



1997 ASSEMBLY BILL 366

May 20, 1997 - Introduced by Representatives OWENS, AINSWORTH, ALBERS, BRANDEMUEHL, DOBYNS, DUFF, GROTHMAN, HUEBSCH, KAUFERT, KELSO, KREIBICH, LADWIG, F. LASEE, LAZICH, MUSSER, NASS, OLSEN, OTT, OTTE, ROBSON, RYBA, SCHAFER, SERATTI, SKINDRUD, STASKUNAS, UNDERHEIM, URBAN, WALKER and ZIEGELBAUER, cosponsored by Senators DARLING, CLAUSING, DRZEWIECKI, FARROW, HUELSMAN, A. LASEE, ROESSLER, ROSENZWEIG and WELCH. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT** *to renumber and amend* 303.065 (1); *to amend* 51.20 (1) (ar) (intro.),
2 51.20 (13) (g) 2m., 51.37 (8) (a), 51.37 (8) (b), 301.13, 301.16 (1p), 301.17, 302.045
3 (3), 302.11 (1), 302.11 (1g) (am), 302.11 (1i), 302.11 (6), 302.11 (7) (a), 302.11 (9),
4 302.45 (1), 303.068 (1) (intro.), 303.19 (3), 304.06 (1) (b), 304.06 (1m) (intro.),
5 304.06 (2), 304.071 (2), 971.11 (6), 973.0135 (2) (intro.), 978.07 (1) (c) 2. and
6 978.07 (1) (c) 3.; and **to create** 302.075, 302.11 (1z), 303.065 (1) (c), 304.02 (6),
7 304.06 (1s) and 973.0135 (2m) of the statutes; **relating to:** institutional
8 placement and parole eligibility of certain sex offenders.

Analysis by the Legislative Reference Bureau

A person serving a sentence of imprisonment to a state prison (other than a sentence of life imprisonment) usually has 3 possible ways of being released on parole: discretionary parole granted by the parole commission (for which a person is usually eligible after serving 25% of the sentence or 6 months, whichever is greater); mandatory release on parole (usually granted automatically after the person serves two-thirds of the sentence); or special action parole release by the secretary of corrections (a program designed to relieve prison crowding).

However, current law also provides different parole eligibility provisions for certain serious felony offenders. If a serious felony offender has one or more prior

ASSEMBLY BILL 366

convictions for a serious felony, a judge may set a discretionary parole eligibility date for the offender that is later than 25% of the sentence or 6 months but not later than the mandatory release date of two-thirds of the sentence. In addition, certain serious felony offenders need not be automatically released when they reach their mandatory release dates. Instead, the parole commission may deny mandatory release to such an offender in order to protect the public or because the offender refused to participate in counseling or treatment. The serious felony offenders covered by these parole provisions include persons convicted of serious violations such as homicide, battery, sexual assault, mayhem, kidnapping, taking hostages, arson, armed burglary, armed robbery, carjacking, assault by a prisoner, unlawful manufacture, sale or delivery of controlled substances (dangerous drugs) and crimes against children.

This bill changes parole eligibility for persons sentenced to prison for serious sex offenses. Specifically, the bill eliminates both mandatory release on parole and special action parole release for a person convicted of a serious sex offense. The bill also provides that a person convicted of a serious sex offense may not be granted discretionary parole release by the parole commission until he or she has served at least two-thirds of his or her sentence or 12 months, whichever is greater.

The bill also provides that the department of corrections (DOC) may not transfer a person serving a sentence for a serious sex offense to a minimum security correctional institution until the person has reached his or her discretionary parole eligibility date. Currently, DOC may transfer an inmate between maximum, medium and minimum security correctional institutions based on the inmate's security classification, which is based, in part, on the length of the person's sentence and how much of the sentence the inmate has served.

The serious sex offenses covered by the bill include the following: sexual exploitation by a therapist; sexual assault; sexual assault of a child; sexual exploitation of a child; causing a child to view or listen to sexual activity; incest with a child; child enticement; soliciting a child for prostitution; sexual assault of a student by a school instructional staff person; exposing a child to harmful material; possession of child pornography; and working with children after being convicted of a serious child sex offense.

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

1 **SECTION 1.** 51.20 (1) (ar) (intro.) of the statutes is amended to read:
2 51.20 (1) (ar) (intro.) If the individual is an inmate of a state prison, the petition
3 may allege that the inmate is mentally ill, is a proper subject for treatment and is
4 in need of treatment. The petition shall allege that appropriate less restrictive forms
5 of treatment have been attempted with the individual and have been unsuccessful

ASSEMBLY BILL 366

1 and it shall include a description of the less restrictive forms of treatment that were
2 attempted. The petition shall also allege that the individual has been fully informed
3 about his or her treatment needs, the mental health services available to him or her
4 and his or her rights under this chapter and that the individual has had an
5 opportunity to discuss his or her needs, the services available to him or her and his
6 or her rights with a licensed physician or a licensed psychologist. The petition shall
7 include the inmate's sentence and his or her expected date of release as determined
8 under s. 302.11 or, if the inmate is not entitled to release under s. 302.11, the
9 expiration date of the inmate's sentence. The petition shall have attached to it a
10 signed statement by a licensed physician or a licensed psychologist of a state prison
11 and a signed statement by a licensed physician or a licensed psychologist of a state
12 treatment facility attesting either of the following:

13 **SECTION 2.** 51.20 (13) (g) 2m. of the statutes is amended to read:

14 51.20 (13) (g) 2m. In addition to the provisions under subs. 1., 2. and 2g., no
15 commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date
16 of release as determined under s. 302.11 or, if the inmate is not entitled to release
17 under s. 302.11, the expiration date of the inmate's sentence.

18 **SECTION 3.** 51.37 (8) (a) of the statutes is amended to read:

19 51.37 (8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or
20 inmate who is found to be mentally ill or drug dependent except that the petition
21 shall be made to the court that made the finding or, if the prisoner or inmate is
22 detained by transfer, to the circuit court of the county in which he or she is detained.
23 If upon rehearing it is found that the standards for recommitment under s. 51.20 (13)
24 (g) no longer apply to the prisoner or inmate or that he or she is not in need of
25 psychiatric or psychological treatment, the prisoner or inmate shall be returned to

ASSEMBLY BILL 366**SECTION 3**

1 the prison or county jail or house of correction unless it is past his or her release date
2 as determined under s. 302.11 or, if the prisoner or inmate is not entitled to release
3 under s. 302.11, the expiration date of the inmate's sentence, in which case he or she
4 shall be discharged.

5 **SECTION 4.** 51.37 (8) (b) of the statutes is amended to read:

6 51.37 (8) (b) If the condition of any prisoner or inmate committed or transferred
7 under this section requires psychiatric or psychological treatment after his or her
8 date of release as determined under s. 302.11 or, if the prisoner or inmate is not
9 entitled to release under s. 302.11, the expiration date of the inmate's sentence, the
10 director of the state treatment facility shall, within a reasonable time before the
11 release date of the prisoner or inmate, make a written application to the court which
12 committed the prisoner or inmate under sub. (5) (a). Thereupon, the proceeding shall
13 be upon application made under s. 51.20, but no physician or psychologist who is
14 connected with a state prison, Winnebago or Mendota mental health institute or any
15 county jail or house of correction may be appointed as an examiner. If the court does
16 not commit the prisoner or inmate, it may dismiss the application and order the
17 prisoner or inmate returned to the institution from which he or she was transferred
18 until the release date of the prisoner or inmate. If the court commits the prisoner or
19 inmate for the period commencing upon his or her release date, the commitment
20 shall be to the care and custody of the county department under s. 51.42 or 51.437.

21 **SECTION 5.** 301.13 of the statutes is amended to read:

22 **301.13 Minimum security correctional institutions.** The department
23 may establish and operate minimum security correctional institutions. The
24 secretary may allocate and reallocate existing and future facilities as part of these
25 institutions. The institutions are subject to s. 301.02 and are state prisons as defined

ASSEMBLY BILL 366

1 in s. 302.01. ~~Inmates~~ Subject to s. 302.075, inmates from Wisconsin state prisons
2 may be transferred to these institutions and they shall be subject to all laws
3 pertaining to inmates of other penal institutions of the state. Officers and employes
4 of the institutions shall be subject to the same laws as pertain to other penal
5 institutions. Inmates shall not be received on direct commitment from the courts.
6 In addition to the exemptions under s. 13.48 (13), construction or establishment of
7 facilities at institutions which are community correctional residential centers
8 initially established prior to July 2, 1983, shall not be subject to the ordinances or
9 regulations relating to zoning, including zoning under ch. 91, of the county and
10 municipality in which the construction or establishment takes place. The
11 department shall establish a procedure for soliciting responses from interested
12 communities and persons regarding potential sites for the institutions under this
13 section, except the procedure does not apply to the 125-bed community correctional
14 center in the city of Waupun. The department shall consider locations proposed
15 under this procedure and may consider any other locations on its own initiative. The
16 department need not promulgate rules regarding the site consideration procedures
17 under this section.

18 **SECTION 6.** 301.16 (1p) of the statutes is amended to read:

19 301.16 (1p) ~~Inmates~~ Subject to s. 302.075, inmates from the Wisconsin state
20 prisons may be transferred to the institutions under this section and they shall be
21 subject to all laws pertaining to inmates of other penal institutions of this state.
22 Officers and employes of the institutions shall be subject to the same laws as pertain
23 to other penal institutions. Inmates shall not be received on direct commitment from
24 the courts.

25 **SECTION 7.** 301.17 of the statutes is amended to read:

ASSEMBLY BILL 366**SECTION 7**

1 **301.17 Minimum security corrections institutions.** The department may,
2 with the approval of the joint committee on finance, increase staffing levels at
3 minimum security institutions sufficiently to allow, subject to s. 302.075, temporary
4 placement of medium security inmates at existing minimum security institutions as
5 may be necessary to relieve medium security overcrowding. The temporary
6 placement under this section may constitute a partial use of the institution.

7 **SECTION 8.** 302.045 (3) of the statutes is amended to read:

8 302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department
9 determines that an inmate has successfully completed the challenge incarceration
10 program, the parole commission shall parole the inmate under s. 304.06, regardless
11 of the time the inmate has served, unless the inmate is subject to s. 304.06 (1s). When
12 the parole commission grants parole under this subsection, it must require the
13 parolee to participate in an intensive supervision program for drug abusers as a
14 condition of parole.

15 **SECTION 9.** 302.075 of the statutes is created to read:

16 **302.075 Institutional placement of certain sex offenders.** (1) In this
17 section, "serious sex crime" means a violation of s. 940.22 (2), 940.225 (1), (2) or (3),
18 948.02 (1), (2) or (3), 948.025 (1), 948.05 (1) or (2), 948.055 (1), 948.06, 948.07, 948.08,
19 948.095 (2), 948.11 (2) (a), 948.12 or 948.13 (2).

20 (2) The department may not transfer an inmate serving a sentence for a serious
21 sex crime to a minimum security correctional institution until the inmate has
22 reached parole eligibility under s. 304.06 (1) or (1s) or 973.0135 (2) (b), whichever is
23 applicable.

24 **SECTION 10.** 302.11 (1) of the statutes is amended to read:

ASSEMBLY BILL 366

1 302.11 (1) The warden or superintendent shall keep a record of the conduct of
2 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),
3 (1m), (1z), (7) and (10), each inmate is entitled to mandatory release on parole by the
4 department. The mandatory release date is established at two-thirds of the
5 sentence. Any calculations under this subsection or sub. (2) (b) resulting in fractions
6 of a day shall be rounded in the inmate's favor to a whole day.

7 **SECTION 11.** 302.11 (1g) (am) of the statutes is amended to read:

8 302.11 (1g) (am) The Except as provided in sub. (1z), the mandatory release
9 date established in sub. (1) is a presumptive mandatory release date for an inmate
10 who is serving a sentence for a serious felony committed on or after April 21, 1994.

11 **SECTION 12.** 302.11 (1i) of the statutes is amended to read:

12 302.11 (1i) An Except as provided in sub. (1z), an inmate serving a sentence
13 to the intensive sanctions program is entitled to mandatory release. The mandatory
14 release date under sub. (1) is established at two-thirds of the sentence under s.
15 973.032 (3) (a).

16 **SECTION 13.** 302.11 (1z) of the statutes is created to read:

17 302.11 (1z) (a) In this subsection, "serious sex crime" means a violation of s.
18 940.22 (2), 940.225 (1), (2) or (3), 948.02 (1), (2) or (3), 948.025 (1), 948.05 (1) or (2),
19 948.055 (1), 948.06, 948.07, 948.08, 948.095 (2), 948.11 (2) (a), 948.12 or 948.13 (2).

20 (b) An inmate who is sentenced to imprisonment for a serious sex crime that
21 is committed on or after the effective date of this paragraph ... [revisor inserts date],
22 is not entitled to mandatory release on parole under sub. (1) or presumptive
23 mandatory release under sub. (1g) (b) but may be paroled by the parole commission
24 as provided in s. 304.06 (1s).

25 **SECTION 14.** 302.11 (6) of the statutes is amended to read:

ASSEMBLY BILL 366**SECTION 14**

1 302.11 (6) Any inmate released on parole under sub. (1) or (1g) (b) or s. 304.02
2 or 304.06 (1) or (1s) is subject to all conditions and rules of parole until the expiration
3 of the sentence or until he or she is discharged by the department. Except as provided
4 in ch. 304, releases from prison shall be on the Tuesday or Wednesday preceding the
5 release date. The department may discharge a parolee on or after his or her
6 mandatory release date or after 2 years of supervision. Any inmate sentenced to the
7 intensive sanctions program who is released on parole under sub. (1) or s. 304.02 or
8 304.06 (1) remains in the program unless discharged by the department under s.
9 301.048 (6).

10 **SECTION 15.** 302.11 (7) (a) of the statutes is amended to read:

11 302.11 (7) (a) The division of hearings and appeals in the department of
12 administration, upon proper notice and hearing, or the department of corrections, if
13 the parolee waives a hearing, may return a parolee released under sub. (1) or (1g) (b)
14 or s. 304.02 or 304.06 (1) or (1s) to prison for a period up to the remainder of the
15 sentence for a violation of the conditions of parole. The remainder of the sentence
16 is the entire sentence, less time served in custody prior to parole. The revocation
17 order shall provide the parolee with credit in accordance with ss. 304.072 and
18 973.155.

19 **SECTION 16.** 302.11 (9) of the statutes is amended to read:

20 302.11 (9) Except as provided in ~~sub.~~ subs. (1g) (am) and (1z), this section
21 applies to persons committing offenses occurring on or after June 1, 1984, or persons
22 filing requests in accordance with 1983 Wisconsin Act 528, section 29 (2) or (3).

23 **SECTION 17.** 302.45 (1) of the statutes is amended to read:

24 302.45 (1) The department and any county or group of counties may contract
25 for the cooperative establishment and use of state-local shared correctional

ASSEMBLY BILL 366

1 facilities. Inmates sentenced to the Wisconsin state prisons, a county jail, a county
2 reforestation camp or a county house of correction may be transferred to a shared
3 facility by the department, sheriff or superintendent, respectively, under the
4 agreement covering use of the facility. Any inmate confined in a state-local shared
5 correctional facility shall be deemed to be serving time in the penal institution to
6 which he or she was sentenced and shall be eligible to earn good time credit against
7 his or her sentence as provided under ss. s. 302.11, if applicable, 302.12; 302.43;,
8 303.07 and 303.19 for that institution.

9 **SECTION 18.** 303.065 (1) of the statutes is renumbered 303.065 (1) (intro.) and
10 amended to read:

11 303.065 (1) (intro.) The department may grant work release privileges to any
12 person incarcerated within the state prisons, except that ~~no~~ as follows:

13 (a) ~~No~~ person serving a life sentence may be considered for work release until
14 he or she has reached parole eligibility under s. 304.06 (1) (b) or 973.014 (1) (a) or (b),
15 whichever is applicable, ~~and no~~.

16 (b) ~~No~~ person serving a life sentence under s. 939.62 (2m) or 973.014 (1) (c) may
17 be considered for work release.

18 **SECTION 19.** 303.065 (1) (c) of the statutes is created to read:

19 303.065 (1) (c) No person serving a sentence for a serious sex crime, as defined
20 in s. 304.06 (1s) (a), that is committed on or after the effective date of this paragraph
21 [revisor inserts date], may be considered for work release until he or she has
22 reached parole eligibility under s. 304.06 (1s) (b).

23 **SECTION 20.** 303.068 (1) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 366**SECTION 20**

1 303.068 (1) (intro.) An inmate eligible for confinement in a minimum security
2 institution as established by the department, subject to s. 302.075, may be allowed
3 by the department to leave confinement for one of the following purposes:

4 **SECTION 21.** 303.19 (3) of the statutes is amended to read:

5 303.19 (3) The superintendent shall keep a true record of the conduct of each
6 prisoner, specifying each infraction of the rules of discipline; and at the end of each
7 month shall give a certificate of good conduct to each prisoner against whom no such
8 infraction is recorded, subject to annulment by the department for subsequent
9 misconduct. Upon each such certificate issued to any such prisoner serving sentence
10 for a misdemeanor the prisoner may be credited, at the discretion of the
11 superintendent, with a diminution of the sentence not exceeding 5 days. Each such
12 prisoner serving sentence for a felony shall receive time credits as provided in s.
13 302.11, if applicable.

14 **SECTION 22.** 304.02 (6) of the statutes is created to read:

15 304.02 (6) Notwithstanding subs. (1) to (3), a prisoner who is subject to s. 304.06
16 (1s) is not eligible for release to parole supervision under this section.

17 **SECTION 23.** 304.06 (1) (b) of the statutes is amended to read:

18 304.06 (1) (b) Except as provided in sub. (1m) or (1s) or s. 302.045 (3), 961.49
19 (2) or 973.0135, the parole commission may parole an inmate of the Wisconsin state
20 prisons or any felon or any person serving at least one year or more in a county house
21 of correction or a county reforestation camp organized under s. 303.07, when he or
22 she has served 25% of the sentence imposed for the offense, or 6 months, whichever
23 is greater. Except as provided in s. 939.62 (2m) or 973.014, the parole commission
24 may parole an inmate serving a life term when he or she has served 20 years, as
25 modified by the formula under s. 302.11 (1) and subject to extension using the

ASSEMBLY BILL 366

1 formulas under s. 302.11 (2). The person serving the life term shall be given credit
2 for time served prior to sentencing under s. 973.155, including good time under s.
3 973.155 (4). The secretary may grant special action parole releases under s. 304.02.
4 The department or the parole commission shall not provide any convicted offender
5 or other person sentenced to the department's custody any parole eligibility or
6 evaluation until the person has been confined at least 60 days following sentencing.

NOTE: NOTE: Par. (b) is shown as affected by 1995 Wis. Act 352 and 1995 Wis. Act 448, s. 333, both eff. 7-1-96 and as merged by the revisor under s. 13.93 (2) (c).

7 **SECTION 24.** 304.06 (1m) (intro.) of the statutes is amended to read:

8 304.06 (1m) (intro.) The Except as provided in sub. (1s), the parole commission
9 may waive the 25% or 6-month service of sentence requirement under sub. (1) (b)
10 under any of the following circumstances:

11 **SECTION 25.** 304.06 (1s) of the statutes is created to read:

12 304.06 (1s) (a) In this subsection, "serious sex crime" means a violation of s.
13 940.22 (2), 940.225 (1), (2) or (3), 948.02 (1), (2) or (3), 948.025 (1), 948.05 (1) or (2),
14 948.055 (1), 948.06, 948.07, 948.08, 948.095 (2), 948.11 (2) (a), 948.12 or 948.13 (2).

15 (b) The parole commission may not grant release on parole under this section
16 to an inmate who is serving a sentence for a serious sex crime committed on or after
17 the effective date of this paragraph [revisor inserts date], until the inmate has
18 served two-thirds of the sentence imposed for the offense or 12 months, whichever
19 is greater.

20 (c) Paragraph (b) does not apply if the inmate is not eligible for parole under
21 s. 939.62 (2m).

22 **SECTION 26.** 304.06 (2) of the statutes is amended to read:

23 304.06 (2) No prisoner under sub. (1) or (1s) may be paroled until the parole
24 commission is satisfied that the prisoner has adequate plans for suitable

ASSEMBLY BILL 366**SECTION 26**

1 employment or to otherwise sustain himself or herself. The paroled prisoner shall
2 report to the department in such manner and at such times as it requires.

3 **SECTION 27.** 304.071 (2) of the statutes is amended to read:

4 304.071 (2) If a prisoner is not eligible for parole under s. 304.06 (1s), 939.62
5 (2m), 961.49 (2), 973.014 (1) (c) or 973.032 (5), he or she is not eligible for parole under
6 this section.

7 **SECTION 28.** 971.11 (6) of the statutes is amended to read:

8 971.11 (6) The prisoner shall be delivered into the custody of the sheriff of the
9 county in which the charge is pending for transportation to the court, and the
10 prisoner shall be retained in that custody during all proceedings under this section.
11 The sheriff shall return the prisoner to the prison upon the completion of the
12 proceedings and during any adjournments or continuances and between the
13 preliminary examination and the trial, except that if the department certifies a jail
14 as being suitable to detain the prisoner, he or she may be detained there until the
15 court disposes of the case. The prisoner's existing sentence continues to run and he
16 or she receives time credit under s. 302.11, if applicable, while in custody.

17 **SECTION 29.** 973.0135 (2) (intro.) of the statutes is amended to read:

18 973.0135 (2) (intro.) Except as provided in sub. subs. (2m) and (3), when a
19 court sentences a prior offender to imprisonment in a state prison for a serious felony
20 committed on or after April 21, 1994, the court shall make a parole eligibility
21 determination regarding the person and choose one of the following options:

22 **SECTION 30.** 973.0135 (2m) of the statutes is created to read:

23 973.0135 (2m) (a) In this subsection, "serious sex crime" means a violation of
24 s. 940.22 (2), 940.225 (1), (2) or (3), 948.02 (1), (2) or (3), 948.025 (1), 948.05 (1) or (2),
25 948.055 (1), 948.06, 948.07, 948.08, 948.095 (2), 948.11 (2) (a), 948.12 or 948.13 (2).

ASSEMBLY BILL 366

1 (b) A person who is being sentenced for a serious sex crime committed on or
2 after the effective date of this paragraph ... [revisor inserts date], is not subject to
3 this section but is eligible for parole only as provided in s. 304.06 (1s).

4 **SECTION 31.** 978.07 (1) (c) 2. of the statutes is amended to read:

5 978.07 (1) (c) 2. Any case record of a felony punishable by a maximum period
6 of imprisonment equal to at least 20 years or a related case, after the mandatory
7 release date established under s. 302.11 (1) or the presumptive mandatory release
8 date established under s. 302.11 (1g), if applicable, of any person convicted of that
9 felony or 20 years after commencement of the action, ~~whichever~~ if that date is later
10 or if the person is not entitled to release under s. 302.11.

11 **SECTION 32.** 978.07 (1) (c) 3. of the statutes is amended to read:

12 978.07 (1) (c) 3. Except as provided in subds. 1. and 2., any case record of a
13 felony or related case, after the mandatory release date established under s. 302.11
14 (1) or the presumptive mandatory release date established under s. 302.11 (1g), if
15 applicable, of any person convicted of that felony or 10 years after the commencement
16 of the action, ~~whichever~~ if that date is later or if the person is not entitled to release
17 under s. 302.11.

18 (END)