



1997 ASSEMBLY BILL 505

September 9, 1997 - Introduced by Representatives GREEN, JENSEN, WASSERMAN, OURADA, PLOUFF, SERATTI, DOBYNS, PORTER, LADWIG, URBAN, FREESE, GARD, OTT, GUNDERSON, HANDRICK, WALKER, JESKEWITZ, LAZICH and MUSSER, cosponsored by Senators ROSENZWEIG, A. LASEE, DRZEWIECKI and WELCH. Referred to Committee on Judiciary.

1 **AN ACT to repeal** 939.626; **to renumber and amend** 939.62 (2m) (a) 1., 2., 3. and
2 4. and 939.62 (2m) (b); **to amend** 302.11 (1m), 303.065 (1), 304.02 (5), 304.06
3 (1) (b), 304.071 (2), 939.62 (2m) (a) (intro.), 939.62 (2m) (d), 939.623 (1) and
4 973.014 (2); and **to create** 939.62 (2m) (a) 1m. and 939.62 (2m) (b) 2. of the
5 statutes; **relating to:** persistent child sex offenders and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person who has been convicted of a crime and who has certain prior criminal convictions may be sentenced as a persistent repeater. A person is a persistent repeater under current law if he or she has 2 convictions for any of certain serious felonies and is then convicted a 3rd time for another serious felony (the so-called "3 strikes, you're out" law). A person who is a persistent repeater must be sentenced to life without parole. The persistent repeater law applies to persons convicted of serious violations such as homicide, battery, sexual assault, mayhem, kidnapping, taking hostages, arson, armed burglary, armed robbery, carjacking, assault by a prisoner, crimes against children and the unlawful manufacture, sale and possession of controlled substances.

Current law also provides minimum or increased penalties for persons who commit a certain sex crime after having been previously convicted of that same type of sex crime. A person who has one or more prior convictions for a serious sex crime (whether against an adult or a child) and who is subsequently convicted of committing another serious sex crime must be sentenced to at least 5 years'

ASSEMBLY BILL 505

imprisonment and may not be placed on probation. In addition, if a person has one or more prior convictions for a child sex crime and he or she is subsequently convicted of committing another child sex crime, the maximum term of imprisonment for the subsequent child sex crime may be increased by not more than 10 years.

This bill creates a new category of persistent repeater. Specifically, the bill provides that a person is a persistent repeater if he or she has one or more prior convictions for a serious child sex offense and is subsequently convicted of committing another serious child sex offense. Like a person with 3 serious felony convictions under current law, a person who is a persistent repeater based on convictions for serious child sex offenses must be sentenced to life without parole. The serious child sex offenses covered by the bill are sexual assault of a child, sexual exploitation of a child, incest with a child, child enticement, soliciting a child for prostitution, sexual assault of a student by a school instructional staff person, causing a child to view or listen to sexual activity, exposing a child to harmful material and, if the victim was a minor and the convicted person was not the victim's parent, false imprisonment and kidnapping.

Because the bill provides for a sentence of life without parole for an offender who is convicted of a serious child sex offense and who has one prior serious child sex offense, the bill also eliminates the current 5 year minimum penalty and 10-year penalty enhancer for repeat child sex offenders.

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

2 302.11 **(1m)** An inmate serving a life term is not entitled to mandatory release.
3 Except as provided in ss. 939.62 (2m) (c) and 973.014, the parole commission may
4 parole the inmate as specified in s. 304.06 (1).

5 **SECTION 2.** 303.065 (1) of the statutes is amended to read:

6 303.065 **(1)** The department may grant work release privileges to any person
7 incarcerated within the state prisons, except that no person serving a life sentence
8 may be considered for work release until he or she has reached parole eligibility
9 under s. 304.06 (1) (b) or 973.014 (1) (a) or (b), whichever is applicable, and no person

ASSEMBLY BILL 505

1 serving a life sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) may be considered
2 for work release.

3 **SECTION 3.** 304.02 (5) of the statutes is amended to read:

4 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
5 sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) is not eligible for release to parole
6 supervision under this section.

7 **SECTION 4.** 304.06 (1) (b) of the statutes is amended to read:

8 304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2) or
9 973.0135, the parole commission may parole an inmate of the Wisconsin state
10 prisons or any felon or any person serving at least one year or more in a county house
11 of correction or a county reforestation camp organized under s. 303.07, when he or
12 she has served 25% of the sentence imposed for the offense, or 6 months, whichever
13 is greater. Except as provided in s. 939.62 (2m) (c) or 973.014, the parole commission
14 may parole an inmate serving a life term when he or she has served 20 years, as
15 modified by the formula under s. 302.11 (1) and subject to extension using the
16 formulas under s. 302.11 (2). The person serving the life term shall be given credit
17 for time served prior to sentencing under s. 973.155, including good time under s.
18 973.155 (4). The secretary may grant special action parole releases under s. 304.02.
19 The department or the parole commission shall not provide any convicted offender
20 or other person sentenced to the department's custody any parole eligibility or
21 evaluation until the person has been confined at least 60 days following sentencing.

22 **SECTION 5.** 304.071 (2) of the statutes is amended to read:

23 304.071 (2) If a prisoner is not eligible for parole under s. 939.62 (2m) (c), 961.49
24 (2), 973.014 (1) (c) or 973.032 (5), he or she is not eligible for parole under this section.

25 **SECTION 6.** 939.62 (2m) (a) (intro.) of the statutes amended to read:

ASSEMBLY BILL 505**SECTION 6**

1 939.62 (2m) (a) (intro.) In this subsection, ~~“serious felony”~~;

2 2m. “Serious felony” means any of the following:

3 **SECTION 7.** 939.62 (2m) (a) 1., 2., 3. and 4. of the statutes are renumbered 939.62
4 (2m) (a) 2m. a., b., c. and d., and 939.62 (2m) (a) 2m. d., as renumbered, is amended
5 to read:

6 939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any
7 other state or, prior to April 28, 1994, under the law of this state that is comparable
8 to a crime specified in subd. ~~1., 2. or 3~~ 2m. a., b. or c.

9 **SECTION 8.** 939.62 (2m) (a) 1m. of the statutes is created to read:

10 939.62 (2m) (a) 1m. “Serious child sex offense” means any of the following:

11 a. A violation of s. 948.02, 948.025, 948.05, 948.055, 948.06, 948.07, 948.08,
12 948.095 or 948.11 (2) (a) or, if the victim was a minor and the convicted person was
13 not the victim’s parent, a violation of s. 940.30 or 940.31.

14 b. A crime at any time under federal law or the law of any other state or, prior
15 to the effective date of this subd. 1m. b. [revisor inserts date], under the law of this
16 state that is comparable to a crime specified in subd. 1m. a.

17 **SECTION 9.** 939.62 (2m) (b) of the statutes is renumbered 939.62 (2m) (b) (intro.)
18 and amended to read:

19 939.62 (2m) (b) (intro.) The actor is a persistent repeater if ~~he or she~~ one of the
20 following applies:

21 1. The actor has been convicted of a serious felony on 2 or more separate
22 occasions at any time preceding the serious felony for which he or she presently is
23 being sentenced under ch. 973, which convictions remain of record and unreversed
24 and, ~~that~~ of the 2 or more previous convictions, at least one conviction ~~must have~~

ASSEMBLY BILL 505

1 occurred before the date of violation of at least one of the other felonies for which the
2 actor was previously convicted. It

3 (bm) For purposes of counting a conviction under par. (b), it is immaterial that
4 the sentence for a the previous conviction was stayed, withheld or suspended, or that
5 ~~he or she~~ the actor was pardoned, unless the pardon was granted on the ground of
6 innocence. The

7 (c) If the actor is a persistent repeater, the term of imprisonment for the felony
8 for which the persistent repeater presently is being sentenced under ch. 973 is life
9 imprisonment without the possibility of parole.

10 **SECTION 10.** 939.62 (2m) (b) 2. of the statutes is created to read:

11 939.62 **(2m)** (b) 2. The actor has been convicted of a serious child sex offense
12 on at least one occasion at any time preceding the date of violation of the serious child
13 sex offense for which he or she presently is being sentenced under ch. 973, which
14 conviction remains of record and unreversed.

15 **SECTION 11.** 939.62 (2m) (d) of the statutes is amended to read:

16 939.62 **(2m)** (d) If a prior conviction is being considered as being covered under
17 par. (a) ~~4.~~ 1m. b. or 2m. d. as comparable to a felony specified under par. (a) ~~1., 2. or~~
18 ~~3.~~ 1m. a. or 2m. a., b. or c., the conviction may be counted as a prior conviction under
19 par. (b) only if the court determines, beyond a reasonable doubt, that the violation
20 relating to that conviction would constitute a felony specified under par. (a) ~~1., 2. or~~
21 ~~3.~~ 1m. a. or 2m. a., b. or c. if committed by an adult in this state.

22 **SECTION 12.** 939.623 (1) of the statutes is amended to read:

23 939.623 **(1)** In this section, "serious sex crime" means a violation of s. 940.225
24 (1) or (2), ~~948.02 (1) or (2) or 948.025.~~

25 **SECTION 13.** 939.626 of the statutes is repealed.

