289, which is described in Part I, B, 2 of this Memorandum, except for the exclusion of serious felonies punishable by life imprisonment, as these felons are not eligible for mandatory release.

Act 194 authorizes the Parole Commission to deny parole to a person who is entitled to presumptive mandatory release: (a) in order to protect the public; or (b) because the person has refused to participate in counseling or treatment that the social service and clinical staff of the institution determines is necessary for the inmate.

If the Parole Commission does not deny the person presumptive mandatory release, the person is released on parole. The Act provides that a person who has been denied presumptive mandatory release by the Parole Commission may seek a review of that denial by writ of certiorari in the circuit court in which the person was sentenced.

3. Initial Applicability

The presumptive mandatory release date feature of the Act **first applies** to an inmate who is serving a sentence for a "serious felony" committed on or after the effective date of the Act.

PART III

1993 WISCONSIN ACT 227, RELATING TO SEXUAL ASSAULT

This Part of the Memorandum analyzes 1993 Wisconsin Act 227, relating to sexual assault and providing penalties. **Act 227 took effect on April 23, 1994.**

A. BACKGROUND

The penalties for sexual assault vary depending on the circumstances of the sexual assault. Under s. 948.02 (1), Stats., a person commits **first-degree sexual assault** of a child if he or she has sexual contact or sexual intercourse with a person **who has not obtained the age of 13 years.** The violator is guilty of a **Class B felony**, punishable by imprisonment not to exceed 40 years (maximum penalty increased under 1993 Wisconsin Act 194; see discussion in Part II, A, 2 of this Memorandum). Under s. 948.02 (2), Stats., a person commits **second-degree sexual assault** of a child if he or she has sexual contact or sexual intercourse with a person **who has not obtained the age of 16 years.** The violator is guilty of a **Class C felony**, punishable by a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both. The definitions of "sexual contact" and "sexual intercourse" applicable to these provisions are set forth in s. 948.01 (5) and (6), Stats.

B. 1993 WISCONSIN ACT 227

1. New Crime of Repeated Acts of Sexual Assault of the Same Child

1993 Wisconsin Act 227 creates a **new crime** relating to engaging in **repeated acts of sexual assault of the same child.** Under the Act, whoever commits **three or more** violations under s. 948.02 (1) (first-degree sexual assault of a child) or 948.02 (2) (second-degree sexual assault of a child), Stats., within a **"specified period of time"** and involving the **same child** is guilty of a **Class B felony.** That is, any person who commits three or more sexual assaults of a child who is younger than 16 years of age over a period of time specified in the charging documents (i.e., criminal complaint and information) may be imprisoned for not more than 40 years.

The Act specifies that if an action under the new prohibition is tried to a jury, in order to find the defendant guilty, the members of a jury must **unanimously** agree that at least three violations occurred within the specified time period, but need not agree on which acts constitute the requisite number.

The Act specifies that the state may not charge, **in the same action**, a defendant with a violation of the new prohibition **and** with a felony violation involving the same child under ch. 944 (crimes against sexual morality), Stats., or a violation involving the same child under s. 948.02 (sexual assault of a child), 948.05 (sexual exploitation of a child), 948.06 (incest with a child),

948.07 (child enticement), 948.08 (soliciting a child for prostitution), 948.10 (exposing genitals or pubic area), 948.11 (exposing a child to harmful material) or 948.12 (possession of child pornography), Stats., **unless the other violation occurred outside of the time period within which a violation of the new prohibition is specified to have occurred.**

2. Application of Related Statutes

Act 227 specifies that a number of provisions currently applicable to the child sexual assault statute [s. 948.02, Stats.] also apply to the new prohibition relating to repeated acts of sexual assault of the same child, including:

a. Inclusion of this provision as a compensable act under the Crime Victim Compensation Act [ch. 949, Stats.].

b. Inclusion of the crime as a "violent crime" and a "serious crime" for purposes of the bail provisions in ch. 969, Stats.

c. Inclusion of the new prohibition in the rape shield statute [s. 972.11 (2) (b), Stats.], which specifies that if the defendant is accused of a crime under the sexual assault statutes, any evidence concerning the complaining witness's prior sexual conduct or opinions of the witness's prior sexual conduct and reputation as to prior sexual conduct may not be admitted into evidence during the hearing or trial.

d. Requiring deoxyribonucleic acid (DNA) testing and sex offender registration.

