



1997 SENATE BILL 157

April 9, 1997 - Introduced by Senators WINEKE, MOEN, PLACHE, CLAUSING, BUETTNER and ZIEN, cosponsored by Representatives BLACK, MUSSER, KAUFERT, ZIEGELBAUER, POWERS, REYNOLDS, PLOUFF and STASKUNAS. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT to amend** 51.20 (1) (ar) (intro.), 51.20 (13) (g) 2m., 51.37 (8) (a), 51.37 (8)
2 (b), 302.11 (1), 302.11 (1g) (am), 302.11 (1i), 302.11 (1p), 302.11 (6), 302.11 (9),
3 302.45 (1), 303.19 (3), 304.02 (3) (d), 971.11 (6), 978.07 (1) (c) 2. and 978.07 (1)
4 (c) 3.; and **to create** 302.11 (1z) of the statutes; **relating to:** mandatory release
5 on parole.

Analysis by the Legislative Reference Bureau

A person serving a sentence of imprisonment to a state prison (other than a sentence of life imprisonment) 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).

However, current law also provides different parole eligibility provisions for certain serious felony offenders. 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 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

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refused to participate in counseling or treatment. The serious felony offenders covered by these parole provisions include persons convicted of serious violations such as 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.

Finally, under current law, a person serving a sentence of life imprisonment 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 violations of prison rules, 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 sentence of life imprisonment that is later than the usual parole eligibility date or may provide that the person is not eligible for parole. Also, if a person has 2 convictions for any of certain specified serious felonies and is then convicted a 3rd time for another serious felony, he or she must be sentenced to life without parole (the so-called "3 strikes, you're out" law). No person serving a sentence of life imprisonment is entitled to mandatory release on parole.

This bill eliminates mandatory release on parole. Thus, under the bill, a person serving a sentence of imprisonment (other than a sentence of life imprisonment) may be released on parole only through discretionary parole or special action parole release. The bill does not affect the parole eligibility of a person serving a sentence of life imprisonment.

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.** 51.20 (1) (ar) (intro.) of the statutes is amended to read:
2 51.20 (1) (ar) (intro.) If the individual is an inmate of a state prison, the petition
3 may allege that the inmate is mentally ill, is a proper subject for treatment and is
4 in need of treatment. The petition shall allege that appropriate less restrictive forms
5 of treatment have been attempted with the individual and have been unsuccessful
6 and it shall include a description of the less restrictive forms of treatment that were
7 attempted. The petition shall also allege that the individual has been fully informed
8 about his or her treatment needs, the mental health services available to him or her
9 and his or her rights under this chapter and that the individual has had an
10 opportunity to discuss his or her needs, the services available to him or her and his

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1 or her rights with a licensed physician or a licensed psychologist. The petition shall
2 include the inmate's sentence and his or her expected date of release as determined
3 under s. 302.11 or, if s. 302.11 does not apply to the inmate, the expiration date of the
4 inmate's sentence. The petition shall have attached to it a signed statement by a
5 licensed physician or a licensed psychologist of a state prison and a signed statement
6 by a licensed physician or a licensed psychologist of a state treatment facility
7 attesting either of the following:

8 **SECTION 2.** 51.20 (13) (g) 2m. of the statutes is amended to read:

9 51.20 (13) (g) 2m. In addition to the provisions under subds. 1., 2. and 2g., no
10 commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date
11 of release as determined under s. 302.11 or, if s. 302.11 is not applicable, the
12 expiration date of the inmate's sentence.

13 **SECTION 3.** 51.37 (8) (a) of the statutes is amended to read:

14 51.37 (8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or
15 inmate who is found to be mentally ill or drug dependent except that the petition
16 shall be made to the court that made the finding or, if the prisoner or inmate is
17 detained by transfer, to the circuit court of the county in which he or she is detained.
18 If upon rehearing it is found that the standards for recommitment under s. 51.20 (13)
19 (g) no longer apply to the prisoner or inmate or that he or she is not in need of
20 psychiatric or psychological treatment, the prisoner or inmate shall be returned to
21 the prison or county jail or house of correction unless it is past his or her release date
22 as determined under s. 302.11 or, if s. 302.11 is not applicable, the expiration date
23 of his or her sentence, in which case he or she shall be discharged.

24 **SECTION 4.** 51.37 (8) (b) of the statutes is amended to read:

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1 51.37 (8) (b) If the condition of any prisoner or inmate committed or transferred
2 under this section requires psychiatric or psychological treatment after his or her
3 date of release as determined under s. 302.11 or, if s. 302.11 is not applicable, after
4 the expiration date of his or her sentence, the director of the state treatment facility
5 shall, within a reasonable time before the release date of the prisoner or inmate,
6 make a written application to the court which committed the prisoner or inmate
7 under sub. (5) (a). Thereupon, the proceeding shall be upon application made under
8 s. 51.20, but no physician or psychologist who is connected with a state prison,
9 Winnebago or Mendota mental health institute or any county jail or house of
10 correction may be appointed as an examiner. If the court does not commit the
11 prisoner or inmate, it may dismiss the application and order the prisoner or inmate
12 returned to the institution from which he or she was transferred until the release
13 date of the prisoner or inmate. If the court commits the prisoner or inmate for the
14 period commencing upon his or her release date, the commitment shall be to the care
15 and custody of the county department under s. 51.42 or 51.437.

