



State of Wisconsin
2001 - 2002 LEGISLATURE

P3
LRB-0041/P3

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to renumber and amend** 302.11 (7) (a), 302.113 (9) (a), 302.114 (9) (a),
2 971.17 (1), 973.01 (2) (b) 6. and 973.09 (2) (a) 2.; **to consolidate, renumber**
3 **and amend** 973.09 (2) (intro.) and (a) 1.; **to amend** 301.035 (2), 301.035 (4),
4 302.045 (3), 302.11 (1z), 302.11 (3), 302.11 (7) (b), 302.11 (7) (d), 302.113 (4),
5 302.113 (9) (b), 302.113 (9) (c), 302.114 (4), 302.114 (9) (b), 302.114 (9) (bm),
6 304.11 (3), 908.08 (1), 967.04 (9), 972.15 (2c), 973.01 (1), 973.01 (2) (intro.),
7 973.01 (2) (a), 973.01 (2) (b) (intro.), 973.01 (2) (d), 973.01 (6), 973.09 (1) (a),
8 973.09 (2) (b) 1., 973.09 (2) (b) 2. and 973.155 (1) (b); and **to create** 302.11 (7)
9 (ag), 302.11 (7) (e), 302.113 (8m), 302.113 (9) (ag), 302.113 (9) (d), 302.113 (9) (e),
10 302.113 (9) (f), 302.113 (9) (g), 302.114 (8m), 302.114 (9) (ag), 302.114 (9) (d),
11 302.114 (9) (e), 302.114 (9) (f), 939.32 (1) (title), 939.32 (1m), 939.32 (2) (title),
12 939.32 (3) (title), 971.17 (1) (b), 971.17 (1) (d), 973.01 (2) (b) 6. a. and b., 973.09
13 (2) (ag), 973.09 (2) (am) (title), 973.09 (2) (b) (title) and 973.15 (2m) of the
14 statutes; **relating to:** revocation of extended supervision, sentences for
15 criminal attempts and certain misdemeanants, length of probation, the length

1 of confinement for persons found not guilty by reason of mental disease or
2 mental defect, concurrent and consecutive sentences, and providing penalties.

Analysis by the Legislative Reference Bureau

The structure of felony sentences under current law

Current law sets maximum terms of imprisonment for all crimes. It also specifies how a term of imprisonment is structured. Under current law, if a person committing a felony before December 31, 1999, is sentenced to prison for a term of years, the person receives an indeterminate sentence, which typically consists of a term of confinement followed by parole. The person's term of confinement is not fixed when the sentence is imposed. He or she may be released on parole after serving as little as one-fourth of the sentence, as much as two-thirds of it (or more, if the crime for which the person was sentenced is classified as a serious felony), or some amount in between.

Current law provides a separate system for prison sentences for crimes committed on or after December 31, 1999. If a court chooses to sentence a felony offender to imprisonment in a state prison (other than through a life sentence) for a felony committed on or after December 31, 1999, the court must do so by imposing a bifurcated sentence. For the first part of the bifurcated sentence, the court sentences the person to a fixed term of confinement in prison. The minimum term of confinement is one year. The maximum term of confinement under a bifurcated sentence for felonies classified in the criminal code ranges from two to 40 years. If the person is being sentenced to prison for an unclassified felony, the term of confinement in prison portion of the sentence may not exceed 75% of the total length of the bifurcated sentence.

An offender is not eligible for parole under a bifurcated sentence. Instead, after serving the term of confinement portion of the bifurcated sentence, he or she serves a fixed term of community based extended supervision (ES) as the second part of the bifurcated sentence.

Revocation of extended supervision

Under current law, if a person violates a requirement of parole or ES, the department of corrections (DOC) may return the person to prison. Current law also permits DOC to take a person into custody if it alleges that the person has violated a condition or rule relating to parole. This bill specifies that DOC may also take a person under ES into custody if it alleges that the person has violated a condition or rule relating to ES. In addition, the bill specifies how to calculate the amount of time remaining on a bifurcated sentence, for purposes of determining the maximum amount of time for which a person may be returned to prison after a violation of ES and the length of the term of ES that the person must serve thereafter.

Concurrent and consecutive sentences

Under current law, a court may order any sentence to be served concurrent with or consecutive to any other sentence imposed at the same time or previously. This

bill specifies how the person will serve the periods of confinement and the periods of ES and parole under the sentences as a result of the concurrent or consecutive nature of the sentences under the following circumstances: 1) when the court requires a sentence under which the person may be placed on ES (a "determinate sentence") to be served concurrent with or consecutive to another determinate sentence; 2) when the court requires a determinate sentence to be served concurrent with or consecutive to an indeterminate sentence; or 3) when the court requires an indeterminate sentence to be served concurrent with or consecutive to a determinate sentence. The bill also requires that a person sentenced to consecutive indeterminate and determinate sentences serve the term of ES under the determinate sentence before serving the period of parole under the indeterminate sentence, regardless of the order in which the crimes were committed or the sentences imposed.

