



1997 ASSEMBLY BILL 125

February 18, 1997 - Introduced by Representatives SYKORA, AINSWORTH, DUFF, FOTI, FREESE, GREEN, GRONEMUS, GUNDERSON, HAHN, HANDRICK, HARSDORF, HUEBSCH, JENSEN, KEDZIE, KELSO, KREIBICH, KRUSICK, LADWIG, LA FAVE, F. LASEE, LAZICH, MUSSER, NASS, OLSEN, OTT, OWENS, PLALE, PORTER, POWERS, RYBA, SCHAFFER, SERATTI, SKINDRUD, UNDERHEIM, URBAN, VRAKAS, WALKER and ZUKOWSKI, cosponsored by Senators GROBSCHMIDT, DARLING, BUETTNER, DRZEWIECKI, HUELSMAN, A. LASEE, C. POTTER, ROSENZWEIG, WELCH, WIRCH and ZIEN. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT** *to renumber and amend* 302.11 (1i); *to amend* 51.20 (1) (ar) (intro.),
2 51.20 (13) (g) 2m., 51.37 (8) (a), 51.37 (8) (b), 302.11 (1g) (am), 302.11 (1p), 302.11
3 (6), 302.11 (9), 302.45 (1), 304.02 (3) (d), 971.11 (6), 978.07 (1) (c) 2. and 978.07
4 (1) (c) 3.; and *to create* 302.11 (1g) (az) and 302.11 (1i) (b) of the statutes;
5 **relating to:** mandatory release on parole.

Analysis by the Legislative Reference Bureau

Currently, a person serving a sentence of imprisonment to a state prison (other than a sentence of life imprisonment) usually 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).

However, current law also provides that certain serious felony offenders need not be automatically released when they reach their mandatory release dates. Instead, the parole commission may deny mandatory release to such an offender in order to protect the public or because the offender refused to participate in counseling or treatment. The serious felony offenders who can be denied mandatory release include persons convicted of serious violations such as homicide, battery, sexual assault, mayhem, kidnapping, taking hostages, arson, armed burglary, armed robbery, carjacking, assault by a prisoner, crimes against children and unlawful manufacture, sale and possession of controlled substances (dangerous drugs).

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This bill eliminates mandatory release on parole for these serious felony offenders. Thus, under the bill, a person serving a sentence of imprisonment for one of these serious felony offenses may be released on parole only through discretionary parole or special action parole release.

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

2 51.20 (1) (ar) (intro.) If the individual is an inmate of a state prison, the petition
3 may allege that the inmate is mentally ill, is a proper subject for treatment and is
4 in need of treatment. The petition shall allege that appropriate less restrictive forms
5 of treatment have been attempted with the individual and have been unsuccessful
6 and it shall include a description of the less restrictive forms of treatment that were
7 attempted. The petition shall also allege that the individual has been fully informed
8 about his or her treatment needs, the mental health services available to him or her
9 and his or her rights under this chapter and that the individual has had an
10 opportunity to discuss his or her needs, the services available to him or her and his
11 or her rights with a licensed physician or a licensed psychologist. The petition shall
12 include the inmate's sentence and his or her expected date of release as determined
13 under s. 302.11 or, if the inmate is not entitled to release under s. 302.11, the
14 expiration date of the inmate's sentence. The petition shall have attached to it a
15 signed statement by a licensed physician or a licensed psychologist of a state prison
16 and a signed statement by a licensed physician or a licensed psychologist of a state
17 treatment facility attesting either of the following:

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

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

5 **SECTION 3.** 51.37 (8) (a) of the statutes is amended to read:

6 51.37 (8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or
7 inmate who is found to be mentally ill or drug dependent except that the petition
8 shall be made to the court that made the finding or, if the prisoner or inmate is
9 detained by transfer, to the circuit court of the county in which he or she is detained.
10 If upon rehearing it is found that the standards for recommitment under s. 51.20 (13)
11 (g) no longer apply to the prisoner or inmate or that he or she is not in need of
12 psychiatric or psychological treatment, the prisoner or inmate shall be returned to
13 the prison or county jail or house of correction unless it is past his or her release date
14 as determined under s. 302.11 or, if the prisoner or inmate is not entitled to release
15 under s. 302.11, the expiration date of the inmate's sentence, in which case he or she
16 shall be discharged.

