



## 1995 SENATE BILL 253

June 13, 1995 - Introduced by Senators A. LASEE, BRESKE, DARLING, PETAK and ROSENZWEIG, cosponsored by Representatives OTT, AINSWORTH, ALBERS, DOBYNS, GRONEMUS, HOVEN, HUTCHISON, KAUFERT, KELSO, KRUSICK, F. LASEE, OLSEN, RYBA, SILBAUGH, WALKER and ZIEGELBAUER. Referred to Committee on Judiciary.

1     **AN ACT to amend** 302.045 (3), 302.11 (1), 302.11 (1g) (am), 302.11 (1g) (b) (intro.),  
2           302.11 (1i), 302.11 (6), 304.06 (1) (b), 304.06 (1m) (intro.), 304.06 (1r) (a) (intro.),  
3           304.071 (2), 939.50 (2), 940.225 (1) (intro.), 940.225 (2) (intro.), 948.02 (1),  
4           948.02 (2), 948.025 (1) and 973.0135 (2) (intro.); and **to create** 302.11 (1g) (ar),  
5           304.02 (6), 304.06 (1p), 939.50 (1) (am), 939.50 (1) (bm), 939.50 (3) (am), 939.50  
6           (3) (bm) and 973.0135 (2m) of the statutes; **relating to:** sexual assault and  
7           providing penalties.

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### *Analysis by the Legislative Reference Bureau*

This bill increases penalties and revises parole eligibility for persons convicted of serious sexual assaults. Currently, sexual assault and sexual assault of a child are classified into 4 degrees, with 1st degree sexual assault or sexual assault of a child being the most serious and 4th degree sexual assault being the least serious. Under current law, a person who is convicted of 1st degree sexual assault or 1st degree sexual assault of a child may be imprisoned for not more than 40 years. This bill increases the maximum term of imprisonment to 50 years. Under current law, a person who is convicted of 2nd degree sexual assault or 2nd degree sexual assault of a child may be fined not more than \$10,000 or imprisoned for not more than 10 years or both. This bill increases the maximum period of imprisonment to 20 years and eliminates the fine option.

Under current law, a person who commits 1st or 2nd degree sexual assault or 1st or 2nd degree sexual assault of a child usually is eligible for parole after he or she has served 6 months or 25% of the sentence, whichever is greater. Under this bill, the person is not eligible for release on parole until he or she has served 75% of the sentence imposed by the court.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 302.045 (3) of the statutes is amended to read:

2           302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department  
3 determines that an inmate has successfully completed the challenge incarceration  
4 program, the parole commission shall parole the inmate under s. 304.06, regardless  
5 of the time the inmate has served, unless the person is subject to s. 302.11 (1g) (ar).  
6 When the parole commission grants parole under this subsection, it must require the  
7 parolee to participate in an intensive supervision program for drug abusers as a  
8 condition of parole.

9           **SECTION 2.** 302.11 (1) of the statutes is amended to read:

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

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

18          302.11 (1g) (am) The Except as provided in par. (ar), the mandatory release  
19 date established in sub. (1) is a presumptive mandatory release date for an inmate  
20 who is serving a sentence for a serious felony committed on or after April 21, 1994.

21          **SECTION 4.** 302.11 (1g) (ar) of the statutes is created to read:

1           302.11 **(1g)** (ar) The mandatory release date for an inmate who is serving a  
2 sentence for a violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025 committed  
3 on or after the effective date of this paragraph .... [revisor inserts date], is established  
4 at 75% of the sentence and is a presumptive mandatory release date.

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

6           302.11 **(1g)** (b) (intro.) Before an incarcerated inmate with a presumptive  
7 mandatory release date reaches the presumptive mandatory release date specified  
8 under par. (am) or (ar), whichever is applicable, the parole commission shall proceed  
9 under s. 304.06 (1) to consider whether to deny presumptive mandatory release to  
10 the inmate. If the parole commission does not deny presumptive mandatory release,  
11 the inmate shall be released on parole. The parole commission may deny  
12 presumptive mandatory release to an inmate only on one or more of the following  
13 grounds:

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

15           302.11 **(1i)** An inmate serving a sentence to the intensive sanctions program  
16 is entitled to mandatory release. The mandatory release date under sub. (1) is  
17 established at two-thirds of the sentence under s. 973.032 (3) (a), except that if the  
18 person is subject to sub. (1g) (ar) the person's mandatory release date is established  
19 at 75% of the sentence under s. 973.032 (3) (a).