Penalties for criminal attempts

Current law specifies that the maximum term of imprisonment for an attempt to commit a felony (other than certain felonies having separate penalties for attempts) is one-half of the maximum term of imprisonment for the completed crime. This bill specifies that the maximum term of confinement under a bifurcated sentence imposed for an attempt to commit a classified felony is one-half of the maximum term of confinement for the completed crime. The bill also specifies that the maximum term of confinement under a bifurcated sentence imposed for an attempt to commit an unclassified felony is 75% of the maximum term of imprisonment for the attempt.

Other changes

1. This bill specifies that, if a misdemeanor offender may be sentenced to prison because of the application of one or more sentence enhancers and the court decides to sentence the person to prison, the court must impose a bifurcated sentence. In sentencing a person to prison in such a case, the term of confinement in prison portion of the sentence may not constitute more than 75% of the bifurcated sentence.

2. Under current law, the maximum term of probation for a misdemeanor is two years, and the maximum term of probation for a felony is the maximum term of imprisonment for the crime or three years, whichever is greater. Under this bill, the maximum term of probation for a felony or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement in prison for the crime or three years, whichever is greater.

3. Under current law, if a person is found not guilty of a crime by reason of mental disease or mental defect and the crime is not punishable by life imprisonment, the maximum term for which the person may be committed to the department of health and family services is two-thirds of the maximum term of imprisonment for the crime. Under this bill, the maximum term of commitment for a felony other than one punishable by life imprisonment or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement that could be imposed on a person convicted of the crime.

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:

SECTION 1. 301.035 (2) of the statutes is amended to read:

301.035 (2) Assign hearing examiners from the division to preside over hearings under ss. 302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10 and 975.10 (2) and ch. 304.

SECTION 2. 301.035 (4) of the statutes is amended to read:

301.035 (4) Supervise employes in the conduct of the activities of the division and be the administrative reviewing authority for decisions of the division under ss. 302.11 (7), 302.113 (9), 302.114 (9), 938.357 (5), 973.10, 973.155 (2) and 975.10 (2) and ch. 304.

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

302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department determines that an inmate serving a sentence other than one imposed under s. 973.01 has successfully completed the challenge incarceration program, the parole commission shall parole the inmate for that sentence under s. 304.06, regardless of the time the inmate has served, ~~unless the person is serving a sentence imposed under s. 973.01.~~ When the parole commission grants parole under this subsection, it must require the parolee to participate in an intensive supervision program for drug abusers as a condition of parole.

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SECTION 4. 302.11 (1z) of the statutes is amended to read:

302.11 (1z) An inmate who is sentenced to a term of confinement in prison under s. 973.01 for a felony that is committed on or after December 31, 1999,

1 ~~misdemeanor committed on or after the effective date of this subsection ... (revisor~~
2 ~~inserts date)~~ is not entitled under this section to mandatory release on parole under
3 this section that sentence.

~~SECTION 5.~~

SECTION 5. 302.11 (3) of the statutes is amended to read:

5 302.11 (3) All consecutive sentences imposed for crimes committed before
6 December 31, 1999, shall be computed as one continuous sentence.

7 SECTION 6. 302.11 (7) (a) of the statutes is renumbered 302.11 (7) (am) and
8 amended to read:

9 302.11 (7) (am) ~~The division of hearings and appeals in the department of~~
10 ~~administration, upon proper notice and hearing, or the department of corrections, if~~
11 ~~the parolee waives a hearing, reviewing authority~~ may return a parolee released
12 under sub. (1) or (1g) (b) or s. 304.02 or 304.06 (1) to prison for a period up to the
13 remainder of the sentence for a violation of the conditions of parole. The remainder
14 of the sentence is the entire sentence, less time served in custody prior to parole. The
15 revocation order shall provide the parolee with credit in accordance with ss. 304.072
16 and 973.155.

17 SECTION 7. 302.11 (7) (ag) of the statutes is created to read:

18 302.11 (7) (ag) In this subsection "reviewing authority" means the division of
19 hearings and appeals in the department of administration, upon proper notice and
20 hearing, or the department of corrections, if the parolee waives a hearing.

21 SECTION 8. 302.11 (7) (b) of the statutes is amended to read:

22 302.11 (7) (b) A parolee returned to prison for violation of the conditions of
23 parole shall be incarcerated for the entire period of time determined by the
24 department of corrections in the case of a waiver or the division of hearings and
25 appeals in the department of administration in the case of a hearing under par. (a),



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1 reviewing authority unless paroled earlier under par. (c). The parolee is not subject
2 to mandatory release under sub. (1) or presumptive mandatory release under sub.
3 (1g). The period of time determined under par. (a) (am) may be extended in
4 accordance with subs. (1q) and (2).

5 SECTION 9. 302.11 (7) (d) of the statutes is amended to read:

6 302.11 (7) (d) A parolee who is subsequently released either after service of the
7 period of time determined by the department of corrections in the case of a waiver
8 or the division of hearings and appeals in the department of administration in the
9 case of a hearing under par. (a) reviewing authority or by a grant of parole under par.
10 (c) is subject to all conditions and rules of parole until expiration of sentence or
11 discharge by the department.

12 SECTION 10. 302.11 (7) (e) of the statutes is created to read:

13 302.11 (7) (e) A reviewing authority may consolidate proceedings before it
14 under par. (am) with other proceedings before that reviewing authority under par.
15 (am) or s. 302.113 (9) (am) or 302.114 (9) (am) if all of the proceedings relate to the
16 parole or extended supervision of the same person.

17 SECTION 11. 302.113 (4) of the statutes is amended to read:

18 302.113 (4) All consecutive sentences imposed for crimes committed on or after
19 December 31, 1999, shall be computed as one continuous sentence. The person shall
20 serve any term of extended supervision after serving all terms of confinement in
21 prison.

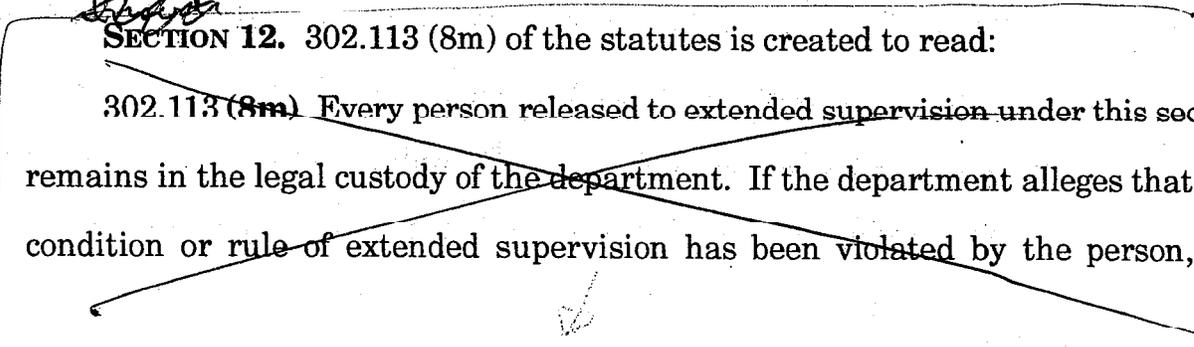
22 SECTION 12. 302.113 (8m) of the statutes is created to read:

23 302.113 (8m) Every person released to extended supervision under this section
24 remains in the legal custody of the department. If the department alleges that any
25 condition or rule of extended supervision has been violated by the person, the

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1 department may take physical custody of the person for the investigation of the
2 alleged violation.

3 ~~SECTION 13. 302.113 (9) (a) of the statutes is renumbered 302.113 (9) (am) and~~
4 ~~amended to read:~~

5 ~~302.113 (9) (am) If a person released to extended supervision under this section~~
6 ~~violates a condition of extended supervision, the division of hearings and appeals in~~
7 ~~the department of administration, upon proper notice and hearing, or the~~
8 ~~department of corrections, if the person on extended supervision waives a hearing,~~
9 ~~reviewing authority may revoke the person's extended supervision of the person and~~
10 ~~return the person to prison. If. Upon revocation, the person is returned to prison,~~
11 ~~he or she shall be returned to prison for any specified period of time that does not~~
12 ~~exceed the time remaining on the bifurcated sentence. The time remaining on the~~
13 ~~bifurcated sentence is the total length of the bifurcated sentence, less time served by~~
14 ~~the person in custody confinement under the sentence before release to extended~~
15 ~~supervision under sub. (2) and less all time served in confinement for previous~~
16 ~~revocations of extended supervision under the sentence. The revocation order shall~~
17 ~~provide the person ~~on~~ whose extended supervision is revoked with credit in~~
18 ~~accordance with ss. 304.072 and 973.155.~~

19 ~~insert ~~6/25~~ 6/25 Blue~~
SECTION 14. 302.113 (9) (ag) of the statutes is created to read:

20 302.113 (9) (ag) In this subsection "reviewing authority" means the division of
21 hearings and appeals in the department of administration, upon proper notice and
22 hearing, or the department of corrections, if the person on extended supervision
23 waives a hearing.

24 SECTION 15. 302.113 (9) (b) of the statutes is amended to read:

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1 302.113 (9) (b) A person who is returned to prison after revocation of extended
2 supervision shall be incarcerated for the entire period of time specified by the
3 department of corrections in the case of a waiver or by the division of hearings and
4 appeals in the department of administration in the case of a hearing under par. (a)
5 reviewing authority. The period of time specified under par. (a) (am) may be extended
6 in accordance with sub. (3). If a person is returned to prison under par. (am) for a
7 period of time that is less than the time remaining on the bifurcated sentence, the
8 person shall be released to extended supervision after he or she has served the period
9 of time specified under par. (am) and any extensions imposed under sub. (3).

10 **SECTION 16.** 302.113 (9) (c) of the statutes is amended to read:

11 302.113 (9) (c) A person who is subsequently released to extended supervision
12 after service of the period of time specified by the department of corrections in the
13 case of a waiver or by the division of hearings and appeals in the department of
14 administration in the case of a hearing under par. (a) reviewing authority is subject
15 to all conditions and rules under sub. (7) until the expiration of the term of remaining
16 extended supervision portion of the bifurcated sentence. The remaining extended
17 supervision portion of the bifurcated sentence is the total length of the bifurcated
18 sentence, less the time served by the person in confinement under the bifurcated
19 sentence before release to extended supervision under sub. (2) and less all time
20 served in confinement for any revocation of extended supervision under the
21 bifurcated sentence.

