

1993 Senate Bill 754

Date of enactment: April 6, 1994  
Date of publication\*: April 20, 1994

## 1993 WISCONSIN ACT 194

AN ACT *to renumber and amend* 940.305 and 940.31 (2); *to amend* 302.11 (1), 302.11 (6), 302.11 (7) (a), 302.11 (7) (b), 302.11 (9), 303.07 (3), 304.06 (1) (b), 939.50 (3) (b), 973.011 (1) (intro.), 978.07 (1) (c) 2 and 978.07 (1) (c) 3; and *to create* 302.11 (1g) and 973.0135 of the statutes, **relating to:** the maximum term of imprisonment for Class B felonies; parole eligibility for persons convicted of certain crimes; eligibility for mandatory release on parole for persons convicted of certain crimes; and providing penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

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

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

**SECTION 2.** 302.11 (1g) of the statutes is created to read:

302.11 (1g) (a) In this subsection, "serious felony" means any of the following:

1. Any felony under s. 161.41 (1), (1m) or (1x) if the felony is punishable by a maximum prison term of 30 years or more.
2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19 (2), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02, 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43, 948.02 (1) or (2), 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.
3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

(am) The mandatory release date established in sub. (1) is a presumptive mandatory release date for an inmate who is serving a sentence for a serious felony committed on or after the effective date of this paragraph .... [revisor inserts date].

(b) Before an incarcerated inmate with a presumptive mandatory release date reaches the presumptive mandatory release date specified under par. (am), the parole commission shall proceed under s. 304.06 (1) to consider whether to deny presumptive mandatory release to the inmate. If the parole commission does not deny presumptive mandatory release, the inmate shall be released on parole. The parole commission may deny presumptive mandatory release to an inmate only on one or more of the following grounds:

1. Protection of the public.
2. Refusal by the inmate to participate in counseling or treatment that the social service and clinical staff of the institution determines is necessary for the inmate.

(c) If the parole commission denies presumptive mandatory release to an inmate under par. (b), the parole commission shall schedule regular reviews of the inmate's case to consider whether to parole the inmate under s. 304.06 (1).

(d) An inmate may seek review of a decision by the parole commission relating to the denial of presumptive mandatory release only by the common law writ of certiorari.

**SECTION 3.** 302.11 (6) of the statutes, as affected by 1993 Wisconsin Act 79, is amended to read:

302.11 (6) Any inmate released on parole under sub. (1) or (1g)(b) or s. 304.02 or 304.06 (1) is subject to all conditions and rules of parole until the expiration of the sentence or until he or she is discharged by the department. Except as provided in ch. 304, releases from prison shall be on the Tuesday or Wednesday preceding the release date. The department may discharge a parolee on or after his or her mandatory release date or after 2 years of supervision. Any inmate sentenced to the intensive sanctions program who is released on parole under sub. (1) or s. 304.02 or 304.06 (1) remains in the program unless discharged by the department under s. 301.048 (6).

**SECTION 4.** 302.11 (7) (a) of the statutes is amended to read:

302.11 (7) (a) The division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the parolee waives a hearing, may return a parolee released under ~~either~~ sub. (1) or (1g)(b) or s. 304.02 or 304.06 (1) to prison for a period up to the remainder of the sentence for a violation of the conditions of parole. The remainder of the sentence is the entire sentence, less time served in custody prior to parole. The revocation order shall provide the parolee with credit in accordance with ss. 304.072 and 973.155.

**SECTION 5.** 302.11 (7) (b) of the statutes is amended to read:

302.11 (7) (b) A parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time determined by the department of corrections in the case of a waiver or the division of hearings and appeals in the department of administration in the case of a hearing under par. (a), unless paroled earlier under par. (c). The parolee is not subject to mandatory release under sub. (1) or presumptive mandatory release under sub. (1g). The period of time determined under par. (a) may be extended in accordance with sub. (2).

**SECTION 6.** 302.11 (9) of the statutes is amended to read:

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

**SECTION 7.** 303.07 (3) of the statutes is amended to read:

303.07 (3) Each prisoner serving a sentence under this section who could have been sentenced to a state prison is subject to s. 302.11 (1), (1g) and (2). Each prisoner serving such a sentence may be transferred to a state prison upon recommendation of the superintendent and approval of the department. The county board may, pursuant to its regulations approved by the department, extend to all other prisoners similar pecuniary earnings

and rewards, subject to similar conditions and limitations as those prescribed by s. 302.12 for prisoners in the Wisconsin state prisons.

**SECTION 8.** 304.06 (1) (b) of the statutes, as affected by 1993 Wisconsin Acts 79 and 89, is amended to read:

304.06 (1) (b) Except as provided in sub. (1m) or s. 161.49 (2) ~~or~~, 302.045 (3) or 973.0135, the parole commission may parole an inmate of the Wisconsin state prisons or any felon or any person serving at least one year or more in a county house of correction or a county reforestation camp organized under s. 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6 months, whichever is greater. Except as provided in s. 973.014, the parole commission may parole an inmate serving a life term when he or she has served 20 years, as modified by the formula under s. 302.11 (1) and subject to extension using the formulas under s. 302.11 (2). The person serving the life term shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). The secretary may grant special action parole releases under s. 304.02. The department or the parole commission shall not provide any convicted offender or other person sentenced to the department's custody any parole eligibility or evaluation until the person has been confined at least 60 days following sentencing.

**SECTION 9.** 939.50 (3) (b) of the statutes is amended to read:

939.50 (3) (b) For a Class B felony, imprisonment not to exceed ~~20~~ 40 years.

**SECTION 10.** 940.305 of the statutes is renumbered 940.305 (1) and amended to read:

940.305 (1) ~~Whoever~~ Except as provided in sub. (2), whoever by force or threat of imminent force seizes, confines or restrains a person without the person's consent and with the intent to use the person as a hostage in order to influence a person to perform or not to perform some action demanded by the actor is guilty of a Class A felony; ~~but if~~

(2) Whoever commits a violation specified under sub. (1) is guilty of a Class B felony if, before the time of the actor's arrest, each person who is held as a hostage is released without bodily harm prior to the time of the defendant's arrest, the defendant is guilty of a Class B felony.

**SECTION 11.** 940.31 (2) of the statutes is renumbered 940.31 (2) (a) and amended to read:

940.31 (2) (a) ~~Whoever~~ Except as provided in par. (b), whoever violates sub. (1) with intent to cause another to transfer property in order to obtain the release of the victim is guilty of a Class A felony; ~~but~~

(b) Whoever violates sub. (1) with intent to cause another to transfer property in order to obtain the release of the victim is guilty of a Class B felony if the victim is released without permanent physical injury prior to the

**1993 Senate Bill 754**

time the first witness is sworn at the trial ~~the defendant is guilty of a Class B felony.~~

**SECTION 12.** 973.011 (1) (intro.) of the statutes is amended to read:

973.011 (1) (intro.) The sentencing commission shall promulgate rules under this subsection. Any such rules shall provide guidelines for use by judges for sentencing defendants convicted of felonies, but shall not provide guidelines for determinations under s. 973.0135 or 973.014. The rules shall:

**SECTION 13.** 973.0135 of the statutes is created to read:

**973.0135 Sentence for certain serious felonies; parole eligibility determination.** (1) In this section:

(a) "Prior offender" means a person who meets all of the following conditions:

1. The person has been convicted of a serious felony on at least one separate occasion at any time preceding the serious felony for which he or she is being sentenced.

2. The person's conviction under subd. 1 remains of record and unreversed.

3. As a result of the conviction under subd. 1, the person was sentenced to more than one year of imprisonment.

(b) "Serious felony" means any of the following:

1. Any felony under s. 161.41 (1), (1m) or (1x) if the felony is punishable by a maximum prison term of 30 years or more.

2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.19 (2), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2), 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

4. A crime at any time under federal law or the law of any other state or, prior to the effective date of this subdivision ... [revisor inserts date], under the law of this state that is comparable to a crime specified in subd. 1, 2 or 3.

(2) Except as provided in sub. (3), when a court sentences a prior offender to imprisonment in a state prison for a serious felony committed on or after the effective date of this subsection ... [revisor inserts date], the court shall make a parole eligibility determination regarding the person and choose one of the following options:

(a) The person is eligible for parole under s. 304.06 (1).

(b) The person is eligible for parole on a date set by the court. Under this paragraph, the court may not set a date that occurs before the earliest possible parole eligibility date as calculated under s. 304.06 (1) and may not set a date that occurs later than two-thirds of the sentence imposed for the felony.

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

(4) If a prior conviction is being considered as being covered under sub. (1) (b) 4. as comparable to a felony specified under sub. (1) (b) 1., 2. or 3., the conviction may be counted as a prior conviction under sub. (1) (a) only if the court determines, beyond a reasonable doubt, that the violation relating to that conviction would constitute a felony specified under sub. (1) (b) 1., 2. or 3. if committed by an adult in this state.

**SECTION 14.** 978.07 (1) (c) 2. of the statutes is amended to read:

978.07 (1) (c) 2. Any case record of a felony punishable by a maximum period of imprisonment equal to at least 20 years or a related case, after the mandatory release date established under s. 302.11 (1) or the presumptive mandatory release date established under s. 302.11 (1g), if applicable, of any person convicted of that felony or 20 years after commencement of the action, whichever is later.

**SECTION 15.** 978.07 (1) (c) 3. of the statutes is amended to read:

978.07 (1) (c) 3. Except as provided in subs. 1 and 2, any case record of a felony or related case, after the mandatory release date established under s. 302.11 (1) or the presumptive mandatory release date established under s. 302.11 (1g), if applicable, of any person convicted of that felony or 10 years after the commencement of the action, whichever is later.

**SECTION 9359. Initial applicability; other.**

(1) PAROLE ELIGIBILITY FOR SERIOUS FELONIES. The treatment of sections 304.06 (1) (b), 973.011 (1) (intro.) and 973.0135 of the statutes first applies to serious felonies committed on the effective date of this subsection, but does not preclude the counting of other serious felonies, regardless of when those felonies occurred, for purposes of sentencing a person under section 973.0135 of the statutes, as created by this act.

(2) CLASS B FELONY PENALTY. The treatment of section 939.50 (3) (b) of the statutes first applies to offenses occurring on the effective date of this subsection.