



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-2329/1
JK&MPG:all

2019 SENATE BILL 242

May 24, 2019 - Introduced by Senators BERNIER, MILLER, SMITH, BEWLEY and SCHACHTNER, cosponsored by Representatives TUSLER, ZAMARRIPA, SPREITZER, ANDERSON, KRUG, LOUDENBECK, MACCO, MURSAU, RAMTHUN, VRUWINK and SUBECK. Referred to Committee on Elections, Ethics and Rural Issues.

1 **AN ACT** *to repeal* 6.22 (6) and 7.15 (1) (j); *to amend* 6.03 (1) (a), 6.03 (3), 6.18
2 (intro.), 6.25 (1) (c), 6.25 (4), 6.79 (2) (d), 6.82 (1) (a), 6.875 (3) (b), 6.97 (1), 7.15
3 (1) (cm), 7.52 (3) (a), 9.10 (2) (e) 6. and 12.60 (1) (a); and *to create* 12.13 (3) (mb)
4 of the statutes; **relating to:** absentee voting, voting procedures, and providing
5 a penalty.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the election laws regarding absentee voting and voting procedures:

1. Under current law, a municipal clerk may dispatch special voting deputies to a residential care facility or qualified retirement home so that the occupants of the facility or home may cast an absentee ballot in person with the special voting deputies rather than vote in person at the appropriate polling place or request and complete an absentee ballot by mail. Current law provides that the occupants of a retirement home that is not a qualified retirement home may vote in person at the appropriate polling place or request and complete an absentee ballot by mail. Under current law, a retirement home is a facility occupied as a primary residence by ten or more unrelated individuals. A qualified retirement home is a retirement home that has a significant number of occupants who lack adequate transportation to the polling place, need assistance in voting, are aged 60 or over, or are indefinitely confined. Current law also requires that if a retirement home is located within a municipality on the same grounds as one or more residential care facilities to which

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special voting deputies are dispatched, the management of the retirement home shall provide the names and addresses of the home occupants to the clerk so that the special voting deputies may verify which electors are eligible to cast absentee ballots in person with the deputies.

This bill provides that if a retirement home that is not a qualified retirement home is located within a municipality as part of a multiple-use facility consisting of one or more qualified retirement homes or residential care facilities to which special voting deputies are dispatched, the management of the retirement home must provide the clerk with the names and addresses of the occupants of the home. The clerk then provides the special voting deputies with the names and addresses of the verified residents who are eligible to cast absentee ballots in person with the deputies.

2. Current law allows an individual who registered to vote without providing proof of residence prior to the enactment of 2013 Act 182, which took effect on April 4, 2014, to cast a provisional ballot on election day. The ballot is counted only if the elector provides proof of residence to the municipal clerk or board of election commissioners no later than 4 p.m. on the Friday after the election. Act 182 eliminated the option to register to vote without proof of residence, but those who exercised that option prior to April 4, 2014, were given the opportunity to vote by provisional ballot and provide proof of residence. By July 1, 2019, those electors will have provided proof of residence and voted or will have been removed from the voter registration database as part of the list maintenance process because they had not voted in four years and had not responded to mailings from the Elections Commission to verify their residential address. This bill provides that an individual who is required to provide proof of residence to complete his or her voter registration but who does not provide such proof is not allowed to cast a provisional ballot or to otherwise vote.

3. Current law allows a former qualified Wisconsin elector who has moved out of this state, but who is not yet a qualified elector in another state, to apply for and vote by an absentee ballot in the ward of the elector's prior Wisconsin residence in any presidential election occurring within 24 months after leaving this state. Current law does not specify the deadline for making such a request, but, generally, an application for an absentee ballot made by mail must be received no later than 5 p.m. on the fifth day preceding the election. This bill clarifies that a former qualified Wisconsin elector who is not a qualified elector elsewhere must apply for an absentee ballot to vote in a presidential election in the ward of the elector's prior residence no later than 5 p.m. on the fifth day preceding the election.

4. Currently, if election inspectors are aware that an eligible elector is unable to enter the polling place due to a disability, the inspectors must allow the elector to vote without entering the polling place. This is commonly referred to as "curbside voting." For curbside voting, the elector may designate another individual to assist the elector with presenting proof of identification or marking the ballot. After the inspectors have viewed the proof of identification and verified that the elector's name and address match the name and address on the poll list, the inspectors issue a ballot and take it to the entrance of the polling place so that the elector or the person

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assisting the elector may mark the ballot. After the elector or the assisting individual has marked the ballot, an inspector receives the ballot, enters the polling place, and announces the name of the elector, states that the elector is unable to enter the polling place due to a disability, and asks if anyone present objects to the inspector receiving the elector's ballot.

Under the bill, an eligible elector who, for any reason, is unable to enter the polling place is not required to sign the poll list, but, instead, must sign a document indicating the elector's name and address and the time at which the inspectors issued the ballot. The document, rather than the poll list, is brought outside the polling place along with the ballot. The bill also requires an inspector to note on the poll list that the elector voted "curbside." The document also requires that the elector certify that he or she is unable to enter the polling place.

The bill also modifies current law to conform with the current practices described in the Elections Commission's election day manual regarding curbside voting. For example, the bill requires that two inspectors must leave the polling place to assist the elector and if having two inspectors outside the polling place results in having fewer than three inspectors inside the polling place, no voting is permitted during the time that the inspectors are outside assisting the elector. The bill specifies that the inspectors leave the polling place initially in order to view the elector's proof of identification. The inspectors then go back inside the polling place to verify that the elector's name and address match the name and address in the poll list and, if so, to issue a ballot. The inspectors then go outside a second time to have the elector or assisting individual mark the ballot.

5. This bill makes a technical change to current law related to the municipal clerk's duty to send absentee ballots automatically to those electors who have requested that option so that the provision for sending out absentee ballots automatically is included in the provision that specifies the clerk's other duties with regard to preparing and providing absentee ballots.

6. Under this bill, a person may be denied the right to register to vote or to vote based on the person's incapacity to understand the objective of the elective process only if a court specifically determines that the person is incompetent to exercise those rights. Under current law, a person who has been adjudicated incompetent may be denied those rights without a specific finding by the court that the person is incompetent to exercise those rights.

7. This bill eliminates the requirement that the board of absentee ballot canvassers mark the poll list number of each elector who casts an absentee ballot on the back of the elector's ballot before placing the ballot in the ballot box.

8. This bill prohibits a person from obtaining another person's marked absentee ballot and failing or refusing to deliver it to the proper municipal clerk or polling place. A person who violates this prohibition is guilty of a Class I felony.

9. The bill eliminates the requirement that each municipal clerk maintain an updated list of all eligible military electors who reside in the municipality.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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For further information see the *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.** 6.03 (1) (a) of the statutes is amended to read:

2 6.03 (1) (a) ~~Any~~ Subject to sub. (3), any person who is incapable of
3 understanding the objective of the elective process ~~or who is under guardianship,~~
4 unless the court has determined that the person is competent to exercise the right
5 to vote.

6 **SECTION 2.** 6.03 (3) of the statutes is amended to read:

7 6.03 (3) No person may be denied the right to register to vote or the right to vote
8 by reason that the person is alleged to be incapable of understanding the objective
9 of the elective process unless the person has been adjudicated incompetent ~~in this~~
10 state. ~~If a determination of incompetency of the person has already been made, or~~
11 ~~if a determination of limited incompetency has been made that does not include a~~
12 ~~specific finding that the subject is competent to exercise the right to vote, and a~~
13 ~~guardian has been appointed as a result of any such determination, then no~~
14 ~~determination of incapacity of understanding the objective of the elective process is~~
15 ~~required unless the guardianship is terminated or modified under s. 54.64~~ to exercise
16 the right to register to vote or to vote under s. 54.25 (2) (c) 1. g.

17 **SECTION 3.** 6.18 (intro.) of the statutes is amended to read:

18 **6.18 Former residents.** (intro.) If ineligible to qualify as an elector in the
19 state to which the elector has moved, any former qualified Wisconsin elector may
20 vote an absentee ballot in the ward of the elector's prior residence in any presidential
21 election occurring within 24 months after leaving Wisconsin by requesting an

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1 application form from the municipal clerk of the elector's prior residence and
2 returning it, properly executed, to the municipal clerk ~~of the elector's prior Wisconsin~~
3 residence no later than 5 p.m. on the 5th day immediately preceding the election.

4 When requesting an application form for an absentee ballot, the applicant shall
5 specify the applicant's eligibility for only the presidential ballot. Unless the
6 applicant is exempted from providing proof of identification under s. 6.87 (4) (b) 2.
7 or 3., or the applicant is a military or overseas elector, the elector shall enclose a copy
8 of his or her proof of identification or any authorized substitute document with his
9 or her application. The municipal clerk shall verify that the name on the proof of
10 identification conforms to the name on the application. The clerk shall not issue a
11 ballot to an elector who is required to enclose a copy of proof of identification or an
12 authorized substitute document with his or her application unless the copy is
13 enclosed and the proof is verified by the clerk. The application form shall require the
14 following information and be in substantially the following form:

15 **SECTION 4.** 6.22 (6) of the statutes is repealed.

16 **SECTION 5.** 6.25 (1) (c) of the statutes is amended to read:

17 6.25 (1) (c) A completed and signed federal write-in absentee ballot submitted
18 by a qualified elector under par. (a) or (b) serves as an application for an absentee
19 ballot and need not be accompanied by a separate application.

20 **SECTION 6.** 6.25 (4) of the statutes is amended to read:

21 6.25 (4) A write-in absentee ballot issued under sub. (1) is valid only if the
22 elector submitting the ballot does not submit an official ballot within the time
23 prescribed in s. 6.87 (6) and, ~~if the elector is an overseas elector, the elector resides~~
24 ~~outside the United States.~~

25 **SECTION 7.** 6.79 (2) (d) of the statutes is amended to read:

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1 6.79 (2) (d) ~~If the poll list indicates that proof of residence under s. 6.34 is~~
2 ~~required and the proof of identification document provided by the elector under par.~~
3 ~~(a) does not constitute proof of residence under s. 6.34, the officials shall require the~~
4 ~~elector to provide proof of residence. If proof of residence is provided, the officials~~
5 ~~shall enter both the type of identifying document submitted as proof of residence and~~
6 ~~the name of the entity or institution that issued the identifying document in the~~
7 ~~space provided on the poll list and shall verify that the name and address on the~~
8 ~~identifying document is the same as the name and address shown on the registration~~
9 ~~list. If proof of residence is required and not provided, or if the an elector does not~~
10 ~~present proof of identification under par. (a), whenever required, the officials shall~~
11 ~~offer the opportunity for the elector to vote under s. 6.97.~~

12 **SECTION 8.** 6.82 (1) (a) of the statutes is amended to read:

13 6.82 (1) (a) When any inspectors are informed that an eligible elector is at the
14 entrance to the polling place ~~who as a result of disability is and unable to enter the~~
15 ~~polling place, they 2 inspectors shall leave the polling place in order to view the~~
16 ~~elector's proof of identification. If having 2 inspectors outside the polling place~~
17 ~~results in having fewer than 3 inspectors inside the polling place, no voting is~~
18 ~~permitted during the time that the inspectors are outside assisting the elector. If the~~
19 ~~elector is able to enter the polling place, the elector shall vote in the polling place.~~
20 ~~If the elector is unable to enter the polling place, the inspectors shall permit the~~
21 ~~elector to be assisted in presenting proof of identification or marking a ballot by any~~
22 ~~individual selected by the elector, except the elector's employer or an agent of that~~
23 ~~employer or an officer or agent of a labor organization which represents the elector.~~
24 ~~Except as authorized in s. 6.79 (6) and (7), the elector or the individual selected by~~
25 ~~the elector shall present to the inspectors proof of identification and, if the elector is~~

