

1999 ASSEMBLY BILL 87

February 4, 1999 – Introduced by Representatives GOETSCH, WALKER, LADWIG, HAHN, NASS, BRANDEMUEHL, ALBERS, VRAKAS, ZIEGELBAUER and PETTIS, cosponsored by Senator FITZGERALD. Referred to Committee on Criminal Justice.

1 **AN ACT to renumber and amend** 939.62 (2); **to amend** 939.62 (2m) (bm), 939.62
 2 (3) (a) and 939.62 (3) (b); and **to create** 938.396 (2) (cm), 939.62 (2) (a) 2., 939.62
 3 (2) (a) 4., 939.62 (2m) (b) 1m., 939.62 (2m) (e), 939.623 (3) and 939.624 (3) of the
 4 statutes; **relating to:** using delinquency adjudications for purposes of certain
 5 penalty enhancers 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 repeater or a persistent repeater. A person is a repeater if, during the five-year period immediately preceding the commission of the crime for which he or she is being sentenced, the person was convicted of either one felony or three misdemeanors. If a person is a repeater, the maximum imprisonment for the crime for which he or she is being sentenced may be increased by a certain number of years, depending on the crime. A person is a persistent repeater under current law if one of the following applies: 1) the person has two convictions for any of certain serious felonies and is then convicted a third time for another serious felony (the so-called “three strikes, you’re out” law); or 2) the person has one conviction for any of certain serious child sex offenses and is then convicted a second time of a serious child sex offense (the so-called “two strikes, you’re out” law for child sex offenders). A person who is charged and convicted as a persistent repeater must be sentenced to life without parole.

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In addition, current law provides minimum or increased penalties for persons who commit a certain type of crime after having been previously convicted of that same type of crime. A person who has one or more prior convictions for a serious sex crime and who is subsequently convicted of committing another serious sex crime must be sentenced to at least five years' imprisonment and may not be placed on probation. Likewise, a person who has one or more prior convictions for a serious violent crime and who is subsequently convicted of committing another serious violent crime must be sentenced to at least five years' imprisonment and may not be placed on probation.

This bill provides that delinquency adjudications may be used like prior convictions for the purpose of determining whether a person is a repeater or a "three strikes, you're out" persistent repeater and for the purpose of imposing minimum or increased penalties in cases involving serious sex crimes and serious violent crimes. Specifically, the changes that the bill makes are as follows:

1. The bill provides that a person is a repeater if he or she has been: 1) adjudicated delinquent for any felony; or 2) adjudicated delinquent for one misdemeanor and convicted for two misdemeanors as an adult. Like prior convictions under current law, the delinquency adjudication must have occurred within five years of the commission of the crime for which the person is being sentenced.

2. The bill provides that, under the "three strikes, you're out" law, one or more delinquency adjudications for any of the serious felonies covered by the law may count as one "strike", and one "strike" only. The bill does not provide for delinquency adjudications to count as a "strike" under the "two strikes, you're out" law for child sex offenders. Thus, under the bill, a person with one or more delinquency adjudications for serious felonies will be a persistent repeater only if he or she also has two convictions for serious felonies as an adult. In addition, a person's delinquency adjudications can no longer be considered after a person reaches the age of 25; instead, a person 25 years of age or older is a persistent repeater only if he or she satisfies the requirements under current law.

3. Under the bill, if a person has a delinquency adjudication for a serious sex crime or a serious violent crime and he or she subsequently is convicted of committing another such crime, the person will be subject to the minimum or increased penalties provided under current law. As with repeaters and persistent repeaters, a person's delinquency adjudications can no longer be considered after a person reaches the age of 25; instead, a person 25 years of age or older will be subject to the minimum or increased penalties for a serious sex crime, a serious violent crime or a child sex crime only if he or she satisfies the requirements under current law.

