

1999 SENATE BILL 153

May 13, 1999 – Introduced by Senators A. LASEE, DRZEWIECKI, FITZGERALD and ZIEN, cosponsored by Representatives F. LASEE, MUSSER, HANDRICK, GUNDERSON, AINSWORTH, HOVEN, HUNDERTMARK, KREIBICH and KAUFERT. Referred to Committee on Judiciary and Consumer Affairs.

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

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1 younger than 16 years old, affecting parole and extended supervision eligibility
2 and 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 parole eligibility restrictions) for any first-degree intentional homicide committed by a person who is 16 years old or older against a child who is younger than 16 years old. Other first-degree homicides remain punishable by life imprisonment.

The procedure for determining whether or not the death penalty would be imposed is the subject of a proceeding that is separate from the regular trial. After a conviction finding that a first-degree homicide of a child younger than 16 years old had occurred, 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.

The jury hears the evidence and then gives an advisory sentence to the court 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 parole or extended supervision eligibility. The court, 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 court may completely or substantially restrict the defendant's parole or extended supervision eligibility. If the court chooses the death sentence it must set forth its findings in writing. Any death sentence is subject to automatic appellate review by the supreme court.

The court that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner. Twelve 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:

3 **SECTION 1.** 301.046 (3) (cm) of the statutes is created to read:
4 301.046 (3) (cm) The prisoner is not awaiting imposition of a death sentence.
5 **SECTION 2.** 301.048 (2) (b) of the statutes is amended to read:

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1 301.048 (2) (b) He or she is a prisoner serving a ~~felony~~ sentence for a felony not
2 punishable by death or life imprisonment and the department directs him or her to
3 participate in the program. This paragraph does not apply to a prisoner serving a
4 bifurcated sentence imposed under s. 973.01.

5 **SECTION 3.** 302.11 (1m) of the statutes is amended to read:

6 302.11 (1m) An inmate serving a life term is not entitled to mandatory release.
7 Except as provided in ss. 304.06 (1t), 939.62 (2m) (c) and 973.014, the parole
8 commission may parole the inmate as specified in s. 304.06 (1). An inmate awaiting
9 imposition of a death sentence is not eligible for parole.

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

11 302.114 (1) An inmate is subject to this section if he or she is serving a life
12 sentence imposed under s. 973.014 (1g) (a) 1. or 2. or if he or she is serving a life
13 sentence imposed under s. 973.015 and the sentencing court has authorized release
14 to extended supervision under s. 973.015 (3) (c). An inmate serving a life sentence
15 under s. 939.62 (2m) or 973.014 (1g) (a) 3. is not eligible for release to extended
16 supervision under this section.

17 **SECTION 5.** 302.114 (2) of the statutes is amended to read:

18 302.114 (2) Except as provided in subs. (3) and (9), an inmate subject to this
19 section may petition the sentencing court for release to extended supervision after
20 he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a)
21 1., or after he or she has reached the extended supervision eligibility date set by the
22 court, if the inmate was sentenced under s. 973.014 (1g) (a) 2. or 973.015 (3) (c).

23 **SECTION 6.** 302.114 (3) (a) (intro.) of the statutes is amended to read:

24 302.114 (3) (a) (intro.) The warden or superintendent shall keep a record of the
25 conduct of each inmate subject to this section, specifying each infraction of the rules.

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1 If any inmate subject to this section violates any regulation of the prison or refuses
2 or neglects to perform required or assigned duties, the department may extend the
3 extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2. or 973.015
4 (3) (c), whichever is applicable, as follows:

5 **SECTION 7.** 302.114 (3) (b) of the statutes is amended to read:

6 302.114 (3) (b) In addition to the sanctions under par. (a), if an inmate subject
7 to this section is placed in adjustment, program or controlled segregation status, the
8 department may extend the extended supervision eligibility date set under s.
9 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c), whichever is applicable, by a number of days
10 equal to 50% of the number of days spent in segregation status. In administering this
11 paragraph, the department shall use the definition of adjustment, program or
12 controlled segregation status under departmental rules in effect at the time an
13 inmate is placed in that status.

14 **SECTION 8.** 302.114 (3) (c) of the statutes is amended to read:

15 302.114 (3) (c) An inmate subject to this section who files an action or special
16 proceeding, including a petition for a common law writ of certiorari, to which s.
17 807.15 applies shall have his or her extended supervision eligibility date set under
18 s. 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c), whichever is applicable, extended by the
19 number of days specified in the court order prepared under s. 807.15 (3). Upon
20 receiving a court order issued under s. 807.15, the department shall recalculate the
21 date on which the inmate to whom the order applies will be entitled to petition for
22 release to extended supervision and shall inform the inmate of that date.

23 **SECTION 9.** 303.065 (1) (b) of the statutes is amended to read:

24 303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence
25 specified in subd. 2., may be considered for work release only after he or she has

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1 reached parole eligibility under s. 304.06 (1) (b) or (1t) or 973.014 (1) (a) or (b),
2 whichever is applicable, or he or she has reached his or her extended supervision
3 eligibility date under s. 302.114 (9) (b) ~~or~~ 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c),
4 whichever is applicable.

5 2. A person serving a life sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) or
6 (1g) (a) 3. may not be considered for work release. A person serving a life sentence
7 imposed under s. 973.015 may not be considered for work release if the sentencing
8 court has determined under s. 973.015 (3) (c) that the person is not eligible for release
9 to extended supervision.

10 **SECTION 10.** 303.065 (1) (b) 3. of the statutes is created to read:

11 303.065 (1) (b) 3. A person awaiting imposition of a death sentence may not be
12 considered for work release.

13 **SECTION 11.** 304.02 (5) of the statutes is amended to read:

14 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
15 sentence under s. 939.62 (2m) (c) ~~or~~ 973.014 (1) (c) or (1g) or 973.015 or who is
16 awaiting imposition of a death sentence is not eligible for release to parole
17 supervision under this section.

18 **SECTION 12.** 304.06 (1) (b) of the statutes is amended to read:

19 304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2),
20 973.01 (6) or 973.0135, the parole commission may parole an inmate of the Wisconsin
21 state prisons or any felon or any person serving at least one year or more in a county
22 house of correction or a county reforestation camp organized under s. 303.07, when
23 he or she has served 25% of the sentence imposed for the offense, or 6 months,
24 whichever is greater. Except as provided in sub. (1t) or s. 939.62 (2m) (c) or 973.014
25 (1) (b) or (c), (1g) or (2), the parole commission may parole an inmate serving a life

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

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

11 304.06 (1t) If the prisoner is serving a life term imposed under s. 973.015, the
12 prisoner is eligible for parole only when authorized by the sentencing court under s.
13 973.015 (3) (c).

14 **SECTION 14.** 304.071 (2) of the statutes is amended to read:

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

18 **SECTION 15.** 939.22 (7) of the statutes is created to read:

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

21 **SECTION 16.** 939.30 (2) of the statutes is amended to read:

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

25 **SECTION 17.** 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 18.** 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 19.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

12 **SECTION 20.** 939.50 (1) (ag) of the statutes is created to read:

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

14 **SECTION 21.** 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 22.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

18 **SECTION 23.** 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 24.** 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 25.** 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 26.** 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 27.** 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 28.** 940.01 (1) (a) of the statutes is renumbered 940.01 (1) (a) 1. and
16 amended to read:

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

20 **SECTION 29.** 940.01 (1) (a) 2., 3. and 4. of the statutes are created to read:

21 940.01 **(1)** (a) 2. Except as provided in subds. 3. and 4. and sub. (2), whoever
22 causes the death of another human being with intent to kill that person or another
23 is guilty of a Class AA felony if the victim has not attained the age of 16 years.

24 3. Notwithstanding s. 939.05, a person is subject to subd. 2. as a party to a crime
25 only if that person had intended that a person be killed.

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1 4. A person is subject to subd. 2. only if the person is 16 years old or older when
2 he or she commits the offense.

3 **SECTION 30.** 940.01 (1) (b) of the statutes is renumbered 940.01 (1) (b) 1. and
4 amended to read:

5 940.01 (1) (b) 1. Except as provided in subds. 2. and 3. and sub. (2), whoever
6 causes the death of an unborn child with intent to kill that unborn child, kill the
7 woman who is pregnant with that unborn child or kill another is guilty of a Class
8 ~~A~~ AA felony.

9 **SECTION 31.** 940.01 (1) (b) 2. and 3. of the statutes are created to read:

10 940.01 (1) (b) 2. Notwithstanding s. 939.05, a person charged under subd. 1.
11 as a party to a crime is guilty of a Class AA felony only if that person had intended
12 that a person or an unborn child be killed. If a person charged as a party to a crime
13 under subd. 1. did not intend that a person or an unborn child be killed, he or she is
14 guilty of a Class A felony.

15 3. A person charged under subd. 1. is guilty of a Class AA felony only if the
16 person is 16 years old or older when he or she commits the offense. If a person
17 charged under subd. 1. is not 16 years old or older when he or she commits the offense,
18 he or she is guilty of a Class A felony.

19 **SECTION 32.** 961.335 (1) of the statutes is amended to read:

20 961.335 (1) ~~Upon~~ Except as provided in sub. (1m), upon application, the
21 controlled substances board may issue a permit authorizing a person to
22 manufacture, obtain, possess, use, administer or dispense a controlled substance for
23 purposes of scientific research, instructional activities, chemical analysis or other
24 special uses, without restriction because of enumeration. No person shall may
25 engage in any such activity without a permit issued under this section, except that

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1 an individual may be designated and authorized to receive the permit for a college
2 or university department, research unit or similar administrative organizational
3 unit and students, laboratory technicians, research specialists or chemical analysts
4 under his or her supervision may be permitted possession and use of controlled
5 substances for these purposes without obtaining an individual permit.

6 **SECTION 33.** 961.335 (1m) of the statutes is created to read:

7 961.335 **(1m)** Upon application of the secretary of corrections for a permit to
8 obtain a controlled substance for purposes of an execution under s. 973.017, the
9 controlled substances board shall issue a permit under this section.

10 **SECTION 34.** 967.02 (1m) of the statutes is created to read:

11 967.02 **(1m)** “Crime punishable by death or life imprisonment” has the
12 meaning given in s. 939.22 (7).

13 **SECTION 35.** 971.17 (1) of the statutes is amended to read:

14 971.17 **(1)** COMMITMENT PERIOD. When a defendant is found not guilty by reason
15 of mental disease or mental defect, the court shall commit the person to the
16 department of health and family services for a specified period not exceeding
17 two-thirds of the maximum term of imprisonment that could be imposed under s.
18 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
19 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621,
20 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b) and 961.48 and
21 other penalty enhancement statutes, as applicable, subject to the credit provisions
22 of s. 973.155. If the ~~maximum term of imprisonment is~~ crime is punishable by death
23 or life imprisonment, the commitment period specified by the court may be life,
24 subject to termination under sub. (5).

25 **SECTION 36.** 972.03 of the statutes is amended to read:

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1 **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory
2 challenges except as otherwise provided in this section. When the crime charged is
3 punishable by death or life imprisonment, the state is entitled to 6 peremptory
4 challenges and the defendant is entitled to 6 peremptory challenges. If there is more
5 than one defendant, the court shall divide the challenges as equally as practicable
6 among them; and if their defenses are adverse and the court is satisfied that the
7 protection of their rights so requires, the court may allow the defendants additional
8 challenges. If the crime is punishable by death or life imprisonment, the total
9 peremptory challenges allowed the defense shall not exceed 12 if there are only 2
10 defendants and 18 if there are more than 2 defendants; in other felony cases 6
11 challenges if there are only 2 defendants and 9 challenges if there are more than 2.
12 In misdemeanor cases, the state is entitled to 3 peremptory challenges and the
13 defendant is entitled to 3 peremptory challenges, except that if there are 2
14 defendants, the court shall allow the defense 4 peremptory challenges, and if there
15 are more than 2 defendants, the court shall allow the defense 6 peremptory
16 challenges. Each side shall be allowed one additional peremptory challenge if
17 additional jurors are to be selected under s. 972.04 (1).