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

18 51.37 (8) (b) If the condition of any prisoner or inmate committed or transferred
19 under this section requires psychiatric or psychological treatment after his or her
20 date of release as determined under s. 302.11 or, if the prisoner or inmate is not
21 entitled to release under s. 302.11, the expiration date of the inmate's sentence, the
22 director of the state treatment facility shall, within a reasonable time before the
23 release date of the prisoner or inmate, make a written application to the court which
24 committed the prisoner or inmate under sub. (5) (a). Thereupon, the proceeding shall
25 be upon application made under s. 51.20, but no physician or psychologist who is

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1 connected with a state prison, Winnebago or Mendota mental health institute or any
2 county jail or house of correction may be appointed as an examiner. If the court does
3 not commit the prisoner or inmate, it may dismiss the application and order the
4 prisoner or inmate returned to the institution from which he or she was transferred
5 until the release date of the prisoner or inmate. If the court commits the prisoner or
6 inmate for the period commencing upon his or her release date, the commitment
7 shall be to the care and custody of the county department under s. 51.42 or 51.437.

8 **SECTION 5.** 302.11 (1g) (am) of the statutes is amended to read:

9 302.11 (1g) (am) The mandatory release date established in sub. (1) is a
10 presumptive mandatory release date for an inmate who is serving a sentence for a
11 serious felony committed on or after April 21, 1994, but before the effective date of
12 this paragraph [revisor inserts date].

13 **SECTION 6.** 302.11 (1g) (az) of the statutes is created to read:

14 302.11 (1g) (az) An inmate who is sentenced to imprisonment for a serious
15 felony committed on or after the effective date of this paragraph [revisor inserts
16 date], is not entitled to mandatory release on parole under sub. (1) or to presumptive
17 mandatory release under par. (b). An inmate who is subject to this paragraph may
18 be paroled by the parole commission under s. 304.06.

19 **SECTION 7.** 302.11 (1i) of the statutes is renumbered 302.11 (1i) (a) and
20 amended to read:

21 302.11 (1i) (a) An Except as provided in par. (b), an inmate serving a sentence
22 to the intensive sanctions program is entitled to mandatory release. The mandatory
23 release date under sub. (1) is established at two-thirds of the sentence under s.
24 973.032 (3) (a).

25 **SECTION 8.** 302.11 (1i) (b) of the statutes is created to read:

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1 302.11 (1i) (b) An inmate serving a sentence to the intensive sanctions program
2 for a serious felony, as defined in sub. (1g) (a), that is committed on or after the
3 effective date of this paragraph [revisor inserts date], is not entitled to mandatory
4 release.

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

6 302.11 (1p) An inmate serving a term subject to s. 961.49 (2) is entitled to
7 mandatory release, except as provided in sub. (1g) (az) and except that the inmate
8 may not be released before he or she has complied with s. 961.49 (2).

9 **SECTION 10.** 302.11 (6) of the statutes is amended to read:

10 302.11 (6) Any inmate released on parole under sub. (1) or (1g) (b) or s. 304.02
11 or 304.06 (1) is subject to all conditions and rules of parole until the expiration of the
12 sentence or until he or she is discharged by the department. Except as provided in
13 ch. 304, releases from prison shall be on the Tuesday or Wednesday preceding the
14 release date. The department may discharge a parolee on or after his or her
15 mandatory release date, if applicable, or after 2 years of supervision. Any inmate
16 sentenced to the intensive sanctions program who is released on parole under sub.
17 (1) or s. 304.02 or 304.06 (1) remains in the program unless discharged by the
18 department under s. 301.048 (6).

19 **SECTION 11.** 302.11 (9) of the statutes is amended to read:

20 302.11 (9) Except as provided in ~~sub.~~ subs. (1g) (am) and (az) and (1i) (b), this
21 section applies to persons committing offenses occurring on or after June 1, 1984, or
22 persons filing requests in accordance with 1983 Wisconsin Act 528, section 29 (2) or
23 (3).

24 **SECTION 12.** 302.45 (1) of the statutes is amended to read:

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1 302.45 (1) The department and any county or group of counties may contract
2 for the cooperative establishment and use of state-local shared correctional
3 facilities. Inmates sentenced to the Wisconsin state prisons, a county jail, a county
4 reforestation camp or a county house of correction may be transferred to a shared
5 facility by the department, sheriff or superintendent, respectively, under the
6 agreement covering use of the facility. Any inmate confined in a state-local shared
7 correctional facility shall be deemed to be serving time in the penal institution to
8 which he or she was sentenced and shall be eligible to earn good time credit against
9 his or her sentence as provided under ~~ss. s. 302.11, if applicable, and ss. 302.12;~~
10 302.43; 303.07 and 303.19 for that institution.

11 **SECTION 13.** 304.02 (3) (d) of the statutes is amended to read:

12 304.02 (3) (d) The inmate is not granted a special action release more than 18
13 months before his or her expected release date under s. 302.11, if applicable.

14 **SECTION 14.** 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 15.** 978.07 (1) (c) 2. of the statutes is amended to read:

