



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-6264/1
EAW:emw

2021 ASSEMBLY BILL 1197

March 10, 2022 - Introduced by Representative BOWEN. Referred to Committee on Rules.

1 **AN ACT** *to amend* 302.113 (2), 911.01 (4) (c), 973.01 (4), 973.017 (2) (b) and
2 973.198 (6); and *to create* 973.017 (8m), 973.195 (2) and 977.05 (4) (jo) of the
3 statutes; **relating to:** a mitigating factor in sentencing where the crime is
4 committed by a victim of sex trafficking.

Analysis by the Legislative Reference Bureau

Under current law, when a court makes a sentencing decision, it must consider aggravating or mitigating factors. This bill creates a mitigating factