



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1661/P2
EAW:cdc&skw

DOA:.....Schmidt, BB0541 - Life sentence without parole for juveniles

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Sentencing for youthful offenders

Under current law, a person who is under the age of 17 and is alleged to have violated a criminal law is generally under the jurisdiction of the juvenile court and, upon being adjudged delinquent of such an act, is subject to one of the dispositions under the juvenile justice code. However, a person who is age 10 or older who is alleged to have committed certain crimes may be under the jurisdiction of the criminal court and, upon conviction, subject to sentencing under the criminal code.

This bill creates a sentence adjustment procedure for a “youthful offender,” defined under the bill as a person who committed a crime before he or she turned 18 years old. The bill also prohibits a court from sentencing a youthful offender to life imprisonment without the possibility of parole or release to extended supervision, and creates new mitigating factors in the sentencing criteria when sentencing a youthful offender. Finally, the bill eliminates statutory mandatory life sentences without parole for youthful offenders in order to align with federal constitutional law.

Under current law, an inmate can petition to reduce the confinement portion of his or her bifurcated sentence after serving a certain proportion of the sentence. An inmate who is serving a life sentence can petition to be released to extended

supervision or parole after serving at least 20 years of his or her sentence or after another date set by the sentencing court. This bill creates a new procedure for a youthful offender, including a youthful offender who is serving a life sentence, to receive a sentence adjustment after serving 15 years of his or her sentence. Under the bill, one year before the inmate is eligible to petition for the sentence adjustment, DOC is required to notify the youthful offender of his or her eligibility. The court may reduce the term of imprisonment for the youthful offender and may modify the conditions of parole or extended supervision if the court determines that the interests of justice warrant a reduction, taking into account the factors enumerated in the bill. If the court denies the petition under the bill, the youthful offender may petition again every five years, up to five times. Under the bill, DOC is required to send a notice to all youthful offenders who have served at least 14 years of their sentences within six months after the bill takes effect.

Under current law, when a court makes a sentencing decision, it must consider certain guidelines, including whether there were any aggravating factors present. Under this bill, when a court is sentencing a youthful offender, it must also consider mitigating factors related to the age and maturity of the youthful offender. These sentencing guidelines for youthful offenders take effect retroactively under the bill, meaning that they apply to any conviction for which sentencing has already occurred.

Under current law, if a person is convicted of a serious felony on three separate occasions or a serious child sex offense on two separate occasions, the person is subject to a mandatory life sentence without the possibility of parole or extended supervision. However, in *Miller v. Alabama*, 567 U.S. 460 (2012), the U.S. Supreme Court held that imposing a mandatory life sentence without parole for a minor constitutes cruel and unusual punishment and therefore violates the eighth amendment of the Constitution. The bill clarifies that the statutory mandatory sentence of life imprisonment without the possibility of parole or extended supervision for repeat offenders does not apply to youthful offenders. This bill also prohibits a court from imposing a life sentence without the possibility of parole or extended supervision for a youthful offender. These changes to sentencing also apply retroactively under the bill.

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. 302.113 (title) of the statutes is amended to read:

302.113 (title) Release to extended supervision for felony offenders not serving life sentences and youthful offenders.

SECTION 2. 302.113 (1) of the statutes is amended to read:

302.113 (1) An inmate is subject to this section if he or she is serving a bifurcated sentence imposed under s. 973.01 or, if the inmate is a youthful offender, as defined in s. 973.014 (3) (a), a life sentence imposed under s. 973.014 (3) (b) or (c) or, if the youthful offender is sentenced before the effective date of this subsection [LRB inserts date], s. 973.014 (1g).

SECTION 3. 302.113 (2) of the statutes is amended to read:

302.113 (2) Except as provided in subs. (3) and (9), an inmate subject to this section is entitled to release to extended supervision after he or she has served the term of confinement in prison portion of the sentence imposed under s. 973.01, as modified by the sentencing court under sub. (9g) or s. 302.045 (3m) (b) 1., 302.05 (3) (c) 2. a., 973.018, 973.195 (1r), or 973.198, if applicable.

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

302.114 (1) An inmate is subject to this section if he or she is serving a life sentence imposed under s. 973.014 (1g) (a) 1. or 2. An inmate serving a life sentence under s. 939.62 (2m) or 973.014 (1g) (a) 3. is not eligible for release to extended supervision under this section. This section does not apply to a youthful offender, as defined in s. 973.014 (3) (a), who was sentenced under s. 973.014 (1g) before the effective date of this subsection [LRB inserts date].

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

303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence specified in subd. 2., may be considered for work release only after he or she has reached parole eligibility under s. 304.06 (1) (b) or 973.014 (1) (a) or (b) or (3) (b), whichever is applicable, or he or she has reached his or her extended supervision eligibility date under s. 302.114 (9) (am) or 973.014 (1g) (a) 1. or 2. or (3) (c), whichever is applicable.

SECTION 6. 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) ~~or (1g), or (3) (c)~~ is not eligible for release to parole supervision under this section.

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

304.06 (1) (b) Except as provided in s. 961.49 (2), 1999 stats., sub. (1m) or s. 302.045 (3), 302.05 (3) (b), 973.01 (6), ~~or 973.0135,~~ or 973.018, 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 percent 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 (1) (b) or (c), (1g) ~~or (2), or (3) (b) or (c)~~, 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 under s. 302.11 (1q) and (2), or reduction under s. 973.018, if applicable. 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 8. 304.071 (2) of the statutes is amended to read:

304.071 (2) If a prisoner is not eligible for parole under s. 961.49 (2), 1999 stats., or s. 939.62 (2m) (c), 973.01 (6), 973.014 (1) (c) ~~or (1g), or (3) (c)~~, or 973.032 (5), he or she is not eligible for parole under this section.

SECTION 9. 939.616 (1g) of the statutes is amended to read:

939.616 **(1g)** If a person is convicted of a violation of s. 948.02 (1) (am) or 948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2. and except as provided under s. 973.018, the court may not make an extended supervision eligibility date determination on a date that will occur before the person has served a 25-year term of confinement in prison.

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

939.62 **(2m)** (b) (intro.) The actor is a persistent repeater if the offense for which he or she is presently being sentenced was committed after he or she attained the age of 18 and one of the following applies:

SECTION 11. 950.04 (1v) (m) of the statutes is amended to read:

950.04 **(1v)** (m) To provide statements concerning sentencing, disposition, or parole, as provided under ss. 304.06 (1) (e), 938.32 (1) (b) 1g., 938.335 (3m) (ag), ~~and~~ 972.14 (3) (a), and 973.018 (4) (d).

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

973.01 **(3)** NOT APPLICABLE TO LIFE SENTENCES. If a person is being sentenced for a felony that is punishable by life imprisonment, he or she is not subject to this section but shall be sentenced under s. 973.014 (1g) or (3).

SECTION 13. 973.01 (4) of the statutes is amended to read:

973.01 **(4)** NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. A person sentenced to a bifurcated sentence under sub. (1) shall serve the term of confinement in prison portion of the sentence without reduction for good behavior. The term of confinement in prison portion is subject to extension under s. 302.113 (3) and, if applicable, to reduction under s. 302.045 (3m), 302.05 (3) (c) 2. a., 302.113 (9g), 973.018, 973.195 (1r), or 973.198.

SECTION 14. 973.014 (1) (intro.) of the statutes is amended to read:

973.014 (1) (intro.) Except as provided in sub. (2) or (3), when a court sentences a person to life imprisonment for a crime committed on or after July 1, 1988, but before December 31, 1999, the court shall make a parole eligibility determination regarding the person and choose one of the following options:

SECTION 15. 973.014 (1g) (a) (intro.) of the statutes is amended to read:

973.014 (1g) (a) (intro.) Except as provided in sub. (2) or (3), when a court sentences a person to life imprisonment for a crime committed on or after December 31, 1999, the court shall make an extended supervision eligibility date determination regarding the person and choose one of the following options:

SECTION 16. 973.014 (3) of the statutes is created to read:

973.014 (3) (a) In this subsection, “youthful offender” means a person who committed an offense before the person attained the age of 18 years.

(b) When a court sentences a youthful offender to life imprisonment for a crime committed on or after July 1, 1988, but before December 31, 1999, the court shall set a date on which the youthful offender is eligible for parole.

(c) When a court sentences a youthful offender to life imprisonment for a crime committed on or after December 31, 1999, the court shall set a date on which the youthful offender is eligible for release to extended supervision.

(d) When sentencing a youthful offender to life imprisonment under par. (b) or (c), the court shall inform the youthful offender of the procedure for petitioning for a sentence adjustment under s. 973.018.

(e) When sentencing a youthful offender to life imprisonment under par. (b) or (c), the court shall consider, in addition to all other relevant factors, all of the following:

1. That, because children are less criminally culpable and more amenable to reform, youthful offenders are constitutionally different from adults for the purposes of sentencing.

2. That the sentencing goals of deterrence, retribution, and incapacitation are secondary to the goal of rehabilitation when sentencing youthful offenders.

3. That unless the state proves beyond a reasonable doubt that the youthful offender is permanently incorrigible and is therefore unable to be rehabilitated, youthful offenders must have a meaningful opportunity to obtain release from prison based on maturity and rehabilitation.

SECTION 17. 973.017 (2c) of the statutes is created to read:

973.017 (2c) MITIGATION FOR YOUTH. When making a sentencing decision for a person who had not attained the age of 18 years at the time the crime was committed, the court shall consider all of the following mitigating factors:

(a) That, because children are less criminally culpable and more amenable to reform, youthful offenders are constitutionally different from adults for the purposes of sentencing.

(b) That the sentencing goals of deterrence, retribution, and incapacitation are secondary to the goal of rehabilitation when sentencing youthful offenders.

(c) That unless the state proves beyond a reasonable doubt that the youthful offender is permanently incorrigible and is therefore unable to be rehabilitated, youthful offenders must have a meaningful opportunity to obtain release from prison based on maturity and rehabilitation.

SECTION 18. 973.018 of the statutes is created to read:

973.018 Sentence adjustment for youthful offenders. (1) DEFINITION. In this section, “youthful offender” has the meaning given in s. 973.014 (3) (a).

(2) SENTENCE ADJUSTMENT; FACTORS. A court may reduce a term of imprisonment, including life imprisonment under s. 973.014 (3), for a youthful offender who has served 15 years of his or her term of imprisonment if the court finds that the interests of justice warrant a reduction. In making its determination, the court shall consider all of the following:

(a) The sentencing factors set forth in ss. 973.014 (3) (e) and 973.017 (2c).

(b) The youthful offender's subsequent growth, behavior, and rehabilitation while incarcerated.

(3) PETITION FOR SENTENCE ADJUSTMENT. (a) One year before the youthful offender becomes eligible for a sentence adjustment under this section, the department shall provide written notice of the eligibility to the qualifying youthful offender, the sentencing court, the district attorney for the county in which the youthful offender was sentenced, and the state public defender. Notice under this paragraph shall include notice of the youthful offender's right to counsel and notice that if the youthful offender believes that he or she cannot afford an attorney, the youthful offender may ask the state public defender to represent him or her.

(b) A youthful offender has a right to counsel in the sentence adjustment proceedings under this section. The right to counsel begins at the service of notice under par. (a).

(c) After service of notice under par. (a) and upon request by the youthful offender or the youthful offender's attorney, the court shall make documents from the sentencing hearing available to the youthful offender or his or her attorney, including the presentence investigation report in accordance with s. 972.15 (4m) and the transcript from the sentencing hearing.

(d) A qualifying youthful offender may file a petition for a sentence adjustment under this section. The petitioner shall file the petition and any affidavits and other written support for the petition in the sentencing court no more than 90 days before the youthful offender's eligibility date. A copy of the petition shall be served on the district attorney in the county in which the youthful offender was sentenced.

(e) Upon receipt of a petition under par. (d), the district attorney shall notify any victims of the crime in accordance with s. 950.04 (1v) (gm).

(4) HEARING. (a) The court shall hold a hearing within 120 days of a petition filed under sub. (3) (d), unless all parties agree to an extension for the hearing date.

(b) The court shall consider relevant information, including expert testimony and other information about the youthful offender's participation in any available educational, vocational, volunteer, community service, or other programs, the youthful offender's work reports and psychological evaluations, and the youthful offender's major violations of institutional rules, if any.

(c) The youthful offender has the right to attend the hearing, the right to be represented by counsel, and the right to testify, present evidence, and cross-examine witnesses.

(d) The victim shall be given the opportunity to provide a statement concerning sentencing in accordance with s. 950.04 (1v) (m).

(e) A hearing under this subsection shall be recorded.

(f) The decision of the court on a petition under sub. (3) is a final adjudication subject to appeal under s. 809.30.

(5) ORDER. If the court finds that the interests of justice warrant a sentence adjustment, the court may amend the judgment of conviction according to one of the following:

(a) If the youthful offender is serving a sentence for a crime committed before December 31, 1999, reduce the parole eligibility date and modify the conditions of parole. The court may also reduce the sentence, but shall provide for at least 3 years of parole supervision after release from prison.

(b) Upon request by the youthful offender, for a crime committed before December 31, 1999, convert an indeterminate sentence to a bifurcated sentence under s. 973.01 or 973.014 (1g). If the court converts the indeterminate sentence to a bifurcated sentence, the court shall set a date for release to extended supervision under s. 302.113 that is no later than the original parole eligibility date. The court may also modify the conditions of parole or extended supervision.

(c) For a crime committed on or after December 31, 1999, reduce the term of confinement in prison and modify the conditions of extended supervision. The court may also reduce the total length of the bifurcated sentence. Notwithstanding s. 973.01 (2) (d), the court shall provide for at least 3 years of extended supervision under s. 302.113.

(d) For a life sentence without the possibility of parole or release to extended supervision under s. 973.014 (1) (c) or (1g) (a) 3., convert the sentence to a life sentence with the possibility of parole or release to extended supervision and set a date for parole eligibility or release to extended supervision and conditions for parole or extended supervision accordingly.

(6) SUBSEQUENT PETITIONS. A youthful offender is eligible to file a subsequent petition under sub. (3) no earlier than 5 years after a hearing is held under sub. (4), unless the court sets an earlier date. A youthful offender may file no more than 5 petitions under sub. (3) during his or her sentence.

(7) SENTENCE MODIFICATION ON OTHER GROUNDS. Nothing in this section limits the youthful offender's right to resentencing, sentence adjustment, or sentence modification on other grounds, including under s. 302.113 (9g) or 302.114.

SECTION 19. 973.15 (2m) (a) 1. of the statutes is amended to read:

973.15 (2m) (a) 1. "Determinate sentence" means a bifurcated sentence imposed under s. 973.01 or a life sentence under which a person is eligible for release to extended supervision under s. 973.014 (1g) (a) 1. or 2. or (3) (c).

SECTION 20. 977.05 (4) (i) 10. of the statutes is created to read:

977.05 (4) (i) 10. Cases involving youthful offenders under s. 973.018 (3).

SECTION 21. 978.07 (1) (c) 1. of the statutes is amended to read:

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

SECTION 9108. Nonstatutory provisions; Corrections.

(1) SENTENCE ADJUSTMENT FOR YOUTHFUL OFFENDERS. No later than the first day of the 6th month beginning after the effective date of this subsection, the department of corrections shall provide written notice under s. 973.018 (3) (a) to all youthful offenders who have served at least 14 years of their terms of imprisonment.

SECTION 9308. Initial applicability; Corrections.

(1) YOUTHFUL OFFENDERS; SENTENCING.

(a) The treatment of ss. 973.014 (1) (intro.), (1g) (a) (intro.), and (3) and 973.017 (2c) first applies to a conviction for which sentencing has occurred on the effective date of this paragraph.

(b) The treatment of s. 973.018 first applies to a youthful offender who is serving a term of imprisonment on the effective date of this paragraph.

(END)