



1995 ASSEMBLY BILL 192

March 13, 1995 - Introduced by Representatives FOTI, LEHMAN, AINSWORTH, ALBERS, BRANDEMUEHL, FREESE, GUNDERSON, HANDRICK, HOVEN, HUEBSCH, KREIBICH, LADWIG, F. LASEE, MUSSER, OLSEN, OTT, RILEY, SKINDRUD, SILBAUGH, WALKER and ZIEGELBAUER, cosponsored by Senators A. LASEE, ANDREA, DARLING and ROSENZWEIG. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to amend** 161.49 (2) (a), 302.045 (3), 302.11 (1), 302.11 (1g) (am), 302.11
2 (1g) (b) (intro.), 302.11 (1i), 302.11 (6), 304.06 (1) (b), 304.06 (1m) (intro.), 304.06
3 (1r) (a) (intro.), 304.071 (2) and 973.0135 (2) (intro.); and **to create** 302.11 (1g)
4 (ar), 304.02 (6), 304.02 (7), 304.06 (1p), 304.06 (1q) and 973.0135 (2m) of the
5 statutes; **relating to:** parole eligibility.

Analysis by the Legislative Reference Bureau

Under present law, a person serving a sentence in a state prison usually has 3 possible ways of being released on parole: discretionary parole granted by the parole commission, mandatory release on parole (usually serving two-thirds of the sentence and automatically receiving parole) or special action parole release by the secretary of corrections (a program designed to relieve prison crowding). Currently, certain serious felony offenders need not be automatically released when they reach their mandatory release dates. Instead, the parole commission may deny such a release to an inmate in order to protect the public or because the inmate refused to participate in counseling or treatment. The serious felonies include serious violations related to homicide, battery, sexual assault, mayhem, kidnapping, taking hostages, tampering with household products, arson, armed burglary, armed robbery, carjacking, assault by a prisoner, crimes against children and controlled substances.

Under the bill, first-time serious felony offenders must serve two-thirds of the sentence imposed by the court before they are eligible for any type of release on parole and 2nd-time serious felony offenders must serve 85% of the sentence imposed by the court before they are eligible for any type of release on parole.

Under current law, a person serving a life sentence must serve 20 years minus time calculated under the mandatory release formula before he or she is eligible for release on parole. If the person does not receive extensions due to prison violations,

he or she reaches parole eligibility after serving 13 years, 4 months. This bill provides that a person serving a life sentence reaches parole eligibility after serving 40 years, with no reductions calculated under the mandatory release formula.

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.** 161.49 (2) (a) of the statutes is amended to read:

2 161.49 (2) (a) Except as provided in par. (b), if any person violates s. 161.41 (1)
3 by distributing, or violates s. 161.41 (1m) by possessing with intent to deliver, a
4 controlled substance listed in schedule I or II while in or on the premises of a
5 scattered-site public housing project, while in or otherwise within 1,000 feet of a
6 state, county, city, village or town park, a jail or correctional facility, a multiunit
7 public housing project, a swimming pool open to members of the public, a youth
8 center or a community center, while on or otherwise within 1,000 feet of any private
9 or public school premises or while on or otherwise within 1,000 feet of a school bus,
10 as defined in s. 340.01 (56), the court shall sentence the person to at least 3 years in
11 prison, but otherwise the penalties for the crime apply. Except as provided in s.
12 161.438, the court shall not place the person on probation. The Except as provided
13 in s. 302.11 (1g) (ar) or 304.06 (1p), the person is not eligible for parole until he or she
14 has served at least 3 years, with no modification by the calculation under s. 302.11
15 (1) or (1g) (ar), whichever is applicable.

16 **SECTION 2.** 302.045 (3) of the statutes is amended to read:

17 302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department
18 determines that an inmate has successfully completed the challenge incarceration
19 program, the parole commission shall parole the inmate under s. 304.06, regardless

1 of the time the inmate has served, unless the person is subject to s. 302.11 (1g) (ar)
2 or 304.06 (1p). When the parole commission grants parole under this subsection, it
3 must require the parolee to participate in an intensive supervision program for drug
4 abusers as a condition of parole.

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

6 302.11 (1) The warden or superintendent shall keep a record of the conduct of
7 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),
8 (1m), (7) and (10), each inmate is entitled to mandatory release on parole by the
9 department. The Except as provided in sub. (1g) (ar), the mandatory release date is
10 established at two-thirds of the sentence. Any calculations under this subsection or
11 sub. (2) (b) resulting in fractions of a day shall be rounded in the inmate's favor to
12 a whole day.

13 **SECTION 4.** 302.11 (1g) (am) of the statutes is amended to read:

14 302.11 (1g) (am) The Except as provided in par. (ar), the mandatory release
15 date established in sub. (1) is a presumptive mandatory release date for an inmate
16 who is serving a sentence for a serious felony committed on or after April 21, 1994.

17 **SECTION 5.** 302.11 (1g) (ar) of the statutes is created to read:

18 302.11 (1g) (ar) The mandatory release date for an inmate who is serving a
19 sentence under s. 973.0135 (2m) as a prior offender for a serious felony committed
20 on or after the effective date of this paragraph [revisor inserts date], is established
21 at 85% of the sentence and is a presumptive mandatory release date.

22 **SECTION 6.** 302.11 (1g) (b) (intro.) of the statutes is amended to read:

23 302.11 (1g) (b) (intro.) Before an incarcerated inmate with a presumptive
24 mandatory release date reaches the presumptive mandatory release date specified
25 under par. (am) or (ar), whichever is applicable, the parole commission shall proceed

1 under s. 304.06 (1) to consider whether to deny presumptive mandatory release to
2 the inmate. If the parole commission does not deny presumptive mandatory release,
3 the inmate shall be released on parole. The parole commission may deny
4 presumptive mandatory release to an inmate only on one or more of the following
5 grounds:

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

7 302.11 (1i) An inmate serving a sentence to the intensive sanctions program
8 is entitled to mandatory release. The mandatory release date under sub. (1) is
9 established at two-thirds of the sentence under s. 973.032 (3) (a), except that if the
10 person is subject to sub. (1g) (ar), the person's presumptive mandatory release date
11 is established at 85% of the sentence under s. 973.032 (3) (a).

12 **SECTION 8.** 302.11 (6) of the statutes is amended to read:

13 302.11 (6) Any inmate released on parole under sub. (1) or (1g) (b) or s. 304.02
14 or 304.06 (1) is subject to all conditions and rules of parole until the expiration of the
15 sentence or until he or she is discharged by the department. Except as provided in
16 ch. 304, releases from prison shall be on the Tuesday or Wednesday preceding the
17 release date. The department may discharge a parolee on or after his or her
18 mandatory release date or after 2 years of supervision. Any inmate sentenced to the
19 intensive sanctions program who is released on parole under sub. (1) or (1g) (b) or s.
20 304.02 or 304.06 (1) remains in the program unless discharged by the department
21 under s. 301.048 (6).

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

23 304.02 (6) Notwithstanding subs. (1) to (3), a prisoner who is subject to s. 304.06
24 (1p) is not eligible for release to parole supervision under this section until he or she
25 is eligible for release under s. 304.06 (1p).

1 **SECTION 10.** 304.02 (7) of the statutes is created to read:

2 304.02 (7) Notwithstanding subs. (1) to (3), a prisoner who is subject to s. 302.11
3 (1g) (ar) is not eligible for release to parole supervision under this section until he or
4 she is eligible for release under s. 302.11 (1g) (ar).

5 **SECTION 11.** 304.06 (1) (b) of the statutes is amended to read:

6 304.06 (1) (b) Except as provided in sub. (1m), (1p) or (1q) or s. 161.49 (2),
7 302.045 (3) or 973.0135, the parole commission may parole an inmate of the
8 Wisconsin state prisons or any felon or any person serving at least one year or more
9 in a county house of correction or a county reforestation camp organized under s.
10 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6
11 months, whichever is greater. Except as provided in s. 939.62 (2m) or 973.014, the
12 parole commission may parole an inmate serving a life term when he or she has
13 served ~~20~~ 40 years, ~~as modified by the formula under s. 302.11 (1) and subject to~~
14 extension using the formulas under s. 302.11 (2). The person serving the life term
15 shall be given credit for time served prior to sentencing under s. 973.155, including
16 good time under s. 973.155 (4). The secretary may grant special action parole
17 releases under s. 304.02. The department or the parole commission shall not provide
18 any convicted offender or other person sentenced to the department's custody any
19 parole eligibility or evaluation until the person has been confined at least 60 days
20 following sentencing.

21 **SECTION 12.** 304.06 (1m) (intro.) of the statutes is amended to read:

22 304.06 (1m) (intro.) ~~The~~ Except as provided in subs. (1p) and (1q), the parole
23 commission may waive the 25% or 6-month service of sentence requirement under
24 sub. (1) (b) under any of the following circumstances:

25 **SECTION 13.** 304.06 (1p) of the statutes is created to read:

1 304.06 (1p) (a) In this subsection, “serious felony” means any of the following:

2 1. Any felony under s. 161.41 (1), (1m) or (1x) if the felony is punishable by a
3 maximum prison term of 30 years or more.

4 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19 (5), 940.21,
5 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02, 943.10 (2), 943.23 (1g) or
6 (1m), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06,
7 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

8 3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to
9 commit a Class A felony.

10 (b) If an inmate is serving a sentence for a serious felony committed on or after
11 the effective date of this paragraph [revisor inserts date], the parole commission
12 may not parole the inmate until the inmate has reached his or her presumptive
13 mandatory release date under s. 302.11 (1g) (am).

14 (c) Paragraph (b) does not apply if the inmate has a longer parole eligibility
15 restriction or is not eligible for parole.

16 **SECTION 14.** 304.06 (1q) of the statutes is created to read:

17 304.06 (1q) The parole commission may not grant release on parole under this
18 section to an inmate who is subject to s. 302.11 (1g) (ar) until the inmate has reached
19 his or her presumptive mandatory release date under s. 302.11 (1g) (ar).

20 **SECTION 15.** 304.06 (1r) (a) (intro.) of the statutes is amended to read:

21 304.06 (1r) (a) (intro.) The parole commission shall grant release on parole,
22 unless there are overriding considerations not to do so or unless the person does not
23 meet the requirements of sub. (1p) or (1q), to any inmate who is eligible for parole
24 under sub. (1) and meets either of the following conditions:

25 **SECTION 16.** 304.071 (2) of the statutes is amended to read:

