

1999 ASSEMBLY BILL 724

February 8, 2000 – Introduced by Representatives F. LASEE, KAUFERT, PETTIS, KREUSER, AINSWORTH and SKINDRUD, cosponsored by Senators A. LASEE, ROESSLER and DRZEWIECKI. Referred to Committee on Criminal Justice.

1 **AN ACT to renumber** 939.50 (1) (a), 939.50 (3) (a) and 973.015; **to amend** 301.048
2 (2) (b), 302.11 (1m), 302.114 (1), 303.065 (1) (b) 2., 304.02 (5), 304.06 (1) (b),
3 304.071 (2), 939.30 (2), 939.31, 939.32 (1) (a), 939.50 (2), 939.60, 939.624 (2),
4 939.625 (1) (b) 2., 939.63 (1) (a) 2., 940.01 (1) (a), 940.01 (1) (b), 940.01 (3),
5 961.335 (1), 971.17 (1), 972.03, 972.13 (6), 973.01 (3), 973.013 (1) (b), 973.0135
6 (3), 973.032 (2) (b), 973.09 (1) (c) and 978.07 (1) (c) 1.; and **to create** 301.046 (3)
7 (cm), 304.06 (1t), 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1m), 961.335
8 (1m), 967.02 (1m), 973.015, 973.016 and 973.017 of the statutes; **relating to:**
9 providing a penalty of either death or life imprisonment for a 2nd or subsequent
10 conviction for first-degree intentional homicide, affecting parole eligibility and
11 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, no state crime is punishable by the death penalty. This bill provides for either a death penalty (by lethal injection) or life imprisonment (with or without restrictions on eligibility for parole or supervised release) for first-degree intentional homicide committed by a person who has one or more previous

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convictions for first-degree intentional homicide or an equivalent crime under federal law, prior law of this state or the law of another state. A first conviction for first-degree homicide remains punishable by life imprisonment.

The procedure for determining whether the death penalty would be imposed is the subject of a proceeding that is separate from the regular trial. After a second or subsequent conviction for first-degree intentional homicide, the court reconvenes the trial jury, or, if there was no jury trial or the trial jury is unable to continue, a new jury is summoned. The defendant may waive the right to a jury. Evidence is then presented regarding various aggravating or mitigating circumstances relating to the crime and the defendant.

If the jury is not waived, the jury hears the evidence and then gives an advisory sentence to the judge of either life imprisonment or death. If the jury recommends life imprisonment, it may further recommend a complete or substantial restriction of the defendant's eligibility for parole or extended supervision. The judge, not bound by the advisory sentence, then weighs the aggravating and mitigating circumstances and enters the sentence of either life imprisonment or death. If life imprisonment is imposed, the judge may completely or substantially restrict the defendant's eligibility for parole or extended supervision. If the judge chooses the death sentence he or she must set forth his or her findings in writing. Any death sentence is subject to automatic appellate review by the supreme court.

The judge that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner. One physician and 12 citizen witnesses must be present at the execution.

This bill applies only to those offenses committed on or after its effective date (the day after publication).

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.** 301.046 (3) (cm) of the statutes is created to read:
- 2 301.046 **(3)** (cm) The prisoner is not awaiting imposition of a death sentence.
- 3 **SECTION 2.** 301.048 (2) (b) of the statutes is amended to read:
- 4 301.048 **(2)** (b) He or she is a prisoner serving a ~~felony~~ sentence for a felony not
- 5 punishable by death or life imprisonment and the department directs him or her to
- 6 participate in the program. This paragraph does not apply to a prisoner serving a
- 7 bifurcated sentence imposed under s. 973.01.

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1 **SECTION 3.** 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). An inmate awaiting imposition of a
5 death sentence is not eligible for parole.

6 **SECTION 4.** 302.114 (1) of the statutes is amended to read:

7 302.114 **(1)** An inmate is subject to this section if he or she is serving a life
8 sentence imposed under s. 973.014 (1g) (a) 1. or 2. An inmate serving a life sentence
9 under s. 939.62 (2m) (c) or 973.014 (1g) (a) 3. or awaiting imposition of a death
10 sentence is not eligible for release to extended supervision under this section.

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

12 303.065 **(1)** (b) 2. A person serving a life sentence under s. 939.62 (2m) (c) or
13 973.014 (1) (c) or (1g) (a) 3. or awaiting imposition of a death sentence may not be
14 considered for work release.

15 **SECTION 6.** 304.02 (5) of the statutes is amended to read:

16 304.02 **(5)** Notwithstanding subs. (1) to (3), a prisoner who is serving a life
17 sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) or (1g) or awaiting imposition of
18 a death sentence is not eligible for release to parole supervision under this section.

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

20 304.06 **(1)** (b) Except as provided in sub. (1m) or (1t) or s. 302.045 (3), 961.49
21 (2), 973.01 (6) or 973.0135, the parole commission may parole an inmate of the
22 Wisconsin state prisons or any felon or any person serving at least one year or more
23 in a county house of correction or a county reforestation camp organized under s.
24 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6
25 months, whichever is greater. Except as provided in s. 939.62 (2m) (c) or 973.014 (1)

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1 (b) or (c), (1g) or (2), the parole commission may parole an inmate serving a life term
2 when he or she has served 20 years, as modified by the formula under s. 302.11 (1)
3 and subject to extension under s. 302.11 (1q) and (2), if applicable. The person
4 serving the life term shall be given credit for time served prior to sentencing under
5 s. 973.155, including good time under s. 973.155 (4). The secretary may grant special
6 action parole releases under s. 304.02. The department or the parole commission
7 shall not provide any convicted offender or other person sentenced to the
8 department's custody any parole eligibility or evaluation until the person has been
9 confined at least 60 days following sentencing.

10 **SECTION 8.** 304.06 (1t) of the statutes is created to read:

11 304.06 (1t) The parole commission may not parole an inmate who is awaiting
12 imposition of a death sentence.

13 **SECTION 9.** 304.071 (2) of the statutes is amended to read:

14 304.071 (2) If a prisoner is not eligible for parole under s. 304.06 (1t), 939.62
15 (2m) (c), 961.49 (2), 973.01 (6), 973.014 (1) (c) or (1g) or 973.032 (5), he or she is not
16 eligible for parole under this section.

17 **SECTION 10.** 939.22 (7) of the statutes is created to read:

18 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for
19 which one or more of the possible penalties is death or life imprisonment.

20 **SECTION 11.** 939.30 (2) of the statutes is amended to read:

21 939.30 (2) For a solicitation to commit a crime ~~for which the penalty is~~
22 punishable by death or life imprisonment, the actor is guilty of a Class C felony. For
23 a solicitation to commit a Class E felony, the actor is guilty of a Class E felony.

24 **SECTION 12.** 939.31 of the statutes is amended to read:

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1 **939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4) and 961.41
2 (1x), whoever, with intent that a crime be committed, agrees or combines with
3 another for the purpose of committing that crime may, if one or more of the parties
4 to the conspiracy does an act to effect its object, be fined or imprisoned or both not
5 to exceed the maximum provided for the completed crime; except that for a
6 conspiracy to commit a crime ~~for which the penalty is~~ punishable by death or life
7 imprisonment, the actor is guilty of a Class B felony.

8 **SECTION 13.** 939.32 (1) (a) of the statutes is amended to read:

9 939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is~~
10 punishable by death or life imprisonment is guilty of a Class B felony.

11 **SECTION 14.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

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

13 939.50 (1) (ag) Class AA felony.

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

15 939.50 (2) A felony is a Class AA, A, B, BC, C, D or E felony when it is so
16 specified in chs. 939 to 951.

17 **SECTION 17.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

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

19 939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined
20 under s. 973.015.

21 **SECTION 19.** 939.60 of the statutes is amended to read:

22 **939.60 Felony and misdemeanor defined.** A crime punishable by death or
23 imprisonment in the Wisconsin state prisons is a felony. Every other crime is a
24 misdemeanor.

25 **SECTION 20.** 939.624 (2) of the statutes is amended to read:

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1 939.624 **(2)** If a person has one or more prior convictions for a serious violent
2 crime or a crime punishable by death or life imprisonment and subsequently
3 commits a serious violent crime, the court shall sentence the person to not less than
4 5 years' imprisonment, but otherwise the penalties for the crime apply, subject to any
5 applicable penalty enhancement. The court shall not place the defendant on
6 probation.

7 **SECTION 21.** 939.625 (1) (b) 2. of the statutes is amended to read:

8 939.625 **(1)** (b) 2. If the maximum term of imprisonment for a felony is more
9 than 5 years or is a life term or the felony is punishable by death, the maximum term
10 of imprisonment for the felony may be increased by not more than 5 years.

11 **SECTION 22.** 939.63 (1) (a) 2. of the statutes is amended to read:

12 939.63 **(1)** (a) 2. If the maximum term of imprisonment for a felony is more than
13 5 years or is a life term or the felony is punishable by death, the maximum term of
14 imprisonment for the felony may be increased by not more than 5 years.

15 **SECTION 23.** 940.01 (1) (a) of the statutes is amended to read:

16 940.01 **(1)** (a) Except as provided in ~~sub.~~ subs. (1m) and (2), whoever causes the
17 death of another human being with intent to kill that person or another is guilty of
18 a Class A felony.

19 **SECTION 24.** 940.01 (1) (b) of the statutes is amended to read:

20 940.01 **(1)** (b) Except as provided in ~~sub.~~ subs. (1m) and (2), whoever causes the
21 death of an unborn child with intent to kill that unborn child, kill the woman who
22 is pregnant with that unborn child or kill another is guilty of a Class A felony.

23 **SECTION 25.** 940.01 (1m) of the statutes is created to read:

24 940.01 **(1m)** PENALTY FOR REPEAT OFFENDERS. (a) In this subsection, "intentional
25 homicide" means any of the following:

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1 1. A violation of this section.

2 2. A crime under federal law, the law of another state or, prior to January 1,
3 1989, a law of this state that is comparable to a crime specified in this section.

4 (b) Except as provided in pars. (c) and (d) and sub. (2), whoever causes the death
5 of another human being with intent to kill that person or another is guilty of a Class
6 AA felony if he or she has been convicted of intentional homicide on one or more
7 separate occasions at any time preceding the offense for which he or she presently
8 is being sentenced.

9 (bm) To be considered as a previous conviction under par. (b), the conviction
10 must remain of record and unreversed. It is immaterial that the sentence for the
11 previous conviction was stayed, withheld or suspended, or that he or she was
12 pardoned, unless the pardon was granted on the ground of innocence. If a previous
13 conviction is considered to be covered under par. (a) 2. as comparable to a violation
14 of this section, the conviction may be counted as a prior conviction under par. (b) only
15 if the court determines, beyond a reasonable doubt, that the violation relating to that
16 conviction would constitute a violation of this section if committed by a person over
17 whom a court of criminal jurisdiction would have exercised original jurisdiction.

18 (c) Notwithstanding s. 939.05, a person is subject to par. (b) as a party to a crime
19 only if that person had intended that a person be killed.

20 (d) A person is subject to par. (b) only if the person is 16 years old or older when
21 he or she commits the offense.

22 **SECTION 26.** 940.01 (3) of the statutes is amended to read:

23 940.01 **(3)** BURDEN OF PROOF. When the existence of an affirmative defense
24 under sub. (2) has been placed in issue by the trial evidence, the state must prove

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1 beyond a reasonable doubt that the facts constituting the defense did not exist in
2 order to sustain a finding of guilt under sub. (1) or (1m).

3 **SECTION 27.** 961.335 (1) of the statutes is amended to read:

4 961.335 (1) ~~Upon~~ Except as provided in sub. (1m), upon application the
5 controlled substances board may issue a permit authorizing a person to
6 manufacture, obtain, possess, use, administer or dispense a controlled substance for
7 purposes of scientific research, instructional activities, chemical analysis or other
8 special uses, without restriction because of enumeration. No person shall engage in
9 any such activity without a permit issued under this section, except that an
10 individual may be designated and authorized to receive the permit for a college or
11 university department, research unit or similar administrative organizational unit
12 and students, laboratory technicians, research specialists or chemical analysts
13 under his or her supervision may be permitted possession and use of controlled
14 substances for these purposes without obtaining an individual permit.

15 **SECTION 28.** 961.335 (1m) of the statutes is created to read:

16 961.335 (1m) Upon the application of the secretary of corrections for a permit
17 to obtain a controlled substance for purposes of an execution under s. 973.017, the
18 controlled substances board shall issue a permit under this section.

19 **SECTION 29.** 967.02 (1m) of the statutes is created to read:

20 967.02 (1m) “Crime punishable by death or life imprisonment” has the
21 meaning given in s. 939.22 (7).

22 **SECTION 30.** 971.17 (1) of the statutes is amended to read:

23 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason
24 of mental disease or mental defect, the court shall commit the person to the
25 department of health and family services for a specified period not exceeding

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1 two-thirds of the maximum term of imprisonment that could be imposed under s.
2 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
3 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621,
4 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b) and 961.48 and
5 other penalty enhancement statutes, as applicable, subject to the credit provisions
6 of s. 973.155. ~~If the maximum term of imprisonment is~~ crime is punishable by death
7 or life imprisonment, the commitment period specified by the court may be life,
8 subject to termination under sub. (5).

9 **SECTION 31.** 972.03 of the statutes is amended to read:

10 **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory
11 challenges except as otherwise provided in this section. When the crime charged is
12 punishable by death or life imprisonment, the state is entitled to 6 peremptory
13 challenges and the defendant is entitled to 6 peremptory challenges. If there is more
14 than one defendant, the court shall divide the challenges as equally as practicable
15 among them; and if their defenses are adverse and the court is satisfied that the
16 protection of their rights so requires, the court may allow the defendants additional
17 challenges. If the crime is punishable by death or life imprisonment, the total
18 peremptory challenges allowed the defense shall not exceed 12 if there are only 2
19 defendants and 18 if there are more than 2 defendants; in other felony cases 6
20 challenges if there are only 2 defendants and 9 challenges if there are more than 2.
21 In misdemeanor cases, the state is entitled to 3 peremptory challenges and the
22 defendant is entitled to 3 peremptory challenges, except that if there are 2
23 defendants, the court shall allow the defense 4 peremptory challenges, and if there
24 are more than 2 defendants, the court shall allow the defense 6 peremptory

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1 challenges. Each side shall be allowed one additional peremptory challenge if
2 additional jurors are to be selected under s. 972.04 (1).

3 **SECTION 32.** 972.13 (6) of the statutes is amended to read:

4 972.13 (6) The following forms may be used for judgments:

5 STATE OF WISCONSIN

6 County

7 In.... Court

8 The State of Wisconsin

9 vs.

10(Name of defendant)

11 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

12 IT IS ADJUDGED That the defendant has been convicted upon the defendant's
13 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)
14 (no contest) on the.... day of...., (year), of the crime of.... in violation of s.....; and
15 the court having asked the defendant whether the defendant has anything to state
16 why sentence should not be pronounced, and no sufficient grounds to the contrary
17 being shown or appearing to the court.

18 *IT IS ADJUDGED That the defendant is guilty as convicted.

19 *IT IS ADJUDGED That the defendant shall be executed by lethal injection.

20 *IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin
21 state prisons (county jail of.... county) for an indeterminate term of not more than....

22 *IT IS ADJUDGED That the defendant is ordered to serve a bifurcated
23 sentence consisting of year(s) of confinement in prison and months/years of
24 extended supervision.

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1 *IT IS ADJUDGED That the defendant is placed in the intensive sanctions
2 program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes
3 and the following conditions:....

4 *IT IS ADJUDGED That the defendant is hereby committed to detention in
5 (the defendant’s place of residence or place designated by judge) for a term of not
6 more than....

7 *IT IS ADJUDGED That the defendant is placed on lifetime supervision by the
8 department of corrections under section 939.615 of the Wisconsin Statutes.

9 *IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the
10 costs of this action).

11 *IT IS ADJUDGED That the defendant pay restitution to....

12 *IT IS ADJUDGED That the defendant is restricted in his or her use of
13 computers as follows:....

14 *The.... at.... is designated as the Reception Center to which the defendant shall
15 be delivered by the sheriff.

16 *IT IS ORDERED That the clerk deliver a duplicate original of this judgment
17 to the sheriff who shall forthwith execute the same and deliver it to the warden.

18 Dated this.... day of...., (year)

19 BY THE COURT....

20 Date of Offense....,

21 District Attorney....,

22 Defense Attorney....

23 *Strike inapplicable paragraphs.

24 STATE OF WISCONSIN

25 County

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1 In.... Court

2 The State of Wisconsin

3 vs.

4(Name of defendant)

5 On the.... day of...., (year), the district attorney appeared for the state and
6 the defendant appeared in person and by... the defendant's attorney.

7 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

8 IT IS ADJUDGED That the defendant has been found not guilty by the verdict
9 of the jury (by the court) and is therefore ordered discharged forthwith.

10 Dated this.... day of...., (year)

11 BY THE COURT....

12 **SECTION 33.** 973.01 (3) of the statutes is amended to read:

13 973.01 (3) NOT APPLICABLE TO LIFE OR DEATH SENTENCES. If a person is being
14 sentenced for a felony that is punishable by death or life imprisonment, he or she is
15 not subject to this section but shall be sentenced under s. 973.014 (1g) or 973.015,
16 whichever is applicable.

17 **SECTION 34.** 973.013 (1) (b) of the statutes is amended to read:

18 973.013 (1) (b) Except as provided in s. 973.01, the sentence shall have the
19 effect of a sentence at hard labor for the maximum term fixed by the court, subject
20 to the power of actual release from confinement by parole by the department or by
21 pardon as provided by law. If a person is sentenced for a definite time for an offense
22 for which the person may be sentenced under this section, the person is in legal effect
23 sentenced as required by this section, said definite time being the maximum period.
24 ~~A~~ Except as provided in s. 973.015, a defendant convicted of a crime for which the
25 minimum penalty is life shall be sentenced for life.

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1 **SECTION 35** 973.0135 (3) of the statutes is amended to read:

2 973.0135 **(3)** A person is not subject to this section if the current serious felony
3 is punishable by death or life imprisonment.

4 **SECTION 36.** 973.015 of the statutes is renumbered 973.019.

5 **SECTION 37.** 973.015 of the statutes is created to read:

6 **973.015 Sentence of death or life imprisonment for Class AA felony. (1)**

7 (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct a
8 separate sentencing proceeding to determine whether the defendant should be
9 sentenced to death or life imprisonment. The trial judge shall conduct the proceeding
10 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury
11 is unable to reconvene for a hearing on the issue of the penalty, the trial judge may
12 summon a new jury to determine the issue of the imposition of the penalty. If the trial
13 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the
14 sentencing proceeding before a jury summoned for that purpose unless the
15 defendant waives a jury.

16 (b) In the proceeding, the court shall admit any evidence that may be relevant
17 to the sentence regarding any mitigating circumstance. The court shall admit any
18 other evidence according to the rules of evidence applicable at a criminal trial. The
19 court shall provide the defendant with a fair opportunity to rebut any hearsay
20 statements. This paragraph does not authorize the introduction of any evidence
21 secured in violation of the state or federal constitution. The state has the burden of
22 proof, beyond a reasonable doubt, regarding the existence of aggravating
23 circumstances. The defendant has the burden of proof, by a preponderance of the
24 evidence, regarding mitigating circumstances. The court shall permit the state and

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1 the defendant or his or her counsel to present arguments for or against a sentence
2 of death.

3 **(2)** (a) Unless the defendant waives the right to a jury, the jury shall deliberate
4 after hearing all of the evidence and, by a majority vote, shall render an advisory
5 sentence to the court of life imprisonment or death, based upon the following
6 matters:

7 1. The existence of aggravating circumstances under sub. (5).

8 2. The existence of mitigating circumstances under sub. (6).

9 (b) If the jury recommends life imprisonment, it may further recommend
10 restrictions on the defendant's eligibility for parole or extended supervision or
11 recommend that the defendant not be eligible for parole or extended supervision.

12 (c) Upon the request of the defendant or the state, the court shall explain to the
13 jury the court's options under sub. (3) (c) to sentence the defendant to life without the
14 possibility of parole or extended supervision or with delayed parole or extended
15 supervision eligibility.

16 **(3)** (a) Notwithstanding the recommendation of a majority of the jury, the court,
17 after weighing the aggravating and mitigating circumstances, shall enter a sentence
18 of life imprisonment or death, but if the court imposes a sentence of death, it shall
19 set forth in writing its findings upon which the sentence of death is based as to the
20 facts:

21 1. That sufficient aggravating circumstances exist under sub. (5); and

22 2. That there are insufficient mitigating circumstances under sub. (6) to
23 outweigh the aggravating circumstances.

24 (b) In each case in which the court imposes the death sentence, the court must
25 support its determination by specific written findings of fact based upon the

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1 circumstances in subs. (5) and (6) and upon the records of the trial and the sentencing
2 proceedings.

3 (c) If the court does not make the findings requiring the death sentence, the
4 court shall impose a sentence of life imprisonment as provided under s. 973.014 (1)
5 or (1g), whichever is applicable.

6 **(4)** If a death sentence is imposed, the judgment of conviction and sentence of
7 death is subject to automatic review by the supreme court within 60 days after
8 certification by the sentencing court of the entire record, unless the supreme court,
9 for good cause shown, extends the time for an additional period not to exceed 30 days.
10 The review by the supreme court has priority over all other cases and shall be heard
11 in accordance with rules promulgated by the supreme court.