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22 **SECTION 17.** 302.113 (9) (d) of the statutes is created to read:

23 302.113 (9) (d) When determining under pars. (am) and (c) the amount of time
24 a person has served in confinement before release to extended supervision or the
25 amount of time a person has served in confinement for a revocation of extended

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1 supervision, the reviewing authority shall include any extensions imposed under
2 sub. (3).

3 SECTION 18. 302.113 (9) (e) of the statutes is created to read:

4 302.113 (9) (e) If a hearing is to be held under par. (am) before the division of
5 hearings and appeals in the department of administration, the hearing examiner
6 may order the taking and allow the use of a videotaped deposition under s. 967.04
7 (7) to (10).

8 SECTION 19. 302.113 (9) (f) of the statutes is created to read:

9 302.113 (9) (f) A reviewing authority may consolidate proceedings before it
10 under par. (am) with other proceedings before that reviewing authority under par.
11 (am) or s. 302.11 (7) (am) or 302.114 (9) (am) if all of the proceedings relate to the
12 parole or extended supervision of the same person.

(end ins 64/3 Blue)

13 ~~SECTION 20. 302.113 (9) (g) of the statutes is created to read:~~

14 ~~302.113 (9) (g) If there is a hearing under par. (am) before the division of~~
15 ~~hearings and appeals in the department of administration, the person on extended~~
16 ~~supervision may seek review of a decision to revoke extended supervision and the~~
17 ~~department of corrections may seek review of a decision to not revoke extended~~
18 ~~supervision. Review of a decision under this paragraph may be sought only by an~~

19 ~~action for certiorari.~~

20 ~~SECTION 21. 302.114 (4) of the statutes is amended to read:~~

21 302.114 (4) All consecutive sentences imposed for crimes committed on or after
22 December 31, 1999, shall be computed as one continuous sentence. An inmate
23 subject to this section shall serve any term of extended supervision after serving all
24 terms of confinement in prison.

25 ~~SECTION 22. 302.114 (8m) of the statutes is created to read:~~

1 302.114 (8m) Every person released to extended supervision under this section
 2 remains in the legal custody of the department. If the department alleges that any
 3 condition or rule of extended supervision has been violated by the person, the
 4 department may take physical custody of the person for the investigation of the
 5 alleged violation.

6 ~~SECTION 23. 302.114 (9) (a) of the statutes is renumbered 302.114 (9) (am) and~~
 7 is amended to read:

8 302.114 (9) (am) If a person released to extended supervision under this section
 9 violates a condition of extended supervision, the division of hearings and appeals in
 10 the department of administration, upon proper notice and hearing, or the
 11 department of corrections, if the person on extended supervision waives a hearing,
 12 reviewing authority may revoke the person's extended supervision of the person and
 13 return the person to prison. If. Upon revocation, the person is returned to prison,
 14 he or she shall be returned to prison for a specified period of time, as provided under
 15 par. (b).

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16 SECTION 24. 302.114 (9) (ag) of the statutes is created to read:

17 302.114 (9) (ag) In this subsection "reviewing authority" has the meaning given
 18 in s. 302.113 (9) (ag). ✓

(end ins 70/0) Blue

19 ~~SECTION 25. 302.114 (9) (b) of the statutes is amended to read:~~

20 302.114 (9) (b) If a person is returned to prison under par. (a) (am) after
 21 revocation of extended supervision, the department of corrections in the case of a
 22 waiver or the division of hearings and appeals in the department of administration
 23 in the case of a hearing under par. (a) reviewing authority shall specify a period of
 24 time for which the person shall be incarcerated before being eligible for release to

1 extended supervision. The period of time specified under this paragraph may not be
2 less than 5 years and may be extended in accordance with sub. (3).

3 ~~SECTION 26. 302.114 (9) (bm) of the statutes is amended to read:~~

4 ~~302.114 (9) (bm) A person who is returned to prison under par. (a) (am) after~~
5 ~~revocation of extended supervision may, upon petition to the sentencing court, be~~
6 ~~released to extended supervision after he or she has served the entire period of time~~
7 ~~specified in par. (b), including any periods of extension imposed under sub. (3). A~~
8 ~~person may not file a petition under this paragraph earlier than 90 days before the~~
9 ~~date on which he or she is eligible to be released to extended supervision. If a person~~
10 ~~files a petition for release to extended supervision under this paragraph at any time~~
11 ~~earlier than 90 days before the date on which he or she is eligible to be released to~~
12 ~~extended supervision, the court shall deny the petition without a hearing. The~~
13 ~~procedures specified in sub. (5) (am) to (f) apply to a petition filed under this~~
14 ~~paragraph.~~

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15 SECTION 27. 302.114 (9) (d) of the statutes is created to read:

16 302.114 (9) (d) If a hearing is to be held under par. (am) before the division of
17 hearings and appeals in the department of administration, the hearing examiner
18 may order the taking and allow the use of a videotaped deposition under s. 967.04
19 (7) to (10).