Finally, for a delinquency adjudication to be used under the bill to impose an increased or minimum sentence, the person must have attained the age of 15 at the time he or she committed the act for which the person was adjudicated delinquent and the adjudication must have occurred on or after the date on which the bill becomes law.

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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.** 938.396 (2) (cm) of the statutes is created to read:

2 938.396 (2) (cm) Upon request of a court of criminal jurisdiction or a district
3 attorney to review court records for the purpose of investigating and determining
4 whether a person is a repeater under s. 939.62 (2) (a) 2. or 4. or a persistent repeater
5 under s. 939.62 (2m) (b) 1m. or whether a person is subject to increased penalties
6 under s. 939.623 (3) or 939.624 (3), the court assigned to exercise jurisdiction under
7 this chapter and ch. 48 shall open for inspection by authorized representatives of the
8 requester the records of the court relating to any juvenile who has been adjudicated
9 delinquent for an act that would be a crime if committed by an adult.

10 **SECTION 2.** 939.62 (2) of the statutes is renumbered 939.62 (2) (a) (intro.) and
11 amended to read:

12 939.62 (2) (a) (intro.) The actor is a repeater if one of the following applies:

13 1. The actor was convicted of a felony during the 5-year period immediately
14 preceding the commission of the crime for which the actor presently is being
15 sentenced, or if the

16 3. The actor was convicted of a misdemeanor on 3 separate occasions during
17 that same period, which convictions the 5-year period immediately preceding the
18 commission of the crime for which the actor presently is being sentenced.

19 (b) To count as an adjudication or conviction under par. (a), the adjudication or
20 conviction must remain of record and unreversed. It is immaterial that disposition
21 or sentence was stayed, withheld or suspended, or that the actor was pardoned,

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1 unless such pardon was granted on the ground of innocence. In computing the
2 preceding 5-year period under par. (a), time which the actor spent in actual
3 confinement under a juvenile dispositional order or serving a criminal sentence shall
4 be excluded.

5 **SECTION 3.** 939.62 (2) (a) 2. of the statutes is created to read:

6 939.62 **(2)** (a) 2. During the 5-year period immediately preceding the
7 commission of the crime for which the actor is presently being sentenced, the actor
8 was adjudicated delinquent for an act that he or she committed after attaining the
9 age of 15 and that if committed by an adult in this state would be a felony. This
10 subdivision applies only to adjudications of delinquency made on or after the
11 effective date of this subdivision [revisor inserts date].

12 **SECTION 4.** 939.62 (2) (a) 4. of the statutes is created to read:

13 939.62 **(2)** (a) 4. During the 5-year period immediately preceding the
14 commission of the crime for which the actor is presently being sentenced, the actor
15 was adjudicated delinquent on one occasion for an act that he or she committed after
16 attaining the age of 15 and that if committed by an adult in this state would be a
17 misdemeanor and the actor was also convicted of a misdemeanor on 2 separate
18 occasions. This subdivision applies only to adjudications of delinquency made on or
19 after the effective date of this subdivision [revisor inserts date].

20 **SECTION 5.** 939.62 (2m) (b) 1m. of the statutes is created to read:

21 939.62 **(2m)** (b) 1m. At any time preceding the serious felony for which he or
22 she presently is being sentenced under ch. 973, the actor has, on one occasion on or
23 after the effective date of this subdivision [revisor inserts date], been adjudicated
24 delinquent for an act that he or she committed after attaining the age of 15 and that
25 if committed by an adult in this state would be a serious felony and, on a separate

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1 occasion, the actor has been convicted of a serious felony. The violation for which the
2 actor was adjudicated delinquent must have occurred before the date of violation of
3 the felony for which the actor was convicted, and both the adjudication and
4 conviction must remain of record and unreversed. This subdivision does not apply
5 if the actor was 25 years of age or older at the time of the commission of the crime
6 for which the actor presently is being sentenced under ch. 973.

7 **SECTION 6.** 939.62 (2m) (bm) of the statutes is amended to read:

8 939.62 **(2m)** (bm) For purposes of counting a conviction or delinquency
9 adjudication under par. (b), it is immaterial that the sentence or disposition for the
10 previous conviction or delinquency adjudication was stayed, withheld or suspended,
11 or that the actor was pardoned, unless the pardon was granted on the ground of
12 innocence.

13 **SECTION 7.** 939.62 (2m) (e) of the statutes is created to read:

14 939.62 **(2m)** (e) If a prior delinquency adjudication is being considered as being
15 covered under par. (a) 2m. d. as comparable to a felony specified under par. (a) 2m.
16 a., b. or c., the delinquency adjudication may be counted as a prior delinquency
17 adjudication under par. (b) 1m. only if the court determines, beyond a reasonable
18 doubt, that the violation relating to that delinquency adjudication would constitute
19 a felony specified under par. (a) 2m. a., b. or c. if committed by an adult in this state.

20 **SECTION 8.** 939.62 (3) (a) of the statutes is amended to read:

21 939.62 **(3)** (a) In case of crimes committed in this state, the terms do not include
22 motor vehicle offenses under chs. 341 to 349 and, except as provided in subs. (2) (a)
23 2. and 4. and (2m) (b) 1m., offenses handled through proceedings in the court
24 assigned to exercise jurisdiction under chs. 48 and 938, but otherwise have the
25 meanings designated in s. 939.60.

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1 **SECTION 9.** 939.62 (3) (b) of the statutes is amended to read:

2 939.62 **(3)** (b) In case of crimes committed in other jurisdictions, the terms do
3 not include those crimes which are equivalent to motor vehicle offenses under chs.
4 341 to 349 or, except as provided in subs. (2) (a) 2. and 4. and (2m) (b) 1m., to offenses
5 handled through proceedings in the court assigned to exercise jurisdiction under chs.
6 48 and 938. Otherwise, felony means a crime which under the laws of that
7 jurisdiction carries a prescribed maximum penalty of imprisonment in a prison or
8 penitentiary for one year or more. Misdemeanor means a crime which does not carry
9 a prescribed maximum penalty sufficient to constitute it a felony and includes crimes
10 punishable only by a fine.

11 **SECTION 10.** 939.623 (3) of the statutes is created to read:

12 939.623 **(3)** (a) If a person has been adjudicated delinquent on or after the
13 effective date of this paragraph [revisor inserts date], for one or more serious sex
14 crimes that he or she committed after attaining the age of 15 and the person
15 subsequently commits a serious sex crime, the court shall sentence the person to not
16 less than 5 years' imprisonment, but otherwise the penalties for the crime apply,
17 subject to any applicable penalty enhancement. The court shall not place the person
18 on probation.

19 (b) Paragraph (a) does not apply if the person was 25 years of age or older at
20 the time he or she committed the subsequent serious sex crime.

21 (c) If a person is sentenced under par. (a), a court may not also impose an
22 enhanced sentence under sub. (2).

23 **SECTION 11.** 939.624 (3) of the statutes is created to read:

24 939.624 **(3)** (a) If a person has been adjudicated delinquent on or after the
25 effective date of this paragraph [revisor inserts date], for one or more serious

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1 violent crimes or crimes punishable by life imprisonment that he or she committed
2 after attaining the age of 15 and the person subsequently commits a serious violent
3 crime, the court shall sentence the person to not less than 5 years' imprisonment, but
4 otherwise the penalties for the crime apply, subject to any applicable penalty
5 enhancement. The court shall not place the person on probation.

6 (b) Paragraph (a) does not apply if the person was 25 years of age or older at
7 the time he or she committed the subsequent serious violent crime.

8 (c) If a person is sentenced under par. (a), a court may not also impose an
9 enhanced sentence under sub. (2).

10 **SECTION 12. Initial applicability.**

11 (1) This act applies to offenses committed on or after the effective date of this
12 subsection.

13 (END)