



1997 ASSEMBLY BILL 733

January 27, 1998 - Introduced by Representatives GRONEMUS, OTT, PORTER, BAUMGART, AINSWORTH, SYKORA, MUSSER, URBAN, BRANDEMUEHL, WARD and GUNDERSON, cosponsored by Senators DRZEWIECKI and A. LASEE. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to renumber** 895.57 (1) (a), 943.75 (1) (a) and 973.075 (1) (b) 3.; **to**
2 **renumber and amend** 303.065 (1), 973.075 (1) (b) (intro.), 973.075 (1) (b) 1.
3 and 973.075 (1) (b) 2.; **to amend** 29.06 (1) (d), 51.20 (1) (ar) (intro.), 51.20 (13)
4 (g) 2m., 51.37 (8) (a), 51.37 (8) (b), 302.045 (3), 302.11 (1), 302.11 (1i), 302.45 (1),
5 304.06 (1) (b), 304.071 (2), 895.57 (title), 895.57 (2), 938.183 (3), 943.75 (2),
6 971.11 (6), 973.075 (5) (intro.) and 978.07 (1) (c) 2.; and **to create** 302.11 (1t),
7 303.065 (1) (c), 304.02 (6), 895.57 (1) (ag), 895.57 (4), 943.75 (1) (ad), 943.75 (2m)
8 (b), 973.075 (1) (b) 1m. f. and 973.075 (1) (bm) of the statutes; **relating to:** the
9 unauthorized release of animals, immunity from liability, affecting parole
10 eligibility and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill makes the following changes in civil and criminal laws relating to the unauthorized release of animals.

Criminal law changes

Current law prohibits a person from intentionally releasing an animal that is lawfully confined for certain purposes (such as scientific research, farming,

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companionship or protection of persons or property) if the owner or custodian of the animal does not consent to the release of the animal. The penalty for violating this prohibition depends on whether the person has violated the prohibition before. The penalty for the first violation is a fine of not more than \$500 or imprisonment for not more than 30 days or both. The penalty for the 2nd violation is a fine of not more than \$10,000 or imprisonment for not more than 9 months or both. The penalty for a 3rd or subsequent violation is a fine of not more than \$10,000 or imprisonment for not more than 2 years or both.

Current law also provides for release on parole of persons sentenced to imprisonment in the state prison system. Generally, a person serving a prison sentence has 3 possible ways of being released on parole: discretionary parole granted by the parole commission (for which a person is usually eligible after serving 25% of the sentence or 6 months, whichever is greater); mandatory release on parole (usually granted automatically after the person serves two-thirds of the sentence); or special action parole release by the secretary of corrections (a program designed to relieve prison crowding).

Finally, current law provides for the forfeiture to the state of certain property connected to criminal activity. Specifically, all of the following property is subject to forfeiture under current law: 1) any property that is directly or indirectly derived from or gained through the commission of any crime; 2) a vehicle used to transport any property or weapon that is used, that will be used or that is received in the commission of a felony; 3) a vehicle used in the commission of certain specified crimes, such as prostitution or impersonating a police officer; 4) certain equipment, such as scuba gear, that is used in the commission of a crime relating to a submerged cultural resource; and 5) tank vessels that violate certain environmental protection requirements for tank vessels.

This bill provides for a minimum mandatory prison sentence and increases the maximum penalty for violating the prohibition against intentionally releasing an animal without the consent of the owner or custodian of the animal. Under the bill, a person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than 20 years or both. The bill also provides that a person convicted of violating the prohibition may not be placed on probation and must be sentenced to at least 2 years in prison for a first violation, at least 5 years in prison for a 2nd violation and at least 8 years in prison for a 3rd or subsequent violation. In addition, the person is not eligible for parole and thus must serve the entire length of the prison sentence imposed. Finally, the bill provides for the forfeiture of any vehicle that is used, or of any other property that is used or that will be used, to violate the prohibition against intentionally releasing an animal without the consent of the owner or custodian of the animal.

Civil law changes

Under current law, a person who intentionally releases an animal that is lawfully confined is liable to the owner or custodian of the animal for damages, including the costs of restoring the animal to confinement. This bill adds punitive damages, attorney fees and interest on the damages from the date of the release to the damages a person is liable for if he or she intentionally releases an animal that

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is lawfully confined. The bill also provides the owner or custodian of a confined animal with immunity from civil liability for any damages caused by any security device that is installed to protect a confined animal or the premises containing a confined animal. Currently, a person is liable for any damages caused by any security device that is installed to protect a confined animal or the premises containing a confined animal if the device is installed negligently or operated in a negligent manner.

For further information see the *state and local* 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.** 29.06 (1) (d) of the statutes, as affected by 1997 Wisconsin Act ...
2 (Assembly Bill 378), is amended to read:

3 29.06 (1) (d) The provisions of s. 973.075 (1) (b) ~~1. to 3.~~ 2m. and (5) apply to
4 vehicles other than motor vehicles under this subsection.

5 **SECTION 2.** 51.20 (1) (ar) (intro.) of the statutes is amended to read:

6 51.20 (1) (ar) (intro.) If the individual is an inmate of a state prison, the petition
7 may allege that the inmate is mentally ill, is a proper subject for treatment and is
8 in need of treatment. The petition shall allege that appropriate less restrictive forms
9 of treatment have been attempted with the individual and have been unsuccessful
10 and it shall include a description of the less restrictive forms of treatment that were
11 attempted. The petition shall also allege that the individual has been fully informed
12 about his or her treatment needs, the mental health services available to him or her
13 and his or her rights under this chapter and that the individual has had an
14 opportunity to discuss his or her needs, the services available to him or her and his
15 or her rights with a licensed physician or a licensed psychologist. The petition shall
16 include the inmate's sentence and his or her expected date of release as determined
17 under s. 302.11 or, if the inmate is not entitled to release under s. 302.11, the

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1 expiration date of the inmate's sentence. The petition shall have attached to it a
2 signed statement by a licensed physician or a licensed psychologist of a state prison
3 and a signed statement by a licensed physician or a licensed psychologist of a state
4 treatment facility attesting either of the following:

5 **SECTION 3.** 51.20 (13) (g) 2m. of the statutes is amended to read:

6 51.20 (13) (g) 2m. In addition to the provisions under subds. 1., 2. and 2g., no
7 commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date
8 of release as determined under s. 302.11 or, if the inmate is not entitled to release
9 under s. 302.11, beyond the expiration date of the inmate's sentence.

10 **SECTION 4.** 51.37 (8) (a) of the statutes is amended to read:

11 51.37 (8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or
12 inmate who is found to be mentally ill or drug dependent except that the petition
13 shall be made to the court that made the finding or, if the prisoner or inmate is
14 detained by transfer, to the circuit court of the county in which he or she is detained.
15 If upon rehearing it is found that the standards for recommitment under s. 51.20 (13)
16 (g) no longer apply to the prisoner or inmate or that he or she is not in need of
17 psychiatric or psychological treatment, the prisoner or inmate shall be returned to
18 the prison or county jail or house of correction unless it is past his or her release date
19 as determined under s. 302.11 or, if the prisoner or inmate is not entitled to release
20 under s. 302.11, the expiration date of his or her sentence, in which case he or she
21 shall be discharged.

22 **SECTION 5.** 51.37 (8) (b) of the statutes is amended to read:

23 51.37 (8) (b) If the condition of any prisoner or inmate committed or transferred
24 under this section requires psychiatric or psychological treatment after his or her
25 date of release as determined under s. 302.11 or, if the prisoner or inmate is not

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1 entitled to release under s. 302.11, the expiration date of his or her sentence, the
2 director of the state treatment facility shall, within a reasonable time before the
3 release date of the prisoner or inmate, make a written application to the court which
4 committed the prisoner or inmate under sub. (5) (a). Thereupon, the proceeding shall
5 be upon application made under s. 51.20, but no physician or psychologist who is
6 connected with a state prison, Winnebago or Mendota mental health institute or any
7 county jail or house of correction may be appointed as an examiner. If the court does
8 not commit the prisoner or inmate, it may dismiss the application and order the
9 prisoner or inmate returned to the institution from which he or she was transferred
10 until the release date of the prisoner or inmate. If the court commits the prisoner or
11 inmate for the period commencing upon his or her release date, the commitment
12 shall be to the care and custody of the county department under s. 51.42 or 51.437.

13 **SECTION 6.** 302.045 (3) of the statutes is amended to read:

14 302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department
15 determines that an inmate has successfully completed the challenge incarceration
16 program, the parole commission shall parole the inmate under s. 304.06, regardless
17 of the time the inmate has served, unless the inmate is serving a sentence imposed
18 under s. 943.75 (2m) (b). When the parole commission grants parole under this
19 subsection, it must require the parolee to participate in an intensive supervision
20 program for drug abusers as a condition of parole.