3. Statute of Limitations

Lastly, Act 227 extends the statute of limitations for prosecutions of the new crime of repeated acts of sexual assault of a child to the later of six years (the statute of limitations generally applicable to felony offenses) or the **day before the victim's 25th birthday**, whichever is later.

Note that Act 219, described in Part IV of this Memorandum, provides that the time limitation for prosecutions involving sexual assault and certain other serious crimes against children is before the victim reaches the age of **26**. In prosecutions for the new crime of repeated sexual assault of a child created under Act 227 (a crime not listed in Act 219), the prosecution must, if the normal six-year felony time period has passed, be commenced the day before the victim's **25th birthday**. Thus, a different statute of limitations provisions applies if the prosecution is for the new crime of repeated sexual assault of a child created under Act 227.

4. Initial Applicability

Act 227 **first applies** to offenses committed on or after its effective date.

PART IV

1993 WISCONSIN ACT 219, RELATING TO TIME LIMITATIONS FOR PROSECUTIONS OF CRIMES AGAINST CHILDREN

This Part of the Memorandum analyzes 1993 Wisconsin Act 219, relating to time limitations for prosecutions of crimes against children. **Act 219 took effect on April 22, 1994.**

A. BACKGROUND

Current law provides various time limitations (referred to as "statutes of limitation") within which a criminal action may be commenced. Generally, the statutes of limitation applicable in criminal cases are six years for felonies and three years for misdemeanors, as measured from the dates when the crimes were committed [s. 939.74 (1), Stats.]. In particular, a prosecution for a violation of sexual assault of a child [s. 948.02, Stats.], physical abuse of a child [s. 948.03, Stats.], causing mental harm to a child [s. 948.04, Stats.], sexual exploitation of a child [s. 948.05, Stats.], incest with a child [s. 948.06, Stats.], child enticement [s. 948.07, Stats.] or soliciting a child for prostitution [s. 948.08, Stats.] must be commenced by the **later** of: (1) six years from the date of the violation (the general time limit applicable to felony offenses); or (2) the day before the victim's 21st birthday [s. 939.74 (1) and (2) (c), Stats.].

B. 1993 WISCONSIN ACT 219

1. Statute of Limitations

1993 Wisconsin Act 219 provides that a prosecution for a violation of the serious crimes against children described in Section A, above (sexual assault of a child, physical abuse of a child, causing mental harm to a child, sexual exploitation of a child, incest with a child, child enticement and soliciting a child for prostitution) must be commenced by the **day before the victim's 26th birthday** or else be barred.

2. Initial Applicability

Act 219 **first applies** to offenses that are not barred from prosecution on the effective date of the Act.

PART V

1993 WISCONSIN ACT 441, RELATING TO BATTERY CAUSING SUBSTANTIAL BODILY HARM

This Part of the Memorandum analyzes 1993 Wisconsin Act 441, relating to battery and providing penalties. **Act 441 takes effect on May 10, 1994.**

A. BACKGROUND

Under current law, battery is punishable by a range of crime classifications that vary from a Class A misdemeanor to a Class D felony, depending on: (1) the type of harm the victim suffers (i.e., "bodily harm" or "great bodily harm"); (2) the type of harm the offender intends to inflict; and (3) special circumstances, such as when the victim is a peace officer. Also, under current law, a person who causes bodily harm by conduct that creates a high probability of great bodily harm is guilty of a Class E felony. The law recognizes two situations (involving the victim's age or physical disability) under which there is rebuttable presumption that certain conduct creates a **substantial risk** of great bodily harm [ss. 940.19, 940.20, 940.203 and 940.205, Stats.].

B. 1993 WISCONSIN ACT 441

1. Treatment of Battery Causing Substantial Harm

1993 Wisconsin Act 441 restructures the current basic battery statute [s. 940.19, Stats.] and creates a middle category of battery, covering situations in which the harm is temporary but substantial. Specifically, the Act recognizes and defines battery causing "**substantial bodily harm.**" "Substantial bodily harm" is defined to mean "...bodily injury that causes a laceration that requires stitches; any fracture of a bone; a burn; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth."

This degree of harm recognized in the definition of "substantial bodily harm" is greater than "bodily harm" and less than "great bodily harm," as these terms are defined currently.

The statutory definitions of "bodily harm" and "great bodily harm," which are unaffected by the Act, are set forth in current s. 939.22 (4) and (14), Stats., and have the following meanings:

a. "**Bodily harm**" means physical pain or injury, illness, or any impairment of physical condition.

b. "**Great bodily harm**" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

The Act penalizes battery causing substantial bodily harm, depending on the **intent** of the offender and the **degree of harm** caused to the victim. Under the Act, it is a:

a. **Class E felony** (punishable by a fine not to exceed $10,000 or imprisonment not to exceed two years, or both) to cause **substantial bodily harm** to another by an act done **with intent to cause bodily harm** to that person or another.

b. **Class D felony** (punishable by a fine not to exceed $10,000 or imprisonment not to exceed five years, or both) to cause **substantial bodily harm** to another by an act done **with intent to cause substantial bodily harm** to that person or another.

c. **Class C felony** (punishable by a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both) to cause **great bodily harm** to another by an act done **with intent to cause either substantial bodily harm or great bodily harm** to that person or another.

2. Initial Applicability

Act 441 **first applies** to offenses occurring on or after its effective date.

PART VI

1993 WISCONSIN ACT 189, RELATING TO FLEEING OR ATTEMPTING TO ELUDE A TRAFFIC OFFICER AND IMPOSING LIABILITY UPON THE OWNER OF A VEHICLE FOR FLEEING A TRAFFIC OFFICER

This Part of the Memorandum analyzes 1993 Wisconsin Act 189, relating to fleeing or attempting to elude a traffic officer, imposing liability upon the owner of a vehicle for fleeing a traffic officer and providing penalties. **Act 189 took effect on April 21, 1994.**

A. BACKGROUND

1. Penalty for Knowingly Fleeing or Attempting to Elude a Traffic Officer

Under current law, the operator of a vehicle who knowingly flees or attempts to elude a traffic officer after receiving a visual or audible signal from either the officer or a marked police vehicle must be fined not less than $300 nor more than $2,000 and may be imprisoned not more than one year in the county jail.

Current law specifies that:

a. If the violation results in bodily harm to another or causes damage to the property of another, the **minimum fine** is increased to $500.

b. If the violation results in great bodily harm to another, the violator must be fined not less than **$600** nor more than **$10,000** and may be imprisoned for not more than **two years**.

c. If the violation results in the death of another, the fine is the same as for a violation that results in great bodily harm to another, but the **maximum term** of imprisonment is **five years** [s. 346.17 (3), Stats.].

2. Liability of the Owner of a Vehicle for Certain Traffic Violations

Current law authorizes, under certain circumstances, the imposition of a civil penalty (forfeiture) on the owner of a vehicle that illegally passes a school bus stopped on a street or highway with its red warning lights flashing or fails to stop when directed by a school crossing guard at a school crossing [ss. 346.465 and 346.485, Stats.]. The school bus operator or school crossing guard who observes the violation is required to prepare a written report of the violation. Subsequently, a traffic officer who receives a report may prepare a uniform traffic citation and personally serve it upon the owner of the vehicle. If the owner cannot be served, service may be accomplished by leaving a copy of the citation at the owner's residence, or if the owner lives

outside the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address. The law recognizes several **defenses** to this vicarious liability (i.e., liability for the acts of another) provision:

a. The vehicle was reported stolen;

b. The vehicle owner provides the traffic officer with the name and address of the person operating the vehicle at the time of the violation and the person so named admits operating the vehicle at the time of the violation;

c. The vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of the lessee; and

d. The vehicle is owned by a motor vehicle dealer and at the time of the violation the vehicle was being operated by any person on a trial run.

B. 1993 WISCONSIN ACT 189

1. Penalty for Knowingly Fleeing or Attempting to Elude a Traffic Officer

Act 189 **increases the maximum penalties** applicable to an operator of a vehicle who knowingly flees or attempts to elude a traffic officer after receiving a visual or audible signal from either the officer or a marked police vehicle. Under Act 189, regardless of whether or not the violation causes bodily harm to another or damages the property of another, the maximum fine is increased from $2,000 to **$10,000** and the maximum term of imprisonment is increased from one year in the county jail to **two years in the state prison system.**

2. Liability of the Owner of a Vehicle for Fleeing or Attempting to Elude a Traffic Officer

Act 189 imposes upon the owner of a vehicle liability for fleeing a traffic officer under certain circumstances. This vicarious liability provision is similar to the liability imposed on the owner of a vehicle which is reported to have illegally passed a school bus or failed to stop as directed by a school crossing guard [ss. 346.465 and 346.485, Stats.].

Under this feature of Act 189, a traffic officer may either: (a) pursue a vehicle that fails to stop in response to an audible or visual signal by the traffic officer or a marked police vehicle; or (b) instead of pursuing the vehicle, the traffic officer may **within 72 hours** after observing the violation, investigate the violation and prepare a uniform traffic citation under s. 345.11, Stats., for the violation.

If the officer elects option b, above, within 96 hours after the violation is observed, any traffic officer employed by the authority issuing the citation, may personally serve the citation upon the owner of the vehicle. If with reasonable diligence the owner of the vehicle cannot be personally served, service may be made by leaving a copy of the citation at the owner's usual place

of abode within this state in the presence of a competent member of the family at least 14 years of age, who must be informed of the contents of the citation. If with reasonable diligence the owner of the vehicle cannot be personally served or served at his or her place of abode or if the owner lives outside the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address.

The owner of a vehicle that is used to flee a traffic officer is subject to a **civil penalty** (forfeiture) of not less than $300 nor more than $1,000. The vehicle owner's operating privilege may **not** be suspended or revoked and **no demerit points** may be recorded against the operator's operating record.

The Act provides that the owner of a vehicle that is used to flee a traffic officer has a **defense** to liability for the violation if:

a. The vehicle was reported stolen to a traffic officer before the violation occurred or within a reasonable time after the violation occurred.

b. The owner of the vehicle provides the traffic officer with the name and address of the person operating the vehicle or having the vehicle under his or her control at the time of the violation and there is sufficient information for the officer to determine that probable cause does not exist to believe that the owner of the vehicle was operating the vehicle at the time of the violation.

c. The vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee who is identified by the lessor.

d. The vehicle is owned by a new or used motor vehicle dealer and at the time of the violation the vehicle was being operated by or was under the control of any person on a trial run and the dealer provides information identifying the operator.

The **vehicle owner's defenses** to liability, recognized in Act 189, are similar to the defenses recognized in ss. 346.465 (5) and 346.485 (5), Stats., relating to a vehicle owner's liability for failing to stop at the direction of a school crossing guard or illegally passing a school bus, as described in Section A, above. One difference is that the defense that arises if the owner of the vehicle provides the traffic officer with the name and address of the person operating the vehicle at the time of the violation is available under the school crossing and school bus statutes only if the person identified as the operator **admits** to operating the vehicle at the time of the violation [ss. 346.465 (5) (b) 1. m. and 346.485 (5) (b) 1. m., Stats.]. Under item b, above, the defense that arises if the owner of the vehicle identifies the operator of the vehicle at the time of the violation is available regardless of whether the alleged operator admits to operating the vehicle at the time of the violation, provided that there is sufficient information for the officer to determine that probable cause does not exist to believe that the owner of the vehicle was operating the vehicle at the time of the violation.

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