



1995 SENATE BILL 668

March 28, 1996 - Introduced by Senator ADELMAN. Referred to Committee on Judiciary.

1 **AN ACT to amend** 161.49 (2) (a), 161.49 (2) (b), 302.045 (3), 302.11 (1), 302.11 (1g)
2 (am), 302.11 (6), 302.11 (9), 304.02 (3) (d), 304.02 (3) (e), 304.06 (1) (b), 304.06
3 (1m) (intro.), 304.06 (1r) (a) (intro.), 304.071 (2) and 973.0135 (2) (intro.); and
4 **to create** 302.11 (1d), 304.06 (1p) and 973.0135 (2m) of the statutes; **relating**
5 **to:** parole eligibility.

Analysis by the Legislative Reference Bureau

This bill makes the following changes relating to parole eligibility:

Felonies other than those punishable by a life sentence

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 (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).

Current law provides different parole eligibility provisions for certain serious felony offenders. Specifically, if a serious felony offender has one or more prior convictions for a serious felony, a judge may set a discretionary parole eligibility date for the offender that is later than 25% of the sentence or 6 months but not later than the usual mandatory release date of two-thirds of the sentence. In addition, 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 covered by these parole provisions include persons convicted of 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, persons sentenced to prison for any felony that is committed on or after the date the bill becomes law must serve 85% of the sentence imposed by the court before they are eligible for release on parole. The bill also eliminates mandatory release for a person sentenced to a prison for any felony that is committed on or after the date the bill becomes law. Thus, once a person covered by the bill has served 85% of his or her sentence, the parole commission may parole the person or may deny parole to the person and require the person to serve his or her entire sentence in prison. Finally, a person covered by the bill may be released under the special action parole release program only after he or she has served 85% of his or her sentence.

Felonies punishable by a life sentence

Under current law, a person serving a life sentence usually 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. However, a judge may set a parole eligibility date for a person serving a life sentence that is later than the usual parole eligibility date or may provide that the person is not eligible for parole. A person serving a life sentence is not entitled to mandatory release.

This bill provides that a person serving a life sentence for a crime committed on or after the date the bill becomes law is not eligible for parole until he or she has served 40 years, with no reductions calculated under the mandatory release formula. Under the bill, a judge may still set a parole eligibility date that is later than 40 years or may provide that a person serving a life sentence is not eligible for parole.

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

1 public housing project, a swimming pool open to members of the public, a youth
2 center or a community center, while on or otherwise within 1,000 feet of any private
3 or public school premises or while on or otherwise within 1,000 feet of a school bus,
4 as defined in s. 340.01 (56), the court shall sentence the person to at least 3 years in
5 prison, but otherwise the penalties for the crime apply. Except as provided in s.
6 161.438, the court shall not place the person on probation. The If the person
7 committed a violation to which this paragraph applies before the effective date of this
8 paragraph [revisor inserts date], the person is not eligible for parole until he or
9 she has served at least 3 years, with no modification by the calculation under s.
10 302.11 (1). If the person committed a violation to which this paragraph applies on
11 or after the effective date of this paragraph [revisor inserts date], the person is not
12 eligible for parole until he or she has served at least 3 years or 85% of the sentence
13 imposed, whichever is greater.

14 **SECTION 2.** 161.49 (2) (b) of the statutes is amended to read:

15 161.49 (2) (b) If the conduct described in par. (a) involves only the distribution,
16 or the possession with intent to deliver, of not more than 25 grams of
17 tetrahydrocannabinols, listed at s. 161.14 (4) (t), or not more than 5 marijuana
18 plants, the court shall sentence the person to at least one year in prison, but
19 otherwise the penalties for the crime apply. Except as provided in s. 161.438, the
20 court shall not place the person on probation. The If the person committed a violation
21 to which this paragraph applies before the effective date of this paragraph [revisor
22 inserts date], the person is not eligible for parole until he or she has served at least
23 one year, with no modification by the calculation under s. 302.11 (1). If the person
24 committed a violation to which this paragraph applies on or after the effective date
25 of this paragraph [revisor inserts date], the person is not eligible for parole until

1 he or she has served at least 3 years or 85% of the sentence imposed, whichever is
2 greater.

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

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

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

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

18 **SECTION 5.** 302.11 (1d) of the statutes is created to read:

19 302.11 (1d) An inmate who is serving a sentence for any felony committed on
20 or after the effective date of this subsection [revisor inserts date], is not entitled
21 to mandatory release. The parole commission may parole the inmate as provided in
22 s. 304.06 (1p).

23 **SECTION 6.** 302.11 (1g) (am) of the statutes is amended to read:

24 302.11 (1g) (am) The mandatory release date established in sub. (1) is a
25 presumptive mandatory release date for an inmate who is serving a sentence for a

1 serious felony committed on or after April 21, 1994, but before the effective date of
2 this paragraph [revisor inserts date].