21 **SECTION 7.** 302.11 (1) of the statutes is amended to read:

22 302.11 (1) The warden or superintendent shall keep a record of the conduct of
23 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),
24 (1m), (1t), (7) and (10), each inmate is entitled to mandatory release on parole by the
25 department. The mandatory release date is established at two-thirds of the

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1 sentence. Any calculations under this subsection or sub. (2) (b) resulting in fractions
2 of a day shall be rounded in the inmate's favor to a whole day.

3 **SECTION 8.** 302.11 (1i) of the statutes is amended to read:

4 302.11 (1i) An Except as provided in sub. (1t), an inmate serving a sentence to
5 the intensive sanctions program is entitled to mandatory release. The mandatory
6 release date under sub. (1) is established at two-thirds of the sentence under s.
7 973.032 (3) (a).

8 **SECTION 9.** 302.11 (1t) of the statutes is created to read:

9 302.11 (1t) An inmate serving a sentence imposed under s. 943.75 (2m) (b) is
10 not entitled to mandatory release.

11 **SECTION 10.** 302.45 (1) of the statutes is amended to read:

12 302.45 (1) The department and any county or group of counties may contract
13 for the cooperative establishment and use of state-local shared correctional
14 facilities. Inmates sentenced to the Wisconsin state prisons, a county jail, a county
15 reforestation camp or a county house of correction may be transferred to a shared
16 facility by the department, sheriff or superintendent, respectively, under the
17 agreement covering use of the facility. Any inmate confined in a state-local shared
18 correctional facility shall be deemed to be serving time in the penal institution to
19 which he or she was sentenced and shall be eligible to earn good time credit against
20 his or her sentence as provided under ~~ss. s.~~ s. 302.11, if applicable, and ss. 302.12,;
21 302.43, 303.07 and 303.19 for that institution.

22 **SECTION 11.** 303.065 (1) of the statutes is renumbered 303.065 (1) (intro.) and
23 amended to read:

24 303.065 (1) (intro.) The department may grant work release privileges to any
25 person incarcerated within the state prisons, ~~except that no~~ as follows:

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1 (a) No person serving a life sentence may be considered for work release until
2 he or she has reached parole eligibility under s. 304.06 (1) (b) or 973.014 (1) (a) or (b),
3 whichever is applicable, ~~and no~~.

4 (b) No person serving a life sentence under s. 939.62 (2m) or 973.014 (1) (c) may
5 be considered for work release.

6 **SECTION 12.** 303.065 (1) (c) of the statutes is created to read:

7 303.065 (1) (c) No person serving a sentence imposed under s. 943.75 (2m) (b)
8 may be considered for work release.

9 **SECTION 13.** 304.02 (6) of the statutes is created to read:

10 304.02 (6) Notwithstanding subs. (1) to (3), a prisoner who is serving a sentence
11 imposed under s. 943.75 (2m) (b) is not eligible for release to parole supervision under
12 this section.

13 **SECTION 14.** 304.06 (1) (b) of the statutes is amended to read:

14 304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 943.75 (2m) (b),
15 961.49 (2) or 973.0135, the parole commission may parole an inmate of the Wisconsin
16 state prisons or any felon or any person serving at least one year or more in a county
17 house of correction or a county reforestation camp organized under s. 303.07, when
18 he or she has served 25% of the sentence imposed for the offense, or 6 months,
19 whichever is greater. Except as provided in s. 939.62 (2m) or 973.014, the parole
20 commission may parole an inmate serving a life term when he or she has served 20
21 years, as modified by the formula under s. 302.11 (1) and subject to extension using
22 the formulas under s. 302.11 (2). The person serving the life term shall be given
23 credit for time served prior to sentencing under s. 973.155, including good time under
24 s. 973.155 (4). The secretary may grant special action parole releases under s.
25 304.02. The department or the parole commission shall not provide any convicted

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1 offender or other person sentenced to the department's custody any parole eligibility
2 or evaluation until the person has been confined at least 60 days following
3 sentencing.