12 **(5)** The court and jury shall consider one or more of the following as
13 aggravating circumstances:

14 (a) The Class AA felony was committed by a person under a sentence of
15 imprisonment.

16 (b) The defendant knowingly created a great risk of death to many persons.

17 (c) The Class AA felony was committed for the purpose of avoiding or
18 preventing a lawful arrest or effecting an escape from custody.

19 (d) The Class AA felony was committed to disrupt or hinder the lawful exercise
20 of any governmental function or the enforcement of laws.

21 (e) The defendant intentionally caused bodily harm or mental anguish to the
22 victim or another before the victim died.

23 (f) During the commission of the offense, the defendant enjoyed or was utterly
24 indifferent to the suffering of another.

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1 **(6)** The court and jury shall consider as a mitigating factor any aspect of the
2 defendant's character, background or record or any of the circumstances of the
3 offense that the defendant offers as a basis for a sentence other than death.
4 Mitigating circumstances may include, but are not limited to, any of the following:

5 (a) The defendant has no significant history of prior criminal activity.

6 (b) The Class AA felony was committed while the defendant was under the
7 influence of extreme mental or emotional disturbance.

8 (c) The victim was a participant in the defendant's conduct or consented to the
9 act.

10 (d) The defendant was an accomplice in the Class AA felony committed by
11 another person and the defendant's participation was relatively minor.

12 (e) The defendant acted under extreme duress or under the substantial
13 domination of another person.

14 (f) The capacity of the defendant to appreciate the criminality of his or her
15 conduct or to conform his or her conduct to the requirements of law was substantially
16 impaired.

17 (g) The age of the defendant at the time of the crime.

18 **(7)** The court that imposes a sentence of death shall set the date for execution.
19 The defendant shall be committed to the Wisconsin state prisons pending the
20 execution of the death sentence.

21 **(8)** The execution of a death sentence shall be by lethal injection.

22 **SECTION 38.** 973.016 of the statutes is created to read:

23 **973.016 Stay of execution of death sentence.** The execution of a death
24 sentence may be stayed only by the governor or incident to an appeal.

25 **SECTION 39.** 973.017 of the statutes is created to read:

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1 **973.017 Execution of death sentence.** The secretary of corrections shall
2 designate the executioner who shall provide a person subject to a death sentence with
3 an intravenous injection of one or more substances in a lethal quantity. The
4 executioner must be a physician or acting under the direction of a physician. A
5 person is immune from civil or criminal liability for his or her acts or omissions, in
6 good faith, in regard to a lawful execution under this section. The secretary shall
7 designate 12 citizens to witness the execution. The secretary shall direct a physician
8 to be present and to announce when death has occurred. The convicted person may
9 request that certain additional people be allowed to witness the execution. The
10 secretary shall grant any such reasonable request. The secretary may allow
11 representatives of the news media to witness the execution under rules of the
12 department. No other persons may be allowed to witness the execution.

13 **SECTION 40.** 973.032 (2) (b) of the statutes is amended to read:

14 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person
15 under sub. (1) if he or she is convicted of a felony punishable by death or life
16 imprisonment.

17 **SECTION 41.** 973.09 (1) (c) of the statutes is amended to read:

18 973.09 (1) (c) When a person is convicted of any crime which that is punishable
19 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

20 **SECTION 42.** 978.07 (1) (c) 1. of the statutes is amended to read:

21 978.07 (1) (c) 1. Any case record of a felony punishable by death or life
22 imprisonment or a related case, after the defendant's parole eligibility date under s.
23 304.06 (1) or 973.014 (1) or date of eligibility for release to extended supervision
24 under s. 973.014 (1g) (a) 1. or 2., whichever is applicable, or 50 years after the
25 commencement of the action, whichever occurs later. If there is no parole eligibility

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1 date or no date for release to extended supervision, the district attorney may destroy
2 the case record after the defendant's death.

3 **SECTION 43. Initial applicability.**

4 (1) The treatment of section 940.01 (1m) of the statutes first applies to offenses
5 committed on the effective date of this subsection, but does not preclude the counting
6 of other intentional homicide convictions as prior convictions for sentencing a person
7 under section 940.01 (1m) of the statutes, as created by this act.

8 (END)