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

4 302.11 (6) Any inmate released on parole under sub. (1) or (1g) (b) or s. 304.02
5 or 304.06 (1) is subject to all conditions and rules of parole until the expiration of the
6 sentence or until he or she is discharged by the department. Except as provided in
7 ch. 304, releases from prison shall be on the Tuesday or Wednesday preceding the
8 release date. The department may discharge a parolee on or after his or her
9 mandatory release date or after 2 years of supervision. Any inmate sentenced to the
10 intensive sanctions program who is released on parole under sub. (1) or (1g) (b) or s.
11 304.02 or 304.06 (1) remains in the program unless discharged by the department
12 under s. 301.048 (6).

13 **SECTION 8.** 302.11 (9) of the statutes is amended to read:

14 302.11 (9) Except as provided in sub- subs. (1d) and (1g) (am), this section
15 applies to persons committing offenses occurring on or after June 1, 1984, or persons
16 filing requests in accordance with 1983 Wisconsin Act 528, section 29 (2) or (3).

17 **SECTION 9.** 304.02 (3) (d) of the statutes is amended to read:

18 304.02 (3) (d) The inmate is not granted a special action release more than 18
19 months before his or her expected release date under s. 302.11, if s. 302.11 applies
20 to the inmate.

21 **SECTION 10.** 304.02 (3) (e) of the statutes is amended to read:

22 304.02 (3) (e) The prisoner is eligible for release under s. 304.06 (1) (b) or (1p).

23 **SECTION 11.** 304.06 (1) (b) of the statutes, as affected by 1995 Wisconsin Act 77,
24 is amended to read:

1 304.06 (1) (b) Except as provided in sub. (1m) or (1p) or s. 161.49 (2), 302.045
2 (3) or 973.0135, the parole commission may parole an inmate of the Wisconsin state
3 prisons or any felon or any person serving at least one year or more in a county house
4 of correction or a county reforestation camp organized under s. 303.07, when he or
5 she has served 25% of the sentence imposed for the offense, or 6 months, whichever
6 is greater. The parole commission may parole a participant in the serious juvenile
7 offender program under s. 938.538 when he or she has participated in that program
8 for 2 years. Except as provided in s. 939.62 (2m) or 973.014, the parole commission
9 may parole an inmate serving a life term when he or she has served ~~20~~ 40 years, as
10 ~~modified by the formula under s. 302.11 (1) and~~ subject to extension using the
11 formulas under s. 302.11 (2). The person serving the life term shall be given credit
12 for time served prior to sentencing under s. 973.155, including good time under s.
13 973.155 (4). The secretary may grant special action parole releases under s. 304.02.
14 The department or the parole commission shall not provide any convicted offender
15 or other person sentenced to the department's custody any parole eligibility or
16 evaluation until the person has been confined at least 60 days following sentencing.

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

18 304.06 (1m) (intro.) The Except as provided in sub. (1p), the parole commission
19 may waive the 25% or 6-month service of sentence requirement under sub. (1) (b)
20 under any of the following circumstances:

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

22 304.06 (1p) (a) The parole commission may not grant release on parole under
23 this section to an inmate who is serving a sentence for a felony committed on or after
24 the effective date of this paragraph [revisor inserts date], until the inmate has
25 served 85% of the sentence imposed for the offense.

1 (b) Paragraph (a) does not apply if the inmate is serving a life term or if the
2 inmate has a longer parole eligibility restriction under s. 973.014 (1) (b) or is not
3 eligible for parole under s. 939.62 (2m) or 973.014 (1) (c).

4 **SECTION 14.** 304.06 (1r) (a) (intro.) of the statutes is amended to read:

5 304.06 (1r) (a) (intro.) The parole commission shall grant release on parole,
6 unless there are overriding considerations not to do so or unless the person does not
7 meet the requirements of sub. (1p), to any inmate who is eligible for parole under sub.
8 (1) and meets either of the following conditions:

9 **SECTION 15.** 304.071 (2) of the statutes, as affected by 1995 Wisconsin Act 48,
10 is amended to read:

11 304.071 (2) If a prisoner is not eligible for parole under s. 161.49 (2), 304.06 (1p),
12 939.62 (2m), 973.014 (1) (c) or 973.032 (5), he or she is not eligible for parole under
13 this section.

14 **SECTION 16.** 973.0135 (2) (intro.) of the statutes is amended to read:

15 973.0135 (2) (intro.) Except as provided in sub. (3), when a court sentences a
16 prior offender to imprisonment in a state prison for a serious felony committed on or
17 after April 21, 1994, but before the effective date of this subsection [revisor inserts
18 date], the court shall make a parole eligibility determination regarding the person
19 and choose one of the following options:

20 **SECTION 17.** 973.0135 (2m) of the statutes is created to read:

21 973.0135 (2m) Except as provided in sub. (3), if a court sentences a prior
22 offender to imprisonment in a state prison for a serious felony committed on or after
23 the effective date of this subsection [revisor inserts date], the person is eligible for
24 release to parole supervision only as provided in s. 304.06 (1p).

25 **SECTION 18. Initial applicability.**