4 **SECTION 15.** 304.071 (2) of the statutes is amended to read:

5 304.071 (2) If a prisoner is not eligible for parole under s. 939.62 (2m), 943.75
6 (2m) (b), 961.49 (2), 973.014 (1) (c) or 973.032 (5), he or she is not eligible for parole
7 under this section.

8 **SECTION 16.** 895.57 (title) of the statutes is amended to read:

9 **895.57 (title) Damages and immunity; unauthorized release of animals.**

10 **SECTION 17.** 895.57 (1) (a) of the statutes is renumbered 895.57 (1) (am).

11 **SECTION 18.** 895.57 (1) (ag) of the statutes is created to read:

12 895.57 (1) (ag) "Animal" means all vertebrate and invertebrate species,
13 including mammals, birds, fish and shellfish but excluding humans.

14 **SECTION 19.** 895.57 (2) of the statutes is amended to read:

15 895.57 (2) A person who intentionally releases an animal that is lawfully
16 confined for scientific, farming, companionship or protection of persons or property,
17 recreation, restocking, research, exhibition, commercial or educational purposes,
18 acting without the consent of the owner or custodian of the animal, is liable to the
19 owner or custodian of the animal for damages, ~~which~~ punitive damages, attorney fees
20 and interest on the amount of the damages incurred at the rate of 12% per year from
21 the date of the intentional release. The damages awarded shall include the costs of
22 restoring the animal to confinement.

23 **SECTION 20.** 895.57 (4) of the statutes is created to read:

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1 895.57 (4) An owner or custodian of a confined animal is immune from civil
2 liability for any damages caused by any security mechanism that is installed to
3 protect the confined animal or the premises containing the animal.

4 **SECTION 21.** 938.183 (3) of the statutes, as affected by 1997 Wisconsin Act 27,
5 is amended to read:

6 938.183 (3) When a juvenile who is subject to a criminal penalty under sub.
7 (1m) or (2) attains the age of 17 years, the department may place the juvenile in a
8 state prison named in s. 302.01. If a juvenile who is subject to a criminal penalty
9 under sub. (1m) or (2) is 15 years of age or over, the department may transfer the
10 juvenile to the Racine youthful offender correctional facility named in s. 302.01 as
11 provided in s. 938.357 (4) (d). A juvenile who is subject to a criminal penalty under
12 sub. (1m) or (2) is eligible for parole under s. 304.06 unless he or she is subject to s.
13 943.75 (2m) (b).

14 **SECTION 22.** 943.75 (1) (a) of the statutes is renumbered 943.75 (1) (am).

15 **SECTION 23.** 943.75 (1) (ad) of the statutes is created to read:

16 943.75 (1) (ad) “Animal” means all vertebrate and invertebrate species,
17 including mammals, birds, fish and shellfish but excluding humans.

18 **SECTION 24.** 943.75 (2) of the statutes is amended to read:

19 943.75 (2) Whoever intentionally releases an animal that is lawfully confined
20 for scientific, farming, companionship or protection of persons or property,
21 recreation, restocking, research, exhibition, commercial or educational purposes,
22 acting without the consent of the owner or custodian of the animal, is may be
23 penalized as provided in sub. (2m).

24 **(2m)** (a) Any person who violates sub. (2) before the effective date of this
25 paragraph [revisor inserts date], is guilty of a Class C misdemeanor. A, except

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1 ~~that if the violation is the person's 2nd violation of this section by a sub. (2) the person~~
2 ~~is guilty of a Class A misdemeanor.—A and if the violation is the person's 3rd or~~
3 ~~subsequent violation of this section by a sub. (2) the person is guilty of a Class E~~
4 ~~felony.~~

5 **SECTION 25.** 943.75 (2m) (b) of the statutes is created to read:

6 943.75 (2m) (b) Any person who violates sub. (2) on or after the effective date
7 of this paragraph [revisor inserts date], is guilty of a Class BC felony and shall
8 be sentenced to not less than 2 years of imprisonment, except that if the violation is
9 the person's 2nd violation of sub. (2) the person shall be sentenced to not less than
10 5 years of imprisonment and if the violation is the person's 3rd or subsequent
11 violation of sub. (2) the person shall be sentenced to not less than 8 years of
12 imprisonment. The court may not place the person on probation and the person is
13 not eligible for parole.

14 **SECTION 26.** 971.11 (6) of the statutes is amended to read:

15 971.11 (6) The prisoner shall be delivered into the custody of the sheriff of the
16 county in which the charge is pending for transportation to the court, and the
17 prisoner shall be retained in that custody during all proceedings under this section.
18 The sheriff shall return the prisoner to the prison upon the completion of the
19 proceedings and during any adjournments or continuances and between the
20 preliminary examination and the trial, except that if the department certifies a jail
21 as being suitable to detain the prisoner, he or she may be detained there until the
22 court disposes of the case. The prisoner's existing sentence continues to run and he
23 or she receives time credit under s. 302.11, if applicable, while in custody.

24 **SECTION 27.** 973.075 (1) (b) (intro.) of the statutes is renumbered 973.075 (1)

25 (b) 1m. (intro.) and amended to read:

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1 973.075 (1) (b) 1m. (intro.) ~~All~~ Except as provided in subd. 2m., all vehicles, as
2 defined in s. 939.22 (44), which are used ~~to~~ in any of the following ways:

3 a. To transport any property or weapon used or to be used or received in the
4 commission of any felony, ~~which are used in.~~

5 b. In the commission of a crime under s. 946.70, ~~which are used in.~~

6 c. In the commission of a crime in violation of s. 944.30, 944.31, 944.32, 944.33
7 or 944.34, ~~which are used in.~~

8 d. In the commission of a crime relating to a submerged cultural resource in
9 violation of s. 44.47 ~~or which are used to.~~

10 e. To cause more than \$1,000 worth of criminal damage to cemetery property
11 in violation of s. 943.01 (2) (d) or 943.012, ~~but.~~

12 **SECTION 28.** 973.075 (1) (b) 1. of the statutes is renumbered 973.075 (1) (b) 2m.

13 a. and amended to read:

14 973.075 (1) (b) 2m. a. No vehicle used by any person as a common carrier in the
15 transaction of business as a common carrier is subject to forfeiture under ss. 973.075
16 to 973.077 unless it appears that the owner or other person in charge of the vehicle
17 had knowledge of or consented to the commission of the crime;

18 **SECTION 29.** 973.075 (1) (b) 1m. f. of the statutes is created to read:

19 973.075 (1) (b) 1m. f. In the commission of a crime under s. 943.75 (2).

20 **SECTION 30.** 973.075 (1) (b) 2. of the statutes is renumbered 973.075 (1) (b) 2m.

21 b. and amended to read:

22 973.075 (1) (b) 2m. b. No vehicle is subject to forfeiture under ss. 973.075 to
23 973.077 by reason of any act or omission established by the owner of the vehicle to
24 have been committed or omitted without his or her knowledge or consent; ~~and.~~

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1 **SECTION 31.** 973.075 (1) (b) 3. of the statutes is renumbered 973.075 (1) (b) 2m.
2 c.

3 **SECTION 32.** 973.075 (1) (bm) of the statutes is created to read:

4 973.075 (1) (bm) Any property used or to be used in the commission of a crime
5 under s. 943.75 (2), but if the property is encumbered by a bonafide perfected security
6 interest that was perfected before the date of the commission of the current violation
7 and the holder of the security interest neither had knowledge of nor consented to the
8 commission of that violation, the holder of the security interest shall be paid from the
9 proceeds of the forfeiture.

10 **SECTION 33.** 973.075 (5) (intro.) of the statutes is amended to read:

11 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
12 with due provision for the rights of innocent persons under sub. (1) (b) ~~1. to 3.~~ 2m.,
13 (bm) and (d). Any property seized but not forfeited shall be returned to its rightful
14 owner. Any person claiming the right to possession of property seized may apply for
15 its return to the circuit court for the county in which the property was seized. The
16 court shall order such notice as it deems adequate to be given the district attorney
17 and all persons who have or may have an interest in the property and shall hold a
18 hearing to hear all claims to its true ownership. If the right to possession is proved
19 to the court's satisfaction, it shall order the property returned if:

20 **SECTION 34.** 978.07 (1) (c) 2. of the statutes is amended to read:

21 978.07 (1) (c) 2. Any case record of a felony punishable by a maximum period
22 of imprisonment equal to at least 20 years or a related case, after the mandatory
23 release date established under s. 302.11 (1) or the presumptive mandatory release
24 date established under s. 302.11 (1g), if applicable, of any person convicted of that

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1 felony or 20 years after commencement of the action, ~~whichever~~ if that date is later
2 or if the person is not entitled to release under s. 302.11.

3 (END)