



1995 ASSEMBLY BILL 594

October 2, 1995 - Introduced by Representatives KAUFERT, FOTI, DOBYNS, ZIEGELBAUER, ALBERS, HOVEN, KELSO, VRAKAS, HANDRICK, SERATTI, GUNDERSON, WARD, GARD, LADWIG, AINSWORTH, F. LASEE and OLSEN, cosponsored by Senators BUETTNER and A. LASEE. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to amend** 302.045 (3), 302.11 (1), 302.11 (1g) (am), 304.06 (1) (b), 304.071
2 (2) and 973.0135 (3); and **to create** 304.02 (6) and 973.031 of the statutes;
3 **relating to:** providing for pharmacological treatment for certain serious child
4 sex offenders and affecting probation and parole.

Analysis by the Legislative Reference Bureau

Under current law, if a person is sentenced to imprisonment for sexual assault of a child, the person is not automatically released if he or she reaches his or her mandatory release date (see basically at two-thirds of the sentence). Instead, the parole commission may deny such a release of the person in order to protect the public or because the inmate refused to participate in counseling or treatment. Additional parole restrictions apply for the person if he or she is a repeat serious offender.

This bill provides a procedure for a court to use to determine if certain serious child sex offenders should be ordered to undergo pharmacological treatment to reduce the production and effects of testosterone (sometimes this treatment is referred to as "chemical castration"). Under the bill, if a person is convicted of sexually assaulting a child who is younger than 12 years old, the court conducts a hearing at sentencing. The court may order the pharmacological treatment if it makes all of the following findings:

1. The treatment is not likely to impair the person's ability to work.
2. The treatment is not likely to cause irreversible changes to the person's body.
3. The treatment is likely to cause the person to stop sexually assaulting children.
4. Without the treatment or incarceration the person is likely to commit sexual assaults of children.
5. There is not likely to be successful treatment of a less intrusive nature.
6. The person understands the effects of the treatment and consents to it.

If the court orders the treatment, it must order that the treatment either be a condition of probation or, after incarceration for the offense, a condition of parole. If the court makes the findings under items 1 to 5 and either the court chooses not to order treatment or the person does not consent to treatment, the court must sentence the person to imprisonment and the defendant is not eligible for parole regarding the sentence.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 302.045 (3) of the statutes is amended to read:

2 302.045 **(3)** PAROLE ELIGIBILITY. Except as provided in sub. (4) and s. 973.031
3 (5) (b), if the department determines that an inmate has successfully completed the
4 challenge incarceration program, the parole commission shall parole the inmate
5 under s. 304.06, regardless of the time the inmate has served. When the parole
6 commission grants parole under this subsection, it must require the parolee to
7 participate in an intensive supervision program for drug abusers as a condition of
8 parole.

9 **SECTION 2.** 302.11 (1) of the statutes is amended to read:

10 302.11 **(1)** The warden or superintendent shall keep a record of the conduct of
11 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),
12 (1m), (7) and (10) and s. 973.031 (5) (b), each inmate is entitled to mandatory release
13 on parole by the department. The mandatory release date is established at
14 two-thirds of the sentence. Any calculations under this subsection or sub. (2) (b)
15 resulting in fractions of a day shall be rounded in the inmate's favor to a whole day.

16 **SECTION 3.** 302.11 (1g) (am) of the statutes is amended to read:

17 302.11 **(1g)** (am) The mandatory release date established in sub. (1) is a
18 presumptive mandatory release date for an inmate who is serving a sentence for a

1 serious felony committed on or after April 21, 1994. This paragraph does not apply
2 to a person who is not eligible for parole under s. 973.031 (5) (b).

3 **SECTION 4.** 304.02 (6) of the statutes is created to read:

4 304.02 (6) Notwithstanding subs. (1) to (3), a prisoner who is not eligible for
5 parole under s. 973.031 (5) (b) is not eligible for release to parole supervision under
6 this section.