20 SECTION 28. 302.114 (9) (e) of the statutes is created to read:

21 302.114 (9) (e) A reviewing authority may consolidate proceedings before it
22 under par. (am) with other proceedings before that reviewing authority under par.
23 (am) or s. 302.11 (7) (am) or 302.113 (9) (am) if all of the proceedings relate to the
24 parole or extended supervision of the same person.

25 ~~SECTION 29. 302.114 (9) (f) of the statutes is created to read:~~

1 302.114 (9) (f) If there is a hearing under par. (am) before the division of
2 hearings and appeals in the department of administration, the person on extended
3 supervision may seek review of a decision to revoke extended supervision and the
4 department of corrections may seek review of a decision to not revoke extended
5 supervision. Review of a decision under this paragraph may be sought only by an
6 action for certiorari.

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7 **SECTION 30.** 304.11 (3) of the statutes is amended to read:

8 304.11 (3) If upon inquiry it further appears to the governor that the convicted
9 person has violated or failed to comply with any of those conditions, the governor may
10 issue his or her warrant remanding the person to the institution from which
11 discharged, and the person shall be confined and treated as though no pardon had
12 been granted, except that the person loses any applicable good time which he or she
13 had earned. If the person is returned to prison, the person is subject to the same
14 limitations as a revoked parolee under s. 302.11 (7). The department shall determine
15 the period of incarceration under s. 302.11 (7) (a) *✓* (am). If the governor determines
16 the person has not violated or failed to comply with the conditions, the person shall
17 be discharged subject to the conditional pardon.

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18 **SECTION 31.** 908.08 (1) of the statutes is amended to read:

19 908.08 (1) In any criminal trial or hearing, juvenile fact-finding hearing under
20 s. 48.31 or 938.31 or revocation hearing under s. 302.113 (9) (am), 302.114 (9) (am),
21 304.06 (3), or 973.10 (2), the court or hearing examiner may admit into evidence the
22 videotaped oral statement of a child who is available to testify, as provided in this
23 section.

(end ins 86/19 blue)

24 **SECTION 32.** 939.32 (1) (title) of the statutes is created to read:

25 939.32 (1) (title) **GENERALLY.**

1 **SECTION 33.** 939.32 (1m) of the statutes is created to read:

2 **939.32 (1m) BIFURCATED SENTENCES.** (a) Subject to s. 973.01 (2) (d), if the court
3 imposes a bifurcated sentence under s. 973.01 (1) for an attempt to commit a crime
4 that is punishable under sub. (1) (intro.), the following requirements apply:

5 1. If the completed crime is a classified felony, the maximum term of
6 confinement in prison is one-half of the maximum term of confinement in prison for
7 the classified felony.

8 2. If the completed crime is not a classified felony, the maximum term of
9 confinement is 75% of the maximum term of imprisonment under sub. (1) (intro.) for
10 an attempt to commit the crime.

11 (b) Subject to s. 973.01 (2) (d), the maximum term of confinement in prison
12 specified under par. (a) may be increased under s. 939.62 (1) or 961.48. If the
13 maximum term of confinement in prison specified in par. (a) is increased under this
14 paragraph, the maximum term of imprisonment under sub. (1) is increased by the
15 same amount.

16 **SECTION 34.** 939.32 (2) (title) of the statutes is created to read:

17 **939.32 (2) (title) MISDEMEANOR COMPUTER CRIMES.**

18 **SECTION 35.** 939.32 (3) (title) of the statutes is created to read:

19 ~~939.32 (3) (title) REQUIREMENTS.~~

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20 **SECTION 36.** 967.04 (9) of the statutes is amended to read:

21 **967.04 (9)** In any criminal prosecution or juvenile fact-finding hearing under
22 s. 48.31 or 938.31, the court may admit into evidence a videotaped deposition taken
23 under subs. (7) and (8) without an additional hearing under s. 908.08. In any
24 proceeding under s. 302.113 (9) (am), 302.114 (9) (am), 304.06 (3), or 973.10 (2), the
25 hearing examiner may order and preside at the taking of a videotaped deposition



1 using the procedure provided in subs. (7) and (8) and may admit the videotaped
2 deposition into evidence without an additional hearing under s. 908.08.

3 *(end ins Blue 178/4C)*
4 SECTION 37. 971.17 (1) of the statutes is renumbered 971.17 (1) (a) and
amended to read:

5 971.17 (1) (a) Felonies committed before the effective date of this paragraph
6 [revisor inserts date]. ~~When~~ Except as provided in par. (c), when a defendant is found
7 not guilty by reason of mental disease or mental defect of a felony committed before
8 the effective date of this paragraph [revisor inserts date], the court shall commit
9 the person to the department of health and family services for a specified period not
10 exceeding two-thirds of the maximum term of imprisonment that could be imposed
11 under s. 973.15 (2) (a) against an offender convicted of the same ~~crime or crimes~~
12 felony, including imprisonment authorized by ~~ss. 346.65 (2) (f), (2j) (d) or (3m),~~
13 ~~939.62, 939.621, 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b)~~
14 ~~and 961.48 and other~~ any applicable penalty enhancement statutes, as applicable,
15 subject to the credit provisions of s. 973.155.