18 **SECTION 37.** 972.13 (6) of the statutes is amended to read:

19 972.13 **(6)** The following forms may be used for judgments:

20 STATE OF WISCONSIN

21 County

22 In.... Court

23 The State of Wisconsin

24 vs.

25 (Name of defendant)

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1 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

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

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

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

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

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

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

18 *IT IS ADJUDGED That the defendant is hereby committed to detention in
19 (the defendant's place of residence or place designated by judge) for a term of not
20 more than....

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

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

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

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

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

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

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

8 BY THE COURT....

9 Date of Offense....,

10 District Attorney....,

11 Defense Attorney....

12 *Strike inapplicable paragraphs.

13 STATE OF WISCONSIN

14 County

15 In.... Court

16 The State of Wisconsin

17 vs.

18(Name of defendant)

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

21 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

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

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

25 BY THE COURT....

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1 **SECTION 38.** 973.01 (3d) of the statutes is created to read:

2 973.01 **(3d)** NOT APPLICABLE TO DEATH SENTENCES. If a person is being sentenced
3 for a felony that is punishable by death, he or she is not subject to this section but
4 shall be sentenced under s. 973.015.

5 **SECTION 39.** 973.013 (1) (b) of the statutes is amended to read:

6 973.013 **(1)** (b) Except as provided in s. 973.01, the sentence shall have the
7 effect of a sentence at hard labor for the maximum term fixed by the court, subject
8 to the power of actual release from confinement by parole by the department or by
9 pardon as provided by law. If a person is sentenced for a definite time for an offense
10 for which the person may be sentenced under this section, the person is in legal effect
11 sentenced as required by this section, said definite time being the maximum period.
12 ~~A- Except as provided in s. 973.015, a defendant convicted of a crime for which the~~
13 ~~minimum penalty is life shall be sentenced for life.~~

14 **SECTION 40.** 973.0135 (3) of the statutes is amended to read:

15 973.0135 **(3)** A person is not subject to this section if the current serious felony
16 is punishable by death or life imprisonment.

17 **SECTION 41.** 973.015 of the statutes is renumbered 973.019.

18 **SECTION 42.** 973.015 of the statutes is created to read:

19 **973.015 Sentence of death or life imprisonment for Class AA felony. (1)**

20 (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct a
21 separate sentencing proceeding to determine whether the defendant should be
22 sentenced to death or life imprisonment. The trial judge shall conduct the proceeding
23 before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury
24 is unable to reconvene for a hearing on the issue of the penalty, the trial judge may
25 summon a new jury to determine the issue of the imposition of the penalty. If the trial

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1 jury has been waived, or if the defendant pleaded guilty, the court shall conduct the
2 sentencing proceeding before a jury summoned for that purpose unless the
3 defendant waives a jury.

4 (b) In a sentencing proceeding under par. (a), the court shall admit any evidence
5 that may be relevant to the sentence regarding any mitigating circumstance. The
6 court shall admit any other evidence according to the rules of evidence applicable at
7 a criminal trial. The court shall provide the defendant with a fair opportunity to
8 rebut any hearsay statements. This paragraph does not authorize the introduction
9 of any evidence secured in violation of the state or federal constitution. The state has
10 the burden of proof, beyond a reasonable doubt, regarding the existence of
11 aggravating circumstances. The defendant has the burden of proof, by a
12 preponderance of the evidence, regarding mitigating circumstances. The court shall
13 permit the state and the defendant or his or her counsel to present arguments for or
14 against a sentence of death.

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

- 19 1. The existence of aggravating circumstances under sub. (5).
- 20 2. The existence of mitigating circumstances under sub. (6).

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

24 (c) Upon the request of the defendant or the state, the court shall explain to the
25 jury the court's options under sub. (3) (c) to sentence the defendant to life without the

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1 possibility of parole or extended supervision or with delayed eligibility for parole or
2 extended supervision.

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

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

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

11 (b) In each case in which the court imposes the death sentence, the court must
12 support its determination by specific written findings of fact based upon the
13 circumstances in subs. (5) and (6) and upon the records of the trial and the sentencing
14 proceedings.

15 (c) If the court does not make the findings requiring the death sentence, the
16 court shall impose a sentence of life imprisonment and shall make a parole eligibility
17 determination regarding the person if he or she is being sentenced for a crime
18 committed before December 31, 1999, or an extended supervision eligibility
19 determination regarding the person if he or she is being sentenced for a crime
20 committed on or after December 31, 1999. The court shall make a parole eligibility
21 determination under this paragraph by choosing one of the options specified in s.
22 973.014 (1). The court shall make an extended supervision eligibility determination
23 under this paragraph by choosing one of the options specified in s. 973.014 (1g) (a).

24 **(4)** If a death sentence is imposed, the judgment of conviction and sentence of
25 death is subject to automatic review by the supreme court within 60 days after

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1 certification by the sentencing court of the entire record, unless the supreme court,
2 for good cause shown, extends the time for an additional period not to exceed 30 days.
3 The review by the supreme court has priority over all other cases and shall be heard
4 in accordance with rules promulgated by the supreme court.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (f) The capacity of the defendant to appreciate the criminality of his or her
8 conduct or to conform his or her conduct to the requirements of law was substantially
9 impaired.

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

11 (7) The court that imposes a sentence of death shall set the date for execution.
12 The defendant shall be committed to the Wisconsin state prisons pending the
13 execution of the death sentence.

14 (7m) A person sentenced to death under this section for a crime committed on
15 or after December 31, 1999, is not eligible for release to extended supervision under
16 s. 302.113 or 302.114.

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

18 **SECTION 43.** 973.016 of the statutes is created to read:

19 **973.016 Stay of execution of death sentence.** The execution of a death
20 sentence may be stayed only by the governor or incident to an appeal.

21 **SECTION 44.** 973.017 of the statutes is created to read:

22 **973.017 Execution of death sentence.** The secretary of corrections shall
23 designate the executioner who shall provide a person subject to a death sentence with
24 an intravenous injection of one or more substances in a lethal quantity. A person is
25 immune from civil or criminal liability for his or her acts or omissions, in good faith,

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1 in regard to a lawful execution under this section. The secretary shall designate 12
2 citizens to witness the execution. The secretary may not direct a physician to be
3 present or require a physician to announce when death has occurred. A physician
4 may certify the death after a person, other than a physician, has determined or
5 pronounced death. The convicted person may request that certain additional people
6 be allowed to witness the execution. The secretary shall grant any such reasonable
7 request. The secretary may allow representatives of the news media to witness the
8 execution under rules of the department. No other persons may be allowed to witness
9 the execution.

10 **SECTION 45.** 973.032 (2) (b) of the statutes is amended to read:

11 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person
12 under sub. (1) if he or she is convicted of a felony punishable by death or life
13 imprisonment.

14 **SECTION 46.** 973.09 (1) (c) of the statutes is amended to read:

15 973.09 (1) (c) When a person is convicted of any crime which that is punishable
16 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

17 **SECTION 47.** 978.07 (1) (c) 1. of the statutes is amended to read:

18 978.07 (1) (c) 1. Any case record of a felony punishable by death or life
19 imprisonment or a related case, after the defendant's parole eligibility date under s.
20 304.06 (1) ~~or~~, 973.014 (1) or 973.015 (3) (c) or date of eligibility for release to extended
21 supervision under s. 973.014 (1g) (a) 1. or 2. or 973.015 (3) (c), whichever is
22 applicable, or 50 years after the commencement of the action, whichever occurs later.
23 If there is no parole eligibility date or no date for release to extended supervision, the
24 district attorney may destroy the case record after the defendant's death.

25 **SECTION 48. Initial applicability.**

