State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0740/1
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2005 ASSEMBLY BILL 30

January 25, 2005 – Introduced by Representative KESSLER. Referred to Committee on Criminal Justice and Homeland Security.

AN ACT ***to repeal*** 51.30 (4) (b) 10m., 938.396 (2) (e) and 980.015; ***to renumber*** 973.01 (2) (b) 1.; ***to amend*** 115.31 (2g), 118.19 (4) (a), 302.113 (9g) (b) (intro.), 938.355 (4) (b), 939.50 (2), 948.02 (1), 948.025 (1) (a), 973.01 (2) (b) 10. a., 973.01 (2) (d) 1., 973.03 (3) (e) 1., 973.195 (1r) (a) and 980.02 (1) (a); and ***to create*** 939.50 (1) (am), 939.50 (3) (am), 973.01 (2) (b) 1m. and 980.02 (6) of the statutes; **relating to:** commitment of sexually violent persons and sexual assault of a child who is less than 13 years old and providing a penalty.

Analysis by the Legislative Reference Bureau

Commitment of sexually violent persons

Current law provides a procedure for involuntarily committing sexually violent persons to the Department of Health and Family Services (DHFS) for control, care, and treatment. A sexually violent person is a person who has committed a sexually violent offense and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in acts of sexual violence.

A proceeding for the involuntary commitment of a sexually violent person is begun by a prosecutor filing of a petition that alleges that the person is a sexually violent person. The petition must be filed before the person is released from the confinement that resulted from the commission of a sexually violent offense on which the petition is based. If, after the trial on a sexually violent person petition, a judge

or jury finds the person to be a sexually violent person, the person must be committed to the custody of DHFS and placed in institutional care.

After 18 months of institutional care (and periodically thereafter), a sexually violent person may petition the court for supervised release. The court must grant the petition unless the state proves that it is still substantially probable that the person will engage in future acts of sexual violence if institutionalized care is not continued. If a court determines that supervised release is appropriate, DHFS must make its best effort to place the person in the county in which the person lived at the time of the sexually violent offense. DHFS and the county in which the person is to be placed must then prepare a plan for treating and monitoring the person upon his or her release.

Once the court approves the plan, the person resides in the community subject to the conditions set by the court and to the rules of DHFS. If the person violates a condition or rule or if the safety of others requires that supervised release be revoked, the court may revoke supervised release and return the person to institutional care.

A person committed as a sexually violent person and who is in institutional care or on supervised release may, under certain circumstances, obtain a hearing to determine whether he or she can be released (discharged) from his or her commitment. At the discharge hearing, the state has the burden of proving by clear and convincing evidence that the person is still a sexually violent person. If the state does not meet its burden, the court must discharge the person from DHFS's custody and supervision. If the state meets its burden, the court may authorize supervised release for the person if appropriate.

This bill eliminates the procedure for involuntarily committing a person in the first instance as a sexually violent offender. Under the bill, no new commitment petitions may be filed. The bill, however, does not affect commitment hearings in cases in which petitions are filed as of the bill's effective date, nor does it affect the commitment of individuals who are committed as of that date.

First–degree sexual assault of a child

Current law prohibits a person from having sexual contact or sexual intercourse with a person who has not attained the age of 13 years (first–degree sexual assault of a child). A person who violates this prohibition is guilty of a Class B felony (one of nine classes of felonies under current law) and may be sentenced to a term of imprisonment of up to 60 years. If the sentence is for more than one year, it must include a term of confinement of no more than 40 years and a term of extended supervision of no more than 20 years.

This bill increases the maximum term of imprisonment and the maximum term of confinement for first–degree sexual assault of a child by five years. The bill does so by placing first–degree sexual assault of a child in a new class of felonies — Class AB — for which the maximum terms of imprisonment and confinement are 65 and 45 years, respectively.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a

report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** 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:

SECTION 1. 51.30 (4) (b) 10m. of the statutes is repealed.

SECTION 2. 115.31 (2g) of the statutes is amended to read:

115.31 **(2g)** Notwithstanding subch. II of ch. 111, the state superintendent shall revoke a license granted by the state superintendent, without a hearing, if the licensee is convicted of any Class A, AB, B, C, or D felony under ch. 940 or 948, except ss. 940.08 and 940.205, for a violation that occurs on or after September 12, 1991, or any Class E, F, G, or H felony under ch. 940 or 948, except ss. 940.08 and 940.205, for a violation that occurs on or after February 1, 2003.

SECTION 3. 118.19 (4) (a) of the statutes is amended to read:

118.19 **(4)** (a) Notwithstanding subch. II of ch. 111, the state superintendent may not grant a license, for 6 years following the date of the conviction, to any person who has been convicted of any Class A, AB, B, C, or D felony under ch. 940 or 948, except ss. 940.08 and 940.205, or of an equivalent crime in another state or country, for a violation that occurs on or after September 12, 1991, or any Class E, F, G, or H felony under ch. 940 or 948, except ss. 940.08 and 940.205, for a violation that occurs on or after February 1, 2003. The state superintendent may grant the license only if the person establishes by clear and convincing evidence that he or she is entitled to the license.

SECTION 4. 302.113 (9g) (b) (intro.) of the statutes is amended to read:

302.113 **(9g)** (b) (intro.) An inmate who is serving a bifurcated sentence for a crime other than a Class AB or B felony may seek modification of the bifurcated sentence in the manner specified in par. (f) if he or she meets one of the following criteria:

SECTION 5. 938.355 (4) (b) of the statutes is amended to read:

938.355 **(4)** (b) Except as provided in s. 938.368, an order under s. 938.34 (4d) or (4m) made before the juvenile reaches 18 years of age may apply for up to 2 years after its entry or until the juvenile's 18th birthday, whichever is earlier, unless the court specifies a shorter period of time or the court terminates the order sooner. Except as provided in s. 938.368, an order under s. 938.34 (4h) made before the juvenile reaches 18 years of age shall apply for 5 years after its entry, if the juvenile is adjudicated delinquent for committing a violation of s. 943.10 (2) or for committing an act that would be punishable as a Class AB, B, or C felony if committed by an adult, or until the juvenile reaches 25 years of age, if the juvenile is adjudicated delinquent for committing an act that would be punishable as a Class A felony if committed by an adult. Except as provided in s. 938.368, an extension of an order under s. 938.34 (4d), (4h), (4m), or (4n) made before the juvenile reaches 17 years of age shall terminate at the end of one year after its entry unless the court specifies a shorter period of time or the court terminates the order sooner. No extension under s. 938.365 of an original dispositional order under s. 938.34 (4d), (4h), (4m), or (4n) may be granted for a juvenile who is 17 years of age or older when the original dispositional order terminates.

SECTION 6. 938.396 (2) (e) of the statutes is repealed.

SECTION 7. 939.50 (1) (am) of the statutes is created to read:

939.50 **(1)** (am) Class AB felony.

SECTION 8. 939.50 (2) of the statutes is amended to read:

939.50 **(2)** A felony is a Class A, AB, B, C, D, E, F, G, H, or I felony when it is so specified in the statutes.

SECTION 9. 939.50 (3) (am) of the statutes is created to read:

939.50 **(3)** (am) For a Class AB felony, imprisonment not to exceed 65 years.

SECTION 10. 948.02 (1) of the statutes is amended to read:

948.02 **(1)** FIRST DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class ~~B~~ AB felony.

SECTION 11. 948.025 (1) (a) of the statutes is amended to read:

948.025 **(1)** (a) A Class ~~B~~ AB felony if at least 3 of the violations were violations of s. 948.02 (1).

SECTION 12. 973.01 (2) (b) 1. of the statutes is renumbered 973.01 (2) (b) 2.

SECTION 13. 973.01 (2) (b) 1m. of the statutes is created to read:

973.01 **(2)** (b) 1m. For a Class AB felony, the term of confinement in prison may not exceed 45 years.

SECTION 14. 973.01 (2) (b) 10. a. of the statutes is amended to read:

973.01 **(2)** (b) 10. a. A felony specified in subds. ~~1.~~ 1m. to 9.

SECTION 15. 973.01 (2) (d) 1. of the statutes is amended to read:

973.01 **(2)** (d) 1. For a Class AB or B felony, the term of extended supervision may not exceed 20 years.

SECTION 16. 973.03 (3) (e) 1. of the statutes is amended to read:

973.03 **(3)** (e) 1. A crime which is a Class A, AB, B, or C felony.

SECTION 17. 973.195 (1r) (a) of the statutes is amended to read:

973.195 **(1r)** (a) An inmate who is serving a sentence imposed under s. 973.01 for a crime other than a Class AB or B felony may petition the sentencing court to adjust the sentence if the inmate has served at least the applicable percentage of the term of confinement in prison portion of the sentence. If an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually for purposes of sentence adjustment under this subsection.

SECTION 18. 980.015 of the statutes is repealed.

SECTION 19. 980.02 (1) (a) of the statutes is amended to read:

980.02 **(1)** (a) The department of justice at the request of the agency with ~~jurisdiction, as defined in s. 980.015 (1), over~~ the authority or duty to release or discharge the person. If the department of justice decides to file a petition under this paragraph, it shall file the petition before the date of the release or discharge of the person.

SECTION 20. 980.02 (6) of the statutes is created to read:

980.02 **(6)** No petition may be filed under this section on or after the effective date of this subsection .... [revisor inserts date].

SECTION 21. Effective date.

(1) This act takes effect on the day after publication.

(END)