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

21           302.11 **(6)** Any inmate released on parole under sub. (1) or (1g) (b) or s. 304.02  
22 or 304.06 (1) is subject to all conditions and rules of parole until the expiration of the  
23 sentence or until he or she is discharged by the department. Except as provided in  
24 ch. 304, releases from prison shall be on the Tuesday or Wednesday preceding the  
25 release date. The department may discharge a parolee on or after his or her

1 mandatory release date or after 2 years of supervision. Any inmate sentenced to the  
2 intensive sanctions program who is released on parole under sub. (1) or (1g) (b) or s.  
3 304.02 or 304.06 (1) remains in the program unless discharged by the department  
4 under s. 301.048 (6).

5 **SECTION 8.** 304.02 (6) of the statutes is created to read:

6 304.02 **(6)** Notwithstanding subs. (1) to (3), a prisoner who is subject to s. 302.11  
7 (1g) (ar) is not eligible for release to parole supervision under this section until he or  
8 she is eligible for release under s. 302.11 (1g) (ar).

9 **SECTION 9.** 304.06 (1) (b) of the statutes is amended to read:

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

24 **SECTION 10.** 304.06 (1m) (intro.) of the statutes is amended to read:

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

4           **SECTION 11.** 304.06 (1p) of the statutes is created to read:

5           304.06 **(1p)** The parole commission may not grant release on parole under this  
6           section to an inmate who is subject to s. 302.11 (1g) (ar) until the inmate has reached  
7           his or her mandatory release date under s. 302.11 (1g) (ar).

8           **SECTION 12.** 304.06 (1r) (a) (intro.) of the statutes is amended to read:

9           304.06 **(1r)** (a) (intro.) The parole commission shall grant release on parole,  
10          unless there are overriding considerations not to do so or unless the person does not  
11          meet the requirements of sub. (1p), to any inmate who is eligible for parole under sub.  
12          (1) and meets either of the following conditions:

13          **SECTION 13.** 304.071 (2) of the statutes is amended to read:

14          304.071 **(2)** If a prisoner is not eligible for parole under s. 161.49 (2), 302.11 (1g)  
15          (ar), 939.62 (2m) or 973.032 (5), he or she is not eligible for parole under this section.

16          **SECTION 14.** 939.50 (1) (am) of the statutes is created to read:

17          939.50 **(1)** (am) Class AB felony.

18          **SECTION 15.** 939.50 (1) (bm) of the statutes is created to read:

19          939.50 **(1)** (bm) Class BC felony.

20          **SECTION 16.** 939.50 (2) of the statutes is amended to read:

21          939.50 **(2)** A felony is a Class A, AB, B, BC, C, D or E felony when it is so  
22          specified in chs. 939 to 951.

23          **SECTION 17.** 939.50 (3) (am) of the statutes is created to read:

24          939.50 **(3)** (am) For a Class AB felony, imprisonment not to exceed 50 years.

25          **SECTION 18.** 939.50 (3) (bm) of the statutes is created to read:

1           939.50 (3) (bm) For a Class BC felony, imprisonment not to exceed 20 years.

2           **SECTION 19.** 940.225 (1) (intro.) of the statutes is amended to read:

3           940.225 (1) FIRST DEGREE SEXUAL ASSAULT. (intro.) Whoever does any of the  
4 following is guilty of a Class B AB felony:

5           **SECTION 20.** 940.225 (2) (intro.) of the statutes is amended to read:

6           940.225 (2) SECOND DEGREE SEXUAL ASSAULT. (intro.) Whoever does any of the  
7 following is guilty of a Class C BC felony:

8           **SECTION 21.** 948.02 (1) of the statutes is amended to read:

9           948.02 (1) FIRST DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual  
10 intercourse with a person who has not attained the age of 13 years is guilty of a Class  
11 B AB felony.

12           **SECTION 22.** 948.02 (2) of the statutes is amended to read:

13           948.02 (2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or  
14 sexual intercourse with a person who has not attained the age of 16 years is guilty  
15 of a Class C BC felony.

16           **SECTION 23.** 948.025 (1) of the statutes is amended to read:

17           948.025 (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2)  
18 within a specified period of time involving the same child is guilty of a Class B AB  
19 felony.

20           **SECTION 24.** 973.0135 (2) (intro.) of the statutes is amended to read:

21           973.0135 (2) (intro.) Except as provided in sub. (2m) or (3), when a court  
22 sentences a prior offender to imprisonment in a state prison for a serious felony  
23 committed on or after April 21, 1994, the court shall make a parole eligibility  
24 determination regarding the person and choose one of the following options:

25           **SECTION 25.** 973.0135 (2m) of the statutes is created to read:

