

# State of Wisconsin



1997 Assembly Bill 505

Date of enactment: **July 1, 1998**  
Date of publication\*: **July 15, 1998**

## 1997 WISCONSIN ACT 326

**AN ACT to repeal 939.626; to renumber and amend 939.62 (2m) (a) 1., 2., 3. and 4. and 939.62 (2m) (b); to amend 302.11 (1m), 303.065 (1), 304.02 (5), 304.06 (1) (b), 304.071 (2), 939.62 (2m) (a) (intro.), 939.62 (2m) (d), 939.623 (1) and 973.014 (2); and to create 939.62 (2m) (a) 1m. and 939.62 (2m) (b) 2. of the statutes; relating to: persistent child sex offenders and providing penalties.**

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

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

302.11 (1m) An inmate serving a life term is not entitled to mandatory release. Except as provided in ss. 939.62 (2m) (c) and 973.014, the parole commission may parole the inmate as specified in s. 304.06 (1).

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

303.065 (1) The department may grant work release privileges to any person incarcerated within the state prisons, except that no person serving a life sentence may be considered for work release until he or she has reached parole eligibility under s. 304.06 (1) (b) or 973.014 (1) (a) or (b), whichever is applicable, and no person serving a life sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) may be considered for work release.

**SECTION 3.** 304.02 (5) of the statutes is amended to read:

304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) is not eligible for release to parole supervision under this section.

**SECTION 4.** 304.06 (1) (b) of the statutes is amended to read:

304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2) 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. 939.62 (2m) (c) or 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 5.** 304.071 (2) of the statutes is amended to read:

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

304.071 (2) If a prisoner is not eligible for parole under s. 939.62 (2m) (c), 961.49 (2), 973.014 (1) (c) or 973.032 (5), he or she is not eligible for parole under this section.

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

939.62 (2m) (a) (intro.) In this subsection, “serious felony”:

2m. “Serious felony” means any of the following:

**SECTION 7.** 939.62 (2m) (a) 1., 2., 3. and 4. of the statutes are renumbered 939.62 (2m) (a) 2m. a., b., c. and d., and 939.62 (2m) (a) 2m. d., as renumbered, is amended to read:

939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any other state or, prior to April 28, 1994, under the law of this state that is comparable to a crime specified in subd. ~~1., 2. or 3.~~ 2m. a., b. or c.

**SECTION 8.** 939.62 (2m) (a) 1m. of the statutes is created to read:

939.62 (2m) (a) 1m. “Serious child sex offense” means any of the following:

a. A violation of s. 948.02, 948.025, 948.05, 948.055, 948.06, 948.07, 948.08 or 948.095 or 948.30 or, if the victim was a minor and the convicted person was not the victim’s parent, a violation of s. 940.31.

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

**SECTION 9.** 939.62 (2m) (b) of the statutes is renumbered 939.62 (2m) (b) (intro.) and amended to read:

939.62 (2m) (b) (intro.) The actor is a persistent repeater if ~~he or she~~ one of the following applies:

1. The actor has been convicted of a serious felony on 2 or more separate occasions at any time preceding the serious felony for which he or she presently is being sentenced under ch. 973, which convictions remain of record and unreversed and, ~~that~~ of the 2 or more previous convictions, at least one conviction ~~must have~~ occurred before the date of violation of at least one of the other felonies for which the actor was previously convicted. ~~It~~

(bm) For purposes of counting a conviction under par. (b), it is immaterial that the sentence for a the previous conviction was stayed, withheld or suspended, or

~~that he or she~~ the actor was pardoned, unless the pardon was granted on the ground of innocence. ~~The~~

(c) If the actor is a persistent repeater, the term of imprisonment for the felony for which the persistent repeater presently is being sentenced under ch. 973 is life imprisonment without the possibility of parole.

**SECTION 10.** 939.62 (2m) (b) 2. of the statutes is created to read:

939.62 (2m) (b) 2. The actor has been convicted of a serious child sex offense on at least one occasion at any time preceding the date of violation of the serious child sex offense for which he or she presently is being sentenced under ch. 973, which conviction remains of record and unreversed.

**SECTION 11.** 939.62 (2m) (d) of the statutes is amended to read:

939.62 (2m) (d) If a prior conviction is being considered as being covered under par. (a) ~~4. 1m. b. or 2m. d.~~ as comparable to a felony specified under par. (a) ~~1., 2. or 3. 1m. a. or 2m. a., b. or c.~~, the conviction may be counted as a prior conviction under par. (b) only if the court determines, beyond a reasonable doubt, that the violation relating to that conviction would constitute a felony specified under par. (a) ~~1., 2. or 3. 1m. a. or 2m. a., b. or c.~~ if committed by an adult in this state.

**SECTION 12.** 939.623 (1) of the statutes is amended to read:

939.623 (1) In this section, “serious sex crime” means a violation of s. 940.225 (1) or (2), ~~948.02 (1) or (2) or 948.025.~~

**SECTION 13.** 939.626 of the statutes is repealed.

**SECTION 14.** 973.014 (2) of the statutes is amended to read:

973.014 (2) When a court sentences a person to life imprisonment under s. 939.62 (2m) (c), the court shall provide that the sentence is without the possibility of parole.

**SECTION 15. Initial applicability.**

(1) The treatment of section 939.62 (2m) (b) 2. of the statutes first applies to serious child sex offenses committed on the effective date of this subsection, but does not preclude the counting of other serious child sex offenses as prior serious child sex offenses for sentencing a person as a persistent repeater under section 939.62 (2m) (b) 2. of the statutes, as created by this act.