16 (c) Felonies punishable by life imprisonment. ~~If the maximum term of~~
17 ~~imprisonment is~~ a defendant is found not guilty by reason of mental disease or
18 mental defect of a felony that is punishable by life imprisonment, the commitment
19 period specified by the court may be life, subject to termination under sub. (5).

20 SECTION 38. 971.17 (1) (b) of the statutes is created to read:

21 971.17 (1) (b) Crimes committed on or after the effective date of this paragraph
22 [revisor inserts date] for which a bifurcated sentence may be imposed. When a
23 defendant is found not guilty by reason of mental disease or mental defect of a crime
24 committed on or after the effective date of this paragraph [revisor inserts date],
25 and the crime is one for which a court may impose a bifurcated sentence under s.

1 ~~973.01~~, the court shall commit the person to the department of health and family
2 services for a specified period not exceeding the maximum term of confinement in
3 prison that could be imposed on an offender convicted of the same crime under s.
4 973.01 (2) (b) and (c), subject to the credit provisions of s. 973.155.

5 **SECTION 39.** 971.17 (1) (d) of the statutes is created to read:

6 971.17 (1) (d) *Misdemeanors for which a bifurcated sentence may not be*
7 *imposed.* When a defendant is found not guilty by reason of mental disease or mental
8 defect of one of the following misdemeanors, the court shall commit the person to the
9 department of health and family services for a specified period not exceeding
10 two-thirds of the maximum term of imprisonment that could be imposed under s.
11 973.15 (2) (a) against an offender convicted of the same misdemeanor, including
12 imprisonment authorized by any applicable penalty enhancement statutes, subject
13 to the credit provisions of s. 973.155:

14 1. A misdemeanor committed before the effective date of this subdivision
15 [revisor inserts date].

16 2. A misdemeanor committed on or after the effective date of this subdivision
17 [revisor inserts date], for which a court may not impose a bifurcated sentence

18 ~~under s. 973.01~~

19 Insert 181/4 Blue

SECTION 40. 972.15 (2c) of the statutes is amended to read:

20 972.15 (2c) If the defendant is subject to being sentenced under s. 973.01 and
21 he or she satisfies the criteria under s. 302.045 (2) (b) and (c), the person preparing
22 the presentence investigation report shall include in the report a recommendation
23 as to whether the defendant should be eligible for the challenge incarceration
24 program under s. 302.045. (end ins 181/4 blue)

25 **SECTION 41.** 973.01 (1) of the statutes is amended to read:

x x

1 973.01 (1) BIFURCATED SENTENCE REQUIRED. Except as provided in sub. (3),
2 whenever a court sentences a person to imprisonment in the Wisconsin state prisons
3 for a felony committed on or after December 31, 1999, or a misdemeanor committed
4 on or after the effective date of this subsection [revisor inserts date], the court
5 shall impose a bifurcated sentence that consists of a term of confinement in prison
6 followed by a term of extended supervision under s. 302.113.

7 **SECTION 42.** 973.01 (2) (intro.) of the statutes is amended to read:

8 973.01 (2) STRUCTURE OF BIFURCATED SENTENCES. (intro.) ~~The court shall ensure~~
9 ~~that~~ An order imposing a bifurcated sentence imposed under sub. (1) ~~complies~~ shall
10 comply with all of the following:

11 **SECTION 43.** 973.01 (2) (a) of the statutes is amended to read:

12 973.01 (2) (a) *Total length of bifurcated sentence.* Except as provided in par. (c),
13 the total length of the bifurcated sentence may not exceed the maximum period of
14 imprisonment for the felony crime.

15 **SECTION 44.** 973.01 (2) (b) (intro.) of the statutes is amended to read:

16 973.01 (2) (b) *Imprisonment Confinement portion of bifurcated sentence.*
17 (intro.) The portion of the bifurcated sentence that imposes a term of confinement
18 in prison may not be less than one year, subject to any minimum sentence prescribed
19 for the felony crime, and, except as provided in par. (c), may not exceed is subject to
20 whichever of the following limits is applicable:

21 **SECTION 45.** 973.01 (2) (b) 6. of the statutes is renumbered 973.01 (2) (b) 6.
22 (intro.) and amended to read:

23 973.01 (2) (b) 6. (intro.) For any felony crime other than a felony specified in
24 subs. 1. to 5. one of the following, the term of confinement in prison may not exceed
25 75% of the total length of the bifurcated sentence.;

Insert 183/6 Blue

1 SECTION 46. 973.01 (2) (b) ¹⁰ a. and b. of the statutes are created to read:

2 973.01 (2) (b) ¹⁰ a. A felony specified in subds. 1. to ⁹ b.

3 b. An attempt to commit a classified felony if the attempt is punishable under
4 s. 939.32 (1) (intro.).

(end ins 183/6 Blue)

5 ~~SECTION 47. 973.01 (2) (d) of the statutes is amended to read:~~

6 ~~973.01 (2) (d) *Minimum term of extended supervision.* The term of extended
7 supervision that follows the term of confinement in prison may not be less than 25%
8 of the length of the term of confinement in prison imposed under par. (b).~~

9 ~~Insert 184/21 Blue~~
SECTION 48. 973.01 (6) of the statutes is amended to read:

10 973.01 (6) NO PAROLE. A person serving a bifurcated sentence imposed under
11 sub. (1) is not eligible for release on parole under that sentence.

12 ~~Insert 191/30 Blue~~
SECTION 49. 973.09 (1) (a) of the statutes is amended to read:

13 973.09 (1) (a) Except as provided in par. (c) or if probation is prohibited for a
14 particular offense by statute, if a person is convicted of a crime, the court, by order,
15 may withhold sentence or impose sentence under s. 973.15 and stay its execution,
16 and in either case place the person on probation to the department for a stated period,
17 stating in the order the reasons therefor. The court may impose any conditions which
18 appear to be reasonable and appropriate. The period of probation may be made
19 consecutive to a sentence on a different charge, whether imposed at the same time
20 or previously. If the court imposes an increased term of probation, as authorized
21 under sub. (2) (a) (am) 2. or (b) 2., it shall place its reasons for doing so on the record.

22 SECTION 50. 973.09 (2) (intro.) and (a) 1. of the statutes are consolidated,
23 renumbered 973.09 (2) (am) 1. and amended to read:

Indeterminate

1 973.09 (2) (am) 1. The Subject to subd. 2., the original term of probation for a
2 jail sentence misdemeanor shall be: (a) 1. ~~Except as provided in subd. 2., for~~
3 ~~misdemeanors, not less than 6 months nor more than 2 years.~~

4 SECTION 51. 973.09 (2) (a) 2. of the statutes is renumbered 973.09 (2) (am) 2.
5 and amended to read:

6 973.09 (2) (am) 2. If the probationer is convicted of not less than 2 nor more than
7 4 jail sentence misdemeanors at the same time, the maximum original term of
8 probation may be increased by one year. If the probationer is convicted of 5 or more
9 jail sentence misdemeanors at the same time, the maximum original term of
10 probation may be increased by 2 years.

11 SECTION 52. 973.09 (2) (ag) of the statutes is created to read:

12 973.09 (2) (ag) *Definitions.* In this subsection:

13 1. "Bifurcated sentence misdemeanor" means a misdemeanor committed on or
14 after the effective date of this subdivision ... [revisor inserts date], for which a court
15 may impose a bifurcated sentence under s. 973.01.

16 2. "Jail ^{*Indeterminate*} sentence misdemeanor" means a misdemeanor other than a bifurcated
17 sentence misdemeanor.

18 SECTION 53. 973.09 (2) (am) (title) of the statutes is created to read:

19 973.09 (2) (am) (title) *Misdemeanors for which a bifurcated sentence may not*
20 *be imposed.*

21 SECTION 54. 973.09 (2) (b) (title) of the statutes is created to read:

22 973.09 (2) (b) (title) *Crimes for which a bifurcated sentence may be imposed.*

23 SECTION 55. 973.09 (2) (b) 1. of the statutes is amended to read:

24 973.09 (2) (b) 1. ~~Except as provided in Subject to subd. 2., the original term of~~
25 ~~probation for felonies, and bifurcated sentence misdemeanors shall be not less than~~

1 ~~one year nor more than either the statutory maximum term of imprisonment~~
2 ~~confinement in prison for the crime or 3 years, whichever is greater.~~

3 SECTION 56. 973.09 (2) (b) 2 of the statutes is amended to read:

4 973.09 (2) (b) 2. If the probationer is convicted of 2 or more crimes, including
5 at least one felony or bifurcated sentence misdemeanor, at the same time, the
6 maximum original term of probation may be increased by one year for each felony
7 conviction for a felony or a bifurcated sentence misdemeanor.

8 Incert 191/10 Blue

SECTION 57. 973.15 (2m) of the statutes is created to read:

9 973.15 (2m) (a) *Definitions*. In this subsection:

10 1. "Determinate sentence" means a bifurcated sentence imposed under s.
11 973.01 or a life sentence under which a person is eligible for release to extended
12 supervision under s. 973.014 (1g) (a) 1. or 2.

13 2. "Indeterminate sentence" means a sentence to the Wisconsin state prisons
14 other than one of the following:

15 a. A determinate sentence.

16 b. A sentence under which the person is not eligible for release on parole under
17 s. 939.62 (2m) (c) or 973.014 (1) (c).

18 3. "Period of confinement in prison," with respect to any sentence to the
19 Wisconsin state prisons, means any time during which a person is incarcerated
20 under that sentence, including any extensions imposed under s. 302.11 (3), 302.113
21 (3), or 302.114 (3) and any period of confinement in prison required to be served under
22 s. 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

23 (b) *Determinate sentences imposed to run concurrent with or consecutive to*
24 *determinate sentences*. 1. If a court provides that a determinate sentence is to run
25 concurrent with another determinate sentence, the person sentenced shall serve the

1 periods of confinement in prison under the sentences concurrently and the terms of
2 extended supervision under the sentences concurrently.

3 2. If a court provides that a determinate sentence is to run consecutive to
4 another determinate sentence, the person sentenced shall serve the periods of
5 confinement in prison under the sentences consecutively and the terms of extended
6 supervision under the sentences consecutively and in the order in which the
7 sentences have been pronounced.

8 (c) *Determinate sentences imposed to run concurrent with or consecutive to*
9 *indeterminate sentences.* 1. If a court provides that a determinate sentence is to run
10 concurrent with an indeterminate sentence, the person sentenced shall serve the
11 period of confinement in prison under the determinate sentence concurrent with the
12 period of confinement in prison under the indeterminate sentence and the term of
13 extended supervision under the determinate sentence concurrent with the parole
14 portion of the indeterminate sentence.

15 2. If a court provides that a determinate sentence is to run consecutive to an
16 indeterminate sentence, the person sentenced shall serve the period of confinement
17 in prison under the determinate sentence consecutive to the period of confinement
18 in prison under the indeterminate sentence and the parole portion of the
19 indeterminate sentence consecutive to the term of extended supervision under the
20 determinate sentence.

21 (d) *Indeterminate sentences imposed to run concurrent with or consecutive to*
22 *determinate sentences.* 1. If a court provides that an indeterminate sentence is to run
23 concurrent with a determinate sentence, the person sentenced shall serve the period
24 of confinement in prison under the indeterminate sentence concurrent with the
25 period of confinement in prison under the determinate sentence and the parole



Blue
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1 portion of the indeterminate sentence concurrent with the term of extended
2 supervision required under the determinate sentence.

3 2. If a court provides that an indeterminate sentence is to run consecutive to
4 a determinate sentence, the person sentenced shall serve the period of confinement
5 in prison under the indeterminate sentence consecutive to the period of confinement
6 in prison under the determinate sentence and the parole portion of the
7 indeterminate sentence consecutive to the term of extended supervision under the
8 determinate sentence.

9 (e) *Revocation in multiple sentence cases.* If a person is serving concurrent
10 determinate sentences and extended supervision is revoked in each case, or if a
11 person is serving a determinate sentence concurrent with an indeterminate sentence
12 and both extended supervision and parole are revoked, the person shall concurrently
13 serve any periods of confinement in prison required under those sentences under s.
14 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

15 **SECTION 58.** 973.155 (1) (b) of the statutes is amended to read:

16 973.155 (1) (b) The categories in par. (a) include custody of the convicted
17 offender which is in whole or in part the result of a probation, extended supervision
18 or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10 (2) placed
19 upon the person for the same course of conduct as that resulting in the new
20 conviction.

(end ins 191/10 blue)

21 **SECTION 59. Initial applicability.**

22 (1) MISDEMEANORS FOR WHICH PRISON SENTENCES MAY BE IMPOSED; PENALTIES FOR
23 ATTEMPTS. The treatment of sections 302.11 (1z), 939.32 (1m), 973.01 (1) and (2) (a)
24 and (b) (intro.), and 973.09 (2) (a) 2., (ag), (am) (title), and (b) (title), 1., and 2. of the
25 statutes, the renumbering and amendment of sections 971.17 (1) and 973.01 (2) (b)

Blue
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Cont'd

1 6. of the statutes, the consolidation, renumbering and amendment of section 973.09
2 (2) (intro.) and (a) 1. of the statutes, and the creation of sections 971.17 (1) (b) and
3 (d) and 973.01 (2) (b) 6. a. and b. of the statutes first apply to crimes committed on
4 the effective date of this subsection.

Insert 201/9A Blue

5 (2) CONCURRENT AND CONSECUTIVE SENTENCES. The treatment of section 973.15
6 (2m) of the statutes first applies to persons sentenced for crimes committed on the
7 effective date of this subsection. *(end ins 201/9A Blue)*

8 **SECTION 60. Effective dates.** This act takes effect on the day after publication,
9 except as follows:

10 (1) MISDEMEANORS FOR WHICH PRISON SENTENCES MAY BE IMPOSED; PENALTIES FOR
11 ATTEMPTS. The treatment of sections 302.11 (1z), 939.32 (1m), 973.01 (1) and (2) (a)
12 and (b) (intro.), and 973.09 (2) (a) 2., (ag), (am) (title), and (b) (title), 1., and 2. of the
13 statutes, the renumbering and amendment of sections 971.17 (1) and 973.01 (2) (b)
14 6. of the statutes, the consolidation, renumbering and amendment of section 973.09
15 (2) (intro.) and (a) 1. of the statutes, the creation of sections 971.17 (1) (b) and (d) and
16 973.01 (2) (b) 6. a. and b. of the statutes, and SECTION 59 (1) and (2) of this act take
17 effect on the first day of the 7th month beginning after publication.

18 (END)