



1995 ASSEMBLY BILL 937

February 23, 1996 - Introduced by Representatives HANDRICK, KAUFERT, BRANDEMUEHL, DOBYNS, FOTI, LADWIG, MUSSER, OLSEN and OWENS, cosponsored by Senators ANDREA, A. LASEE, PETAK and ZIEN. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to renumber** 939.50 (1) (a), 939.50 (3) (a) and 973.015; **to renumber and**
2 **amend** 940.01 (1); **to amend** 161.335 (1), 301.048 (2) (b), 302.11 (1m), 303.065
3 (1), 304.02 (5), 304.06 (1) (b), 304.071 (2), 939.30 (2), 939.31, 939.32 (1) (a),
4 939.50 (2), 939.60, 939.624 (2), 939.625 (1) (b) 2., 939.63 (1) (a) 2., 971.17 (1),
5 972.03, 972.13 (6), 973.013 (1) (b), 973.0135 (3), 973.014 (1) (intro.), 973.032 (2)
6 (b), 973.09 (1) (c) and 978.07 (1) (c) 1.; and **to create** 161.335 (1m), 301.046 (3)
7 (cm), 304.06 (1t), 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1) (b), 940.01
8 (1) (c) and (d), 967.02 (1m), 973.015, 973.016 and 973.017 of the statutes; **relat-**
9 **ing to:** providing a penalty of either death or life imprisonment for first-degree
10 intentional homicide, affecting parole eligibility and granting rule-making au-
11 thority.

Analysis by the Legislative Reference Bureau

Under current law, no state crime is punishable by the death penalty. This bill provides for either a death penalty (by lethal injection) or life imprisonment (without parole eligibility) for first-degree intentional homicide committed by a person 16 years old or older.

The procedure for determining whether or not the death penalty would be imposed is the subject of a proceeding separate from the regular trial. After a conviction finding that the homicide occurred, the court reconvenes the trial jury, or, if there was no jury trial or the trial jury is unable to continue, a new jury is summoned. The defendant may waive the right to a jury. Evidence is then presented regarding various aggravating or mitigating circumstances relating to the crime and the defendant.

If the jury is not waived, the jury hears the evidence, and then gives an advisory sentence of either life imprisonment or death to the court. The court, not bound by the advisory sentence, then weighs the aggravating and mitigating circumstances and enters the sentence of either life imprisonment or death. If life imprisonment is imposed, the court must sentence the person to life imprisonment without the possibility of parole. If the court chooses the death sentence it must set forth its findings in writing. Any death sentence is subject to automatic appellate review by the supreme court.

The court that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner. One physician and 12 citizen witnesses must be present at the execution.

This bill applies only to those offenses committed on or after its effective date (the day after publication).

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.** 161.335 (1) of the statutes is amended to read:

2 161.335 (1) ~~Upon~~ Except as provided in sub. (1m), upon application, the con-
3 trolled substances board may issue a permit authorizing a person to manufacture,
4 obtain, possess, use, administer or dispense a controlled substance for purposes of
5 scientific research, instructional activities, chemical analysis or other special uses,
6 without restriction because of enumeration. No person shall may engage in any such
7 activity without a permit issued under this section, except that an individual may
8 be designated and authorized to receive the permit for a college or university depart-
9 ment, research unit or similar administrative organizational unit and students, lab-
10 oratory technicians, research specialists or chemical analysts under his or her super-
11 vision may be permitted possession and use of controlled substances for these
12 purposes without obtaining an individual permit.

13 **SECTION 2.** 161.335 (1m) of the statutes is created to read:

1 161.335 **(1m)** Upon the application of the secretary of corrections for a permit
2 to obtain a controlled substance for purposes of an execution under s. 973.017, the
3 controlled substances board shall issue a permit under this section.

4 **SECTION 3.** 301.046 (3) (cm) of the statutes is created to read:

5 301.046 **(3)** (cm) The prisoner is not awaiting imposition of a death sentence.

6 **SECTION 4.** 301.048 (2) (b) of the statutes is amended to read:

7 301.048 **(2)** (b) He or she is a prisoner serving a ~~felony~~ sentence for a felony not
8 punishable by death or life imprisonment and the department directs him or her to
9 participate in the program.

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

11 302.11 **(1m)** An inmate serving a life term is not entitled to mandatory release.
12 Except as provided in ss. 304.06 (1t), 939.62 (2m) and 973.014, the parole commission
13 may parole the inmate as specified in s. 304.06 (1). An inmate awaiting imposition
14 of a death sentence is not eligible for parole.

15 **SECTION 6.** 303.065 (1) of the statutes is amended to read:

16 303.065 **(1)** The department may grant work release privileges to any person
17 incarcerated within the state prisons, except that no person serving a life sentence
18 may be considered for work release until he or she has reached parole eligibility un-
19 der s. 304.06 (1) (b) or (1t) or 973.014, whichever is applicable, and no person serving
20 a life sentence under s. 939.62 (2m) or awaiting imposition of a death sentence may
21 be considered for work release.

22 **SECTION 7.** 304.02 (5) of the statutes is amended to read:

23 304.02 **(5)** Notwithstanding subs. (1) to (3), a prisoner who is serving a life sen-
24 tence under s. 939.62 (2m) or awaiting imposition of a death sentence is not eligible
25 for release to parole supervision under this section.

1 **SECTION 8.** 304.06 (1) (b) of the statutes is amended to read:

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

18 **SECTION 9.** 304.06 (1t) of the statutes is created to read:

19 304.06 (1t) If the prisoner is serving a life term imposed under s. 973.015, the
20 prisoner is not eligible for parole.

21 **SECTION 10.** 304.071 (2) of the statutes is amended to read:

22 304.071 (2) If a prisoner is not eligible for parole under s. 161.49 (2), 304.06 (1)
23 (b) or (1t), 939.62 (2m) or 973.032 (5), he or she is not eligible for parole under this
24 section.

25 **SECTION 11.** 939.22 (7) of the statutes is created to read:

1 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for
2 which one or more of the possible penalties is death or life imprisonment.

3 **SECTION 12.** 939.30 (2) of the statutes is amended to read:

4 939.30 (2) For a solicitation to commit a crime ~~for which the penalty is punish-~~
5 ~~able by death or~~ life imprisonment, the actor is guilty of a Class C felony. For a soli-
6 citation to commit a Class E felony, the actor is guilty of a Class E felony.

7 **SECTION 13.** 939.31 of the statutes is amended to read:

8 **939.31 Conspiracy.** Except as provided in ss. 161.41 (1x), 940.43 (4) and
9 940.45 (4), whoever, with intent that a crime be committed, agrees or combines with
10 another for the purpose of committing that crime may, if one or more of the parties
11 to the conspiracy does an act to effect its object, be fined or imprisoned or both not
12 to exceed the maximum provided for the completed crime; except that for a conspira-
13 cy to commit a crime ~~for which the penalty is punishable by death or~~ life imprison-
14 ment, the actor is guilty of a Class B felony.

15 **SECTION 14.** 939.32 (1) (a) of the statutes is amended to read:

16 939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is pun-~~
17 ~~ishable by death or~~ life imprisonment is guilty of a Class B felony.

18 **SECTION 15.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

19 **SECTION 16.** 939.50 (1) (ag) of the statutes is created to read:

20 939.50 (1) (ag) Class AA felony.

21 **SECTION 17.** 939.50 (2) of the statutes is amended to read:

22 939.50 (2) A felony is a Class AA, A, B, C, D or E felony when it is so specified
23 in chs. 939 to 951.

24 **SECTION 18.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

25 **SECTION 19.** 939.50 (3) (ag) of the statutes is created to read:

1 939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined
2 under s. 973.015.

3 **SECTION 20.** 939.60 of the statutes is amended to read:

4 **939.60 Felony and misdemeanor defined.** A crime punishable by death or
5 imprisonment in the Wisconsin state prisons is a felony. Every other crime is a mis-
6 demeanor.

7 **SECTION 21.** 939.624 (2) of the statutes is amended to read:

8 939.624 (2) If a person has one or more prior convictions for a serious violent
9 crime or a crime punishable by death or life imprisonment and subsequently com-
10 mits a serious violent crime, the court shall sentence the person to not less than 5
11 years' imprisonment, but otherwise the penalties for the crime apply, subject to any
12 applicable penalty enhancement. The court shall not place the defendant on proba-
13 tion.

14 **SECTION 22.** 939.625 (1) (b) 2. of the statutes is amended to read:

15 939.625 (1) (b) 2. If the maximum term of imprisonment for a felony is more
16 than 5 years or is a life term or the felony is punishable by death, the maximum term
17 of imprisonment for the felony may be increased by not more than 5 years.

18 **SECTION 23.** 939.63 (1) (a) 2. of the statutes is amended to read:

19 939.63 (1) (a) 2. If the maximum term of imprisonment for a felony is more than
20 5 years or is a life term or the felony is punishable by death, the maximum term of
21 imprisonment for the felony may be increased by not more than 5 years.

22 **SECTION 24.** 940.01 (1) of the statutes is renumbered 940.01 (1) (a) and
23 amended to read:

1 940.01 (1) (a) Except as provided in pars. (b) and (c) and sub. (2), whoever
2 causes the death of another human being with intent to kill that person or another
3 is guilty of a Class A AA felony.

4 **SECTION 25.** 940.01 (1) (b) of the statutes is created to read:

5 940.01 (1) (b) Notwithstanding s. 939.05, a person is subject to par. (a) as a
6 party to a crime only if that person had intended that a person be killed.

7 **SECTION 26.** 940.01 (1) (c) and (d) of the statutes are created to read:

8 940.01 (1) (c) A person is subject to par. (a) only if the person is 16 years old or
9 older when he or she commits the offense.

10 (d) Except as provided in sub. (2), whoever causes the death of another human
11 being with intent to kill that person or another, but who is not subject to par. (a) for
12 any reason provided under par. (b) or (c), is guilty of a Class A felony.

13 **SECTION 27.** 967.02 (1m) of the statutes is created to read:

14 967.02 (1m) "Crime punishable by death or life imprisonment" has the mean-
15 ing given in s. 939.22 (7).

16 **SECTION 28.** 971.17 (1) of the statutes is amended to read:

17 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason
18 of mental disease or mental defect, the court shall commit the person to the depart-
19 ment of health and social services for a specified period not exceeding two-thirds of
20 the maximum term of imprisonment that could be imposed under s. 973.15 (2) (a)
21 against an offender convicted of the same crime or crimes, including imprisonment
22 authorized by ss. 161.48, 939.62, 939.621, 939.63, 939.635, 939.64, 939.641 and
23 939.645 and other penalty enhancement statutes, as applicable, subject to the credit
24 provisions of s. 973.155. If the ~~maximum term of imprisonment is life~~ crime is pun-

1 ishable by death or life imprisonment, the commitment period specified by the court
2 may be life, subject to termination under sub. (5).

3 **SECTION 29.** 972.03 of the statutes is amended to read:

4 **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory
5 challenges except as otherwise provided in this section. When the crime charged is
6 punishable by death or life imprisonment the state is entitled to 6 peremptory chal-
7 lenges and the defendant is entitled to 6 peremptory challenges. If there is more than
8 one defendant, the court shall divide the challenges as equally as practicable among
9 them; and if their defenses are adverse and the court is satisfied that the protection
10 of their rights so requires, the court may allow the defendants additional challenges.
11 If the crime is punishable by death or life imprisonment, the total peremptory chal-
12 lenges allowed the defense shall not exceed 12 if there are only 2 defendants and 18
13 if there are more than 2 defendants; in other cases 6 challenges if there are only 2
14 defendants and 9 challenges if there are more than 2. Each side shall be allowed one
15 additional peremptory challenge if additional jurors are to be impaneled under s.
16 972.04 (1).

17 **SECTION 30.** 972.13 (6) of the statutes is amended to read:

18 972.13 (6) The following forms may be used for judgments:

19 STATE OF WISCONSIN

20 County

21 In Court

22 The State of Wisconsin

23 vs.

24(Name of defendant)

25 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

1 IT IS ADJUDGED That the defendant has been convicted upon the defendant's
2 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)
3 (no contest) on the day of, 19.., of the crime of in violation of s.; and the
4 court having asked the defendant whether the defendant has anything to state why
5 sentence should not be pronounced, and no sufficient grounds to the contrary being
6 shown or appearing to the court.

7 *IT IS ADJUDGED That the defendant is guilty as convicted.

8 *IT IS ADJUDGED That the defendant shall be executed by lethal injection.

9 *IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin
10 state prisons (county jail of county) for an indeterminate term of not more than.....

11 *IT IS ADJUDGED That the defendant is placed in the intensive sanctions pro-
12 gram subject to the limitations of section 973.032 (3) of the Wisconsin Statutes and
13 the following conditions:....

14 *IT IS ADJUDGED That the defendant is hereby committed to detention in
15 (the defendant's place of residence or place designated by judge) for a term of not
16 more than....

17 *IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the
18 costs of this action).

19 *IT IS ADJUDGED That the defendant pay restitution to....

20 *IT IS ADJUDGED That the defendant is restricted in his or her use of comput-
21 ers as follows:....

22 *The at is designated as the Reception Center to which the defendant
23 shall be delivered by the sheriff.

24 *IT IS ORDERED That the clerk deliver a duplicate original of this judgment
25 to the sheriff who shall forthwith execute the same and deliver it to the warden.

1 Dated this day of, 19...

2 BY THE COURT

3 Date of Offense,

4 District Attorney,

5 Defense Attorney

6 *Strike inapplicable paragraphs.

7 STATE OF WISCONSIN

8 County

9 In Court

10 The State of Wisconsin

11 vs.

12(Name of defendant)

13 On the day of, 19.., the district attorney appeared for the state and the
14 defendant appeared in person and by the defendant’s attorney.

15 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

16 IT IS ADJUDGED That the defendant has been found not guilty by the verdict
17 of the jury (by the court) and is therefore ordered discharged forthwith.

18 Dated this day of, 19...

19 BY THE COURT

20 **SECTION 31.** 973.013 (1) (b) of the statutes is amended to read:

21 973.013 (1) (b) The sentence shall have the effect of a sentence at hard labor
22 for the maximum term fixed by the court, subject to the power of actual release from
23 confinement by parole by the department or by pardon as provided by law. If a person
24 is sentenced for a definite time for an offense for which the person may be sentenced
25 under this section, the person is in legal effect sentenced as required by this section,

1 said definite time being the maximum period. ~~A~~ Except as provided in s. 973.015,
2 a defendant convicted of a crime for which the minimum penalty is life shall be sen-
3 tenced for life.

4 **SECTION 32** 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 death or life imprisonment.

7 **SECTION 33.** 973.014 (1) (intro.) of the statutes is amended to read:

8 973.014 (1) (intro.) Except as provided in sub. (2) and s. 973.015, when a court
9 sentences a person to life imprisonment for a crime committed on or after July 1,
10 1988, the court shall make a parole eligibility determination regarding the person
11 and choose one of the following options:

12 **SECTION 34.** 973.015 of the statutes is renumbered 973.019.

13 **SECTION 35.** 973.015 of the statutes is created to read:

14 **973.015 Sentence of death or life imprisonment for Class AA felony. (1)**

15 (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct a sep-
16 arate sentencing proceeding to determine whether the defendant should be sen-
17 tenced to death or life imprisonment. The trial judge shall conduct the proceeding
18 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury
19 is unable to reconvene for a hearing on the issue of penalty, the trial judge may sum-
20 mon a new jury to determine the issue of the imposition of the penalty. If the trial
21 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the
22 sentencing proceeding before a jury summoned for that purpose, unless waived by
23 the defendant.

24 (b) In the proceeding, the court shall admit any evidence that may be relevant
25 to the sentence regarding any mitigating circumstance. The court shall admit any

1 other evidence according to the rules of evidence applicable at a criminal trial. The
2 court shall provide the defendant with a fair opportunity to rebut any hearsay state-
3 ments. This subsection does not authorize the introduction of any evidence secured
4 in violation of the state or federal constitution. The state has the burden of proof,
5 beyond a reasonable doubt, regarding the existence of aggravating circumstances.
6 The defendant has the burden of proof, by a preponderance of the evidence, regarding
7 mitigating circumstances. The court shall permit the state and the defendant or his
8 or her counsel to present arguments for or against a sentence of death.

9 (2) Unless the defendant waives the right to a jury, the jury shall deliberate
10 after hearing all the evidence and, by a majority vote, shall render an advisory sen-
11 tence of life imprisonment or death to the court, based upon the following matters:

12 (a) The existence of aggravating circumstances under sub. (5).

13 (b) The existence of mitigating circumstances under sub. (6).

14 (3) (a) Notwithstanding the recommendation of a majority of the jury, the court,
15 after weighing the aggravating and mitigating circumstances, shall enter a sentence
16 of life imprisonment or death, but if the court imposes a sentence of death, it shall
17 set forth in writing its findings upon which the sentence of death is based as to the
18 facts:

19 1. That sufficient aggravating circumstances exist under sub. (5); and

20 2. That there are insufficient mitigating circumstances under sub. (6) to out-
21 weigh the aggravating circumstances.

22 (b) In each case in which the court imposes the death sentence, the court must
23 support its determination by specific written findings of fact based upon the circum-
24 stances in subs. (5) and (6) and upon the records of the trial and the sentencing pro-
25 ceedings. If the court does not make the findings requiring the death sentence, the

1 court shall impose sentence of life imprisonment. If the court imposes life imprison-
2 ment, it shall provide that the sentence is without the possibility of parole.

3 (4) If a death sentence is imposed, the judgment of conviction and sentence of
4 death is subject to automatic review by the supreme court within 60 days after certifi-
5 cation by the sentencing court of the entire record, unless the supreme court, for good
6 cause shown, extends the time for an additional period not to exceed 30 days. The
7 review by the supreme court has priority over all other cases and shall be heard in
8 accordance with rules promulgated by the supreme court.

9 (5) The court and jury shall consider one or more of the following as aggravat-
10 ing circumstances:

11 (a) The Class AA felony was committed by a person under sentence of imprison-
12 ment.

13 (b) The defendant has been previously convicted of a Class AA felony or any
14 other crime for which the death sentence may be imposed.

15 (c) The Class AA felony was committed for the purpose of avoiding or prevent-
16 ing a lawful arrest or effecting an escape from custody.

17 (d) The defendant knowingly created a great risk to many persons.

18 (e) The Class AA felony was committed to disrupt or hinder the lawful exercise
19 of any governmental function or the enforcement of laws.

20 (f) The defendant intentionally caused bodily harm or mental anguish to the
21 victim or another before the victim died.

22 (g) During the commission of the offense, the defendant enjoyed or was utterly
23 indifferent to the suffering of another.

24 (h) The Class AA felony was committed in a cold, calculated and premeditated
25 manner without any pretense of moral or legal justification.

1 (i) The defendant's attitude or behavior shows a lack of remorse.

2 (6) The court and jury shall consider as a mitigating factor any aspect of the
3 defendant's character, background or record or any of the circumstances of the of-
4 fense that the defendant offers as a basis for a sentence other than death. Mitigating
5 circumstances may include, but are not limited to, any of the following:

6 (a) The defendant has no significant history of prior criminal activity.

7 (b) The Class AA felony was committed while the defendant was under the in-
8 fluence of extreme mental or emotional disturbance.

9 (c) The defendant was an accomplice in the Class AA felony committed by
10 another person and the defendant's participation was relatively minor.

11 (d) The defendant acted under extreme duress or under the substantial domi-
12 nation of another person.

13 (e) The capacity of the defendant to appreciate the criminality of his or her con-
14 duct or to conform his or her conduct to the requirements of law was substantially
15 impaired.

16 (f) The age of the defendant impaired his or her judgment at the time of the
17 crime.

18 (g) The defendant cooperated with authorities in apprehending or prosecuting
19 other participants in the Class AA felony.

20 (h) The attitude or behavior of the defendant shows remorse.

21 (7) The court that imposes a sentence of death shall set the date for execution.
22 The defendant shall be committed to the Wisconsin state prisons pending the execu-
23 tion of the death sentence.

24 (8) The execution of a death sentence shall be by lethal injection.

25 **SECTION 36.** 973.016 of the statutes is created to read:

1 **973.016 Stay of execution of death sentence.** The execution of a death sen-
2 tence may be stayed only by the governor or incident to an appeal.

3 **SECTION 37.** 973.017 of the statutes is created to read:

4 **973.017 Execution of death sentence.** The secretary of corrections shall
5 designate the executioner who shall provide a person subject to a death sentence with
6 an intravenous injection of one or more substances in a lethal quantity. The execu-
7 tioner must be a physician or acting under the direction of a physician. A person is
8 immune from civil or criminal liability for his or her acts or omissions, in good faith,
9 in regard to a lawful execution under this section. The secretary shall designate 12
10 citizens to witness the execution. The secretary shall direct a physician to be present
11 and to announce when death has occurred. The convicted person may request that
12 certain additional people be allowed to witness the execution. The secretary shall
13 grant any such reasonable request. The secretary may allow representatives of the
14 news media to witness the execution under rules of the department. No other per-
15 sons may be allowed to witness the execution.

16 **SECTION 38.** 973.032 (2) (b) of the statutes is amended to read:

17 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person
18 under sub. (1) if he or she is convicted of a felony punishable by death or life imprison-
19 ment.

20 **SECTION 39.** 973.09 (1) (c) of the statutes is amended to read:

21 973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable
22 by death or life imprisonment, the court shall not place the person on probation.

23 **SECTION 40.** 978.07 (1) (c) 1. of the statutes is amended to read:

24 978.07 (1) (c) 1. Any case record of a felony punishable by death or life imprison-
25 ment or a related case, after the defendant's parole eligibility date under s. 304.06

1 (1) or 973.014 or 50 years after the commencement of the action, whichever occurs
2 later. If there is no parole eligibility date, the district attorney may destroy the case
3 record after the defendant's death.

4 **SECTION 41. Initial applicability.**

5 (1) This act first applies to offenses committed on the effective date of this sub-
6 section.

7 (END)