



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5131/1
EAW:amn

2019 ASSEMBLY BILL 775

January 22, 2020 - Introduced by Representatives BOWEN, NOVAK, CROWLEY, ANDERSON, BILLINGS, BROSTOFF, CONSIDINE, GOYKE, GRUSZYNSKI, KOLSTE, L. MYERS, NEUBAUER, SPREITZER, STUBBS, SUBECK, STUCK, C. TAYLOR, ZAMARRIPA and CABRERA, cosponsored by Senators L. TAYLOR, JOHNSON, LARSON and SMITH. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to amend** 302.113 (title), 302.113 (1), 302.113 (2), 302.114 (1), 303.065
2 (1) (b) 1., 304.02 (5), 304.06 (1) (b), 304.071 (2), 939.616 (1g), 939.62 (2m) (b)
3 (intro.), 950.04 (1v) (gm), 950.04 (1v) (m), 973.01 (3), 973.01 (4), 973.014 (1)
4 (intro.), 973.014 (1g) (a) (intro.), 973.15 (2m) (a) 1. and 978.07 (1) (c) 1.; and **to**
5 **create** 973.014 (3), 973.017 (2c), 973.018 and 977.05 (4) (i) 10. of the statutes;
6 **relating to:** sentencing for crimes committed by a person who is under the age
7 of 18.

Analysis by the Legislative Reference Bureau

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. This 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, this 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

ASSEMBLY BILL 775

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, the Department of Corrections 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 juvenile constitutes cruel and unusual punishment and therefore violates the eighth amendment of the Constitution. This 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:

- 1 **SECTION 1.** 302.113 (title) of the statutes is amended to read:
- 2 **302.113 (title) Release to extended supervision for felony offenders not**
- 3 **servicing life sentences and youthful offenders.**
- 4 **SECTION 2.** 302.113 (1) of the statutes is amended to read:

ASSEMBLY BILL 775

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

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

7 302.113 (2) Except as provided in subs. (3) and (9), an inmate subject to this
8 section is entitled to release to extended supervision after he or she has served the
9 term of confinement in prison portion of the sentence imposed under s. 973.01, as
10 modified by the sentencing court under sub. (9g) or s. 302.045 (3m) (b) 1., 302.05 (3)
11 (c) 2. a., 973.018, 973.195 (1r), or 973.198, if applicable.

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

13 302.114 (1) An inmate is subject to this section if he or she is serving a life
14 sentence imposed under s. 973.014 (1g) (a) 1. or 2. An inmate serving a life sentence
15 under s. 939.62 (2m) or 973.014 (1g) (a) 3. is not eligible for release to extended
16 supervision under this section. This section does not apply to a youthful offender, as
17 defined in s. 973.014 (3) (a), who was sentenced under s. 973.014 (1g) before the
18 effective date of this subsection [LRB inserts date].

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

20 303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence
21 specified in subd. 2., may be considered for work release only after he or she has
22 reached parole eligibility under s. 304.06 (1) (b) or 973.014 (1) (a) or (b) or (3) (b),
23 whichever is applicable, or he or she has reached his or her extended supervision
24 eligibility date under s. 302.114 (9) (am) or 973.014 (1g) (a) 1. or 2. or (3) (c), whichever
25 is applicable.

ASSEMBLY BILL 775**SECTION 6**

1 **SECTION 6.** 304.02 (5) of the statutes is amended to read:

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

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

6 304.06 **(1)** (b) Except as provided in s. 961.49 (2), 1999 stats., sub. (1m) or s.
7 302.045 (3), 302.05 (3) (b), 973.01 (6), ~~or 973.0135, or 973.018~~, the parole commission
8 may parole an inmate of the Wisconsin state prisons or any felon or any person
9 serving at least one year or more in a county house of correction or a county
10 reforestation camp organized under s. 303.07, when he or she has served 25 percent
11 of the sentence imposed for the offense, or 6 months, whichever is greater. Except
12 as provided in s. 939.62 (2m) (c) or 973.014 (1) (b) or (c), ~~(1g) or (2), or (3) (b) or (c)~~,
13 the parole commission may parole an inmate serving a life term when he or she has
14 served 20 years, as modified by the formula under s. 302.11 (1) and subject to
15 extension under s. 302.11 (1q) and (2), or reduction under s. 973.018, if applicable.
16 The person serving the life term shall be given credit for time served prior to
17 sentencing under s. 973.155, including good time under s. 973.155 (4). The secretary
18 may grant special action parole releases under s. 304.02. The department or the
19 parole commission shall not provide any convicted offender or other person
20 sentenced to the department's custody any parole eligibility or evaluation until the
21 person has been confined at least 60 days following sentencing.

22 **SECTION 8.** 304.071 (2) of the statutes is amended to read:

23 304.071 **(2)** If a prisoner is not eligible for parole under s. 961.49 (2), 1999 stats.,
24 or s. 939.62 (2m) (c), 973.01 (6), 973.014 (1) (c) ~~or (1g), or (3) (c)~~, or 973.032 (5), he or
25 she is not eligible for parole under this section.

ASSEMBLY BILL 775

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

2 939.616 **(1g)** If a person is convicted of a violation of s. 948.02 (1) (am) or
3 948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2. and except as provided
4 under s. 973.018, the court may not make an extended supervision eligibility date
5 determination on a date that will occur before the person has served a 25-year term
6 of confinement in prison.

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

8 939.62 **(2m)** (b) (intro.) The actor is a persistent repeater if the offense for which
9 he or she is presently being sentenced was committed after he or she attained the age
10 of 18 and one of the following applies:

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

12 950.04 **(1v)** (gm) To have reasonable attempts made to notify the victim of
13 petitions for sentence adjustment as provided under s. 973.018 (3) (e), 973.09 (3m),
14 973.195 (1r) (d), or 973.198.

15 **SECTION 12.** 950.04 (1v) (m) of the statutes is amended to read:

16 950.04 **(1v)** (m) To provide statements concerning sentencing, disposition, or
17 parole, as provided under ss. 304.06 (1) (e), 938.32 (1) (b) 1g., 938.335 (3m) (ag), and
18 972.14 (3) (a), and 973.018 (4) (d).

19 **SECTION 13.** 973.01 (3) of the statutes is amended to read:

20 973.01 **(3)** NOT APPLICABLE TO LIFE SENTENCES. If a person is being sentenced for
21 a felony that is punishable by life imprisonment, he or she is not subject to this
22 section but shall be sentenced under s. 973.014 (1g) or (3).

23 **SECTION 14.** 973.01 (4) of the statutes is amended to read:

24 973.01 **(4)** NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. A
25 person sentenced to a bifurcated sentence under sub. (1) shall serve the term of

ASSEMBLY BILL 775**SECTION 14**

1 confinement in prison portion of the sentence without reduction for good behavior.
2 The term of confinement in prison portion is subject to extension under s. 302.113 (3)
3 and, if applicable, to reduction under s. 302.045 (3m), 302.05 (3) (c) 2. a., 302.113 (9g),
4 973.018, 973.195 (1r), or 973.198.

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

6 973.014 (1) (intro.) Except as provided in sub. (2) or (3), when a court sentences
7 a person to life imprisonment for a crime committed on or after July 1, 1988, but
8 before December 31, 1999, the court shall make a parole eligibility determination
9 regarding the person and choose one of the following options:

10 **SECTION 16.** 973.014 (1g) (a) (intro.) of the statutes is amended to read:

11 973.014 (1g) (a) (intro.) Except as provided in sub. (2) or (3), when a court
12 sentences a person to life imprisonment for a crime committed on or after December
13 31, 1999, the court shall make an extended supervision eligibility date determination
14 regarding the person and choose one of the following options:

15 **SECTION 17.** 973.014 (3) of the statutes is created to read:

16 973.014 (3) (a) In this subsection, “youthful offender” means a person who
17 committed an offense before the person attained the age of 18 years.

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

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

ASSEMBLY BILL 775

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

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

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

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

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

16 **SECTION 18.** 973.017 (2c) of the statutes is created to read:

17 973.017 (2c) MITIGATION FOR YOUTH. When making a sentencing decision for a
18 person who had not attained the age of 18 years at the time the crime was committed,
19 the court shall consider all of the following mitigating factors:

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

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

ASSEMBLY BILL 775**SECTION 18**

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

5 **SECTION 19.** 973.018 of the statutes is created to read:

6 **973.018 Sentence adjustment for youthful offenders. (1) DEFINITION.** In
7 this section, “youthful offender” has the meaning given in s. 973.014 (3) (a).

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

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

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

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

ASSEMBLY BILL 775

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

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

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

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

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

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

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

ASSEMBLY BILL 775**SECTION 19**

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

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

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

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

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

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

19 (c) For a crime committed on or after December 31, 1999, reduce the term of
20 confinement in prison and modify the conditions of extended supervision. The court
21 may also reduce the total length of the bifurcated sentence. Notwithstanding s.
22 973.01 (2) (d), the court shall provide for at least 3 years of extended supervision
23 under s. 302.113.

24 (d) For a life sentence without the possibility of parole or release to extended
25 supervision under s. 973.014 (1) (c) or (1g) (a) 3., convert the sentence to a life

ASSEMBLY BILL 775

1 sentence with the possibility of parole or release to extended supervision and set a
2 date for parole eligibility or release to extended supervision and conditions for parole
3 or extended supervision accordingly.

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

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

11 **SECTION 20.** 973.15 (2m) (a) 1. of the statutes is amended to read:

12 973.15 **(2m)** (a) 1. "Determinate sentence" means a bifurcated sentence
13 imposed under s. 973.01 or a life sentence under which a person is eligible for release
14 to extended supervision under s. 973.014 (1g) (a) 1. or 2. or (3) (c).

15 **SECTION 21.** 977.05 (4) (i) 10. of the statutes is created to read:

16 977.05 **(4)** (i) 10. Cases involving youthful offenders under s. 973.018 (3).

17 **SECTION 22.** 978.07 (1) (c) 1. of the statutes is amended to read:

18 978.07 **(1)** (c) 1. Any case record of a felony punishable by life imprisonment
19 or a related case, after the defendant's parole eligibility date under s. 304.06 (1) or
20 973.014 (1) or (3) (b) or date of eligibility for release to extended supervision under
21 s. 973.014 (1g) (a) 1. or 2. or (3) (c), whichever is applicable, or 50 years after the
22 commencement of the action, whichever occurs later. If there is no parole eligibility
23 date or no date for release to extended supervision, the district attorney may destroy
24 the case record after the defendant's death.

25 **SECTION 23. Nonstatutory provisions.**