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1 not registered and the proof of identification does not constitute proof of residence
2 under s. 6.34, shall also provide proof of residence under s. 6.34 for the assisted
3 elector and all other information necessary for the elector to obtain a ballot under s.
4 6.79 (2). The inspectors shall verify that the photograph appearing on the proof of
5 identification reasonably resembles the elector. The inspectors shall then enter the
6 polling place to verify that the name on the proof of identification presented by the
7 person assisting the elector conforms to the elector's name on the poll list or separate
8 list, shall verify that any photograph appearing on that document reasonably
9 resembles the elector, and, if registration is required, shall enter both the type of
10 identifying document submitted by the assisted elector as proof of residence and the
11 name of the entity or institution that issued the identifying document in the space
12 provided on the poll list or separate list. The inspectors shall also write "exempt" in
13 the signature box of the poll list. The inspectors shall then issue a ballot to the
14 individual selected by the elector and shall accompany the individual to the polling
15 place entrance where the assistance is to be given eligible elector who is unable to
16 enter the polling place and place the ballot in a security sleeve. Two inspectors shall
17 leave the polling place and present the ballot to the elector or to the individual
18 assisting the elector. If the ballot is a paper ballot, the elector or the assisting
19 individual shall fold the ballot place the ballot in the security sleeve after the ballot
20 is marked by the elector or the assisting individual. The inspectors shall complete
21 and have the elector sign a document that indicates the elector's name and address
22 and the time when the inspectors issued the ballot. The document shall also require
23 that the elector certify that he or she is unable to enter the polling place. The
24 inspectors shall explain to the elector the contents and purpose of the document
25 before asking the elector to sign the document. The document shall be kept with the

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1 poll list or separate list. The elector or the assisting individual shall then
2 immediately take the ballot into the polling place and give the ballot to an inspector.
3 ~~The inspector~~ the inspectors who shall return to the polling place. Once inside the
4 polling place, an inspector shall distinctly announce that he or she has “a ballot
5 offered by (stating person’s name), an elector who, ~~as a result of disability,~~ resides
6 at (stating person’s address), and who is unable to enter the polling place without
7 assistance”. ~~The inspector shall then ask, “Does anyone object to the reception of this~~
8 ~~ballot?”~~ If no objection is made, the, The inspectors shall record the elector’s name
9 under s. 6.79 and deposit the ballot in the ballot box, and shall make a notation on
10 the poll list: ~~“Ballot received at poll entrance”~~ “curbside.” ~~The inspectors shall record~~
11 all incidents of voting as provided under this paragraph on an inspector’s statement.

12 **SECTION 9.** 6.875 (3) (b) of the statutes is amended to read:

13 6.875 (3) (b) An occupant of a retirement home that is not a qualified retirement
14 home is not eligible to cast a ballot with a special voting deputy, as provided under
15 sub. (4), but may vote in person at the polling place serving his or her residence or
16 may apply for and cast an absentee ballot at the election in the same manner as
17 provided for other electors of the municipality where he or she resides. If a
18 retirement home that is not a qualified retirement home is located within a
19 municipality ~~on the same grounds as~~ part of a multiple-use facility consisting of one
20 or more qualified retirement homes or residential care facilities to which the
21 municipal clerk or board of election commissioners of the municipality dispatches
22 special voting deputies to conduct voting at an election, the municipal clerk or board
23 of election commissioners shall obtain from the management of the retirement home
24 the names and addresses of the occupants of the home. The municipal clerk or board
25 of election commissioners shall then provide the special voting deputies with the

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1 names and addresses to ~~the special voting deputies to verify which~~ of the verified
2 residents who are eligible to cast their ballots with the special voting deputies.

3 **SECTION 10.** 6.97 (1) of the statutes is amended to read:

4 6.97 (1) Whenever any individual who is required to provide proof of residence
5 under s. 6.34 in order to be permitted to vote appears to vote at a polling place and
6 cannot provide the required proof of residence, the inspectors shall offer the
7 opportunity for the individual to vote under this section. Whenever any individual,
8 other than a military elector, as defined in s. 6.34 (1), an overseas elector, or an elector
9 who has a confidential listing under s. 6.47 (2), appears to vote at a polling place and
10 does not present proof of identification under s. 6.79 (2), whenever required, the
11 inspectors or the municipal clerk shall similarly offer the opportunity for the
12 individual to vote under this section. If the individual wishes to vote, the inspectors
13 shall provide the elector with an envelope marked "Ballot under s. 6.97, stats." on
14 which the serial number of the elector is entered and shall require the individual to
15 execute on the envelope a written affirmation stating that the individual is a
16 qualified elector of the ward or election district where he or she offers to vote and is
17 eligible to vote in the election. The inspectors shall, before giving the elector a ballot,
18 write on the back of the ballot the serial number of the individual corresponding to
19 the number kept at the election on the poll list or other list maintained under s. 6.79
20 and the notation "s. 6.97". If voting machines are used in the municipality where the
21 individual is voting, the individual's vote may be received only upon an absentee
22 ballot furnished by the municipal clerk which shall have the corresponding number
23 from the poll list or other list maintained under s. 6.79 and the notation "s. 6.97"
24 written on the back of the ballot by the inspectors before the ballot is given to the
25 elector. When receiving the individual's ballot, the inspectors shall provide the

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1 individual with written voting information prescribed by the commission under s.
2 7.08 (8). The inspectors shall indicate on the list the fact that the individual is
3 required to provide proof of residence or proof of identification under s. 6.79 (2) but
4 did not do so. The inspectors shall notify the individual that he or she may provide
5 proof of residence or proof of identification to the municipal clerk or executive
6 director of the municipal board of election commissioners no later than 4 p.m. on the
7 Friday after the election. The inspectors shall also promptly notify the municipal
8 clerk or executive director of the name, address, and serial number of the individual.
9 The inspectors shall then place the ballot inside the envelope and place the envelope
10 in a separate carrier envelope.

11 **SECTION 11.** 6.97 (1) of the statutes, as affected by 2019 Wisconsin Act (this
12 act), is amended to read:

13 6.97 (1) ~~Whenever any individual who is required to provide proof of residence~~
14 ~~under s. 6.34 in order to be permitted to vote appears to vote at a polling place and~~
15 ~~cannot provide the required proof of residence, the inspectors shall offer the~~
16 ~~opportunity for the individual to vote under this section.~~ Whenever any individual,
17 other than a military elector, as defined in s. 6.34 (1), an overseas elector, or an elector
18 who has a confidential listing under s. 6.47 (2), appears to vote at a polling place and
19 does not present proof of identification under s. 6.79 (2), whenever required, the
20 inspectors or the municipal clerk shall ~~similarly~~ offer the opportunity for the
21 individual to vote under this section. If the individual wishes to vote, the inspectors
22 shall provide the elector with an envelope marked "Ballot under s. 6.97, stats." on
23 which the serial number of the elector is entered and shall require the individual to
24 execute on the envelope a written affirmation stating that the individual is a
25 qualified elector of the ward or election district where he or she offers to vote and is

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1 eligible to vote in the election. The inspectors shall, before giving the elector a ballot,
2 write on the back of the ballot the serial number of the individual corresponding to
3 the number kept at the election on the poll list or other list maintained under s. 6.79
4 and the notation "s. 6.97". If voting machines are used in the municipality where the
5 individual is voting, the individual's vote may be received only upon an absentee
6 ballot furnished by the municipal clerk which shall have the corresponding number
7 from the poll list or other list maintained under s. 6.79 and the notation "s. 6.97"
8 written on the back of the ballot by the inspectors before the ballot is given to the
9 elector. When receiving the individual's ballot, the inspectors shall provide the
10 individual with written voting information prescribed by the commission under s.
11 7.08 (8). The inspectors shall indicate on the list the fact that the individual is
12 required to provide ~~proof of residence or~~ proof of identification under s. 6.79 (2) but
13 did not do so. The inspectors shall notify the individual that he or she may provide
14 ~~proof of residence or~~ proof of identification to the municipal clerk or executive
15 director of the municipal board of election commissioners no later than 4 p.m. on the
16 Friday after the election. The inspectors shall also promptly notify the municipal
17 clerk or executive director of the name, address, and serial number of the individual.
18 The inspectors shall then place the ballot inside the envelope and place the envelope
19 in a separate carrier envelope.

20 **SECTION 12.** 7.15 (1) (cm) of the statutes is amended to read:

21 7.15 (1) (cm) Prepare official absentee ballots for delivery to electors requesting
22 them, and except as provided in this paragraph, send an official absentee ballot to
23 each elector who has requested a ballot by mail, and to each military elector, as
24 defined in s. 6.34 (1), and overseas elector who has requested a ballot by mail,
25 electronic mail, or facsimile transmission, no later than the 47th day before each

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1 partisan primary and general election and no later than the 21st day before each
2 other primary and election if the request is made before that day; otherwise, the
3 municipal clerk shall send or transmit an official absentee ballot within one business
4 day of the time the elector's request for such a ballot is received. The clerk shall send
5 or transmit an absentee ballot for the presidential preference primary to each elector
6 who has requested that ballot no later than the 47th day before the presidential
7 preference primary if the request is made before that day, or, if the request is not
8 made before that day, within one business day of the time the request is received.
9 The clerk shall send an absentee ballot automatically to each elector and send or
10 transmit an absentee ballot to each military elector, as defined in s. 6.34 (1), and each
11 overseas elector making an authorized request therefor in accordance with s. 6.22
12 (4), 6.24 (4) (c), or 6.86 (2) or (2m). For purposes of this paragraph, "business day"
13 means any day from Monday to Friday, not including a legal holiday under s. 995.20.

14 **SECTION 13.** 7.15 (1) (j) of the statutes is repealed.

15 **SECTION 14.** 7.52 (3) (a) of the statutes is amended to read:

16 7.52 (3) (a) The board of absentee ballot canvassers shall first open the carrier
17 envelope only, and, in such a manner that a member of the public, if he or she desired,
18 could hear, announce the name of the absent elector or the identification serial
19 number of the absent elector if the elector has a confidential listing under s. 6.47 (2).
20 When the board of absentee ballot canvassers finds that the certification has been
21 properly executed and the applicant is a qualified elector of the ward or election
22 district, the board of absentee ballot canvassers shall enter an indication on the poll
23 list next to the applicant's name indicating an absentee ballot is cast by the elector.
24 The board of absentee ballot canvassers shall then open the envelope containing the
25 ballot in a manner so as not to deface or destroy the certification thereon. The board

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1 of absentee ballot canvassers shall take out the ballot without unfolding it or
2 permitting it to be unfolded or examined. Unless the ballot is cast under s. 6.95, the
3 board of absentee ballot canvassers shall verify that the ballot has been endorsed by
4 the issuing clerk. If the poll list indicates that proof of residence is required and no
5 proof of residence is enclosed or the name or address on the document that is provided
6 is not the same as the name and address shown on the poll list, the board of absentee
7 ballot canvassers shall proceed as provided under s. 6.97 (2). ~~The board of absentee~~
8 ~~ballot canvassers shall mark the poll list number of each elector who casts an~~
9 ~~absentee ballot on the back of the elector's ballot.~~ The board of absentee ballot
10 canvassers shall then deposit the ballot into the proper ballot box and enter the
11 absent elector's name or poll list number after his or her name on the poll list.

12 **SECTION 15.** 9.10 (2) (e) 6. of the statutes is amended to read:

13 9.10 (2) (e) 6. The signer has been adjudicated not to be a qualified elector on
14 grounds of incompetency ~~or limited incompetency~~ as provided in s. 6.03 (3).

15 **SECTION 16.** 12.13 (3) (mb) of the statutes is created to read:

16 12.13 (3) (mb) Obtain a marked absentee ballot from another person and fail
17 or refuse to deliver it to the proper municipal clerk or polling place.

18 **SECTION 17.** 12.60 (1) (a) of the statutes is amended to read:

19 12.60 (1) (a) Whoever violates s. 12.09, 12.11, or 12.13 (1), (2) (b) 1. to 7., or (3)
20 (a), (e), (f), (j), (k), (L), (m), (mb), (y), or (z) is guilty of a Class I felony.

21 **SECTION 18. Effective dates.** This act takes effect on the day after publication,
22 except as follows:

23 (1) The treatment of ss. 6.79 (2) (d) and 6.97 (1) (by SECTION 11) takes effect on
24 July 1, 2019.

25 (END)