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

17 302.11 (1) The warden or superintendent shall keep a record of the conduct of
18 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),
19 (1m), (1z), (7) and (10), each inmate is entitled to mandatory release on parole by the
20 department. The mandatory release date is established at two-thirds of the
21 sentence. Any calculations under this subsection or sub. (2) (b) resulting in fractions
22 of a day shall be rounded in the inmate's favor to a whole day.

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

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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 (1i) of the statutes is amended to read:

4 302.11 (1i) ~~An~~ Except as provided in sub. (1z), an inmate serving a sentence
5 to the intensive sanctions program is entitled to mandatory release. The mandatory
6 release date under sub. (1) is established at two-thirds of the sentence under s.
7 973.032 (3) (a).

8 **SECTION 8.** 302.11 (1p) of the statutes is amended to read:

9 302.11 (1p) An inmate serving a term subject to s. 961.49 (2) for a crime
10 committed on or after the effective date of this subsection [revisor inserts date],
11 is entitled to mandatory release, except the inmate may not be released before he or
12 she has complied with s. 961.49 (2).

13 **SECTION 9.** 302.11 (1z) of the statutes is created to read:

14 302.11 (1z) An inmate who is sentenced to imprisonment for a crime that is
15 committed on or after the effective date of this subsection [revisor inserts date],
16 is not entitled to mandatory release on parole under this section but may be paroled
17 by the parole commission as provided in s. 304.06 (1).

18 **SECTION 10.** 302.11 (6) of the statutes is amended to read:

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

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1 (1) or s. 304.02 or 304.06 (1) remains in the program unless discharged by the
2 department under s. 301.048 (6).

3 **SECTION 11.** 302.11 (9) of the statutes is amended to read:

4 302.11 (9) Except as provided in ~~sub.~~ subs. (1g) (am) and (1z), this section
5 applies to persons committing offenses occurring on or after June 1, 1984, or persons
6 filing requests in accordance with 1983 Wisconsin Act 528, section 29 (2) or (3).

7 **SECTION 12.** 302.45 (1) of the statutes is amended to read:

8 302.45 (1) The department and any county or group of counties may contract
9 for the cooperative establishment and use of state-local shared correctional
10 facilities. Inmates sentenced to the Wisconsin state prisons, a county jail, a county
11 reforestation camp or a county house of correction may be transferred to a shared
12 facility by the department, sheriff or superintendent, respectively, under the
13 agreement covering use of the facility. Any inmate confined in a state-local shared
14 correctional facility shall be deemed to be serving time in the penal institution to
15 which he or she was sentenced and shall be eligible to earn good time credit against
16 his or her sentence as provided under ~~ss. s.~~ s. 302.11, if applicable, and ss. 302.12~~;~~,
17 302.43~~;~~, 303.07 and 303.19 for that institution.

18 **SECTION 13.** 303.19 (3) of the statutes is amended to read:

19 303.19 (3) The superintendent shall keep a true record of the conduct of each
20 prisoner, specifying each infraction of the rules of discipline; and at the end of each
21 month shall give a certificate of good conduct to each prisoner against whom no such
22 infraction is recorded, subject to annulment by the department for subsequent
23 misconduct. Upon each such certificate issued to any such prisoner serving sentence
24 for a misdemeanor the prisoner may be credited, at the discretion of the
25 superintendent, with a diminution of the sentence not exceeding 5 days. Each such

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1 prisoner serving sentence for a felony shall receive time credits as provided in s.
2 302.11, if applicable.

3 **SECTION 14.** 304.02 (3) (d) of the statutes is amended to read:

4 304.02 (3) (d) The inmate is not granted a special action release more than 18
5 months before his or her expected release date under s. 302.11, if applicable.

6 **SECTION 15.** 971.11 (6) of the statutes is amended to read:

7 971.11 (6) The prisoner shall be delivered into the custody of the sheriff of the
8 county in which the charge is pending for transportation to the court, and the
9 prisoner shall be retained in that custody during all proceedings under this section.
10 The sheriff shall return the prisoner to the prison upon the completion of the
11 proceedings and during any adjournments or continuances and between the
12 preliminary examination and the trial, except that if the department certifies a jail
13 as being suitable to detain the prisoner, he or she may be detained there until the
14 court disposes of the case. The prisoner's existing sentence continues to run and he
15 or she receives time credit under s. 302.11, if applicable, while in custody.

16 **SECTION 16.** 978.07 (1) (c) 2. of the statutes is amended to read:

17 978.07 (1) (c) 2. Any case record of a felony punishable by a maximum period
18 of imprisonment equal to at least 20 years or a related case, after the mandatory
19 release date established under s. 302.11 (1) or the presumptive mandatory release
20 date established under s. 302.11 (1g), if applicable, of any person convicted of that
21 felony or 20 years after commencement of the action, ~~whichever~~ if that date is later
22 or s. 302.11 does not apply to the person.

23 **SECTION 17.** 978.07 (1) (c) 3. of the statutes is amended to read:

24 978.07 (1) (c) 3. Except as provided in subds. 1. and 2., any case record of a
25 felony or related case, after the mandatory release date established under s. 302.11

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1 (1) or the presumptive mandatory release date established under s. 302.11 (1g), if
2 applicable, of any person convicted of that felony or 10 years after the commencement
3 of the action, ~~whichever~~ if that date is later or s. 302.11 does not apply to the person.

4 (END)