7 **SECTION 5.** 304.06 (1) (b) of the statutes is amended to read:

8 304.06 (1) (b) Except as provided in sub. (1m) or s. 161.49 (2), 302.045 (3) or,
9 973.0135 or 973.031 (5) (b), the parole commission may parole an inmate of the
10 Wisconsin state prisons or any felon or any person serving at least one year or more
11 in a county house of correction or a county reforestation camp organized under s.
12 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6
13 months, whichever is greater. Except as provided in s. 939.62 (2m) or 973.014, the
14 parole commission may parole an inmate serving a life term when he or she has
15 served 20 years, as modified by the formula under s. 302.11 (1) and subject to
16 extension using the formulas under s. 302.11 (2). The person serving the life term
17 shall be given credit for time served prior to sentencing under s. 973.155, including
18 good time under s. 973.155 (4). The secretary may grant special action parole
19 releases under s. 304.02. The department or the parole commission shall not provide
20 any convicted offender or other person sentenced to the department's custody any
21 parole eligibility or evaluation until the person has been confined at least 60 days
22 following sentencing.

23 **SECTION 6.** 304.071 (2) of the statutes is amended to read:

1 304.071 (2) If a prisoner is not eligible for parole under s. 161.49 (2), 939.62
2 (2m), 973.031 (5) (b) or 973.032 (5), he or she is not eligible for parole under this
3 section.

4 **SECTION 7.** 973.0135 (3) of the statutes is amended to read:

5 973.0135 (3) A person is not subject to this section if the current serious felony
6 is punishable by life imprisonment or if the person is not eligible for parole under s.
7 973.031 (5) (b).

8 **SECTION 8.** 973.031 of the statutes is created to read:

9 **973.031 Serious child sex offense; pharmacological treatment.** (1) In
10 this section, "serious child sex offense" means a crime specified in s. 948.02 (1) or (2)
11 or 948.025 (1).

12 (2) If a person is convicted for a violation of a serious child sex offense against
13 a child who has not attained the age of 12 years, the court shall proceed under this
14 section. The court shall hold a hearing at sentencing to determine whether to order
15 the defendant to undergo pharmacological treatment to reduce the production and
16 effects of testosterone, which may include treatment with medroxyprogesterone
17 acetate or its chemical equivalent.

18 (3) At the hearing under sub. (2), any party may present evidence on any of the
19 issues specified in sub. (4) (a) to (f).

20 (4) The court may order the defendant to undergo pharmacological treatment
21 under sub. (2) only if, after the hearing, the court finds all of the following by a
22 preponderance of the evidence:

23 (a) The treatment is not likely to impair the defendant's capacity to work.

24 (b) The treatment is not likely to involve a permanent or irreversible alteration
25 to the defendant's body.

1 (c) The treatment is likely to prevent the defendant from committing further
2 serious child sex offenses.

3 (d) Without the treatment or incarceration the defendant is likely to commit
4 further serious child sex offenses.

5 (e) There is no other less intrusive treatment or condition that is likely to
6 prevent the defendant from committing further serious child sex offenses.

7 (f) The court has fully informed the defendant about the potential benefits and
8 harms associated with the pharmacological treatment and the defendant voluntarily
9 agrees to the treatment.

10 **(5)** (a) If the court makes the findings under sub. (4) (a) to (f) and the court
11 orders treatment, the court shall specify the amount and duration of the
12 pharmacological treatment. The court may provide that the treatment is a condition
13 of probation or may provide a sentence and order that the treatment is a condition
14 of parole.

15 (b) If the court makes the findings under sub. (4) (a) to (e) but either the
16 defendant does not consent to the treatment or the court does not choose the
17 treatment, the court may not order probation and shall sentence the person to a term
18 of imprisonment according to penalties authorized for the crime. The defendant is
19 not eligible for parole with respect to that sentence.

20 (c) If the court does not make all of the findings under sub. (4) (a) to (e) the court
21 shall proceed under this chapter.

22 **(6)** The department shall provide the services necessary to administer any
23 pharmacological treatment ordered under sub. (4). The department shall ensure
24 that any treatment occurs either in a state prison, in another facility owned or
25 operated by a state agency or in the presence of a probation and parole agent. If the

1 department determines that the defendant has developed an adverse health
2 condition as a result of the treatment, the department may petition the court to
3 modify or rescind the order under sub. (4). If the defendant decides he or she does
4 not want to begin or continue treatment under this section, he or she shall inform the
5 department and the department shall not provide the treatment and shall begin
6 procedures to revoke the probation and parole.

7 (7) This section does not apply if the court must sentence the defendant to life
8 imprisonment without the possibility of parole.

9 **SECTION 9. Initial applicability.**

10 (1) This act first applies to offenses committed on the effective date of this
11 subsection.

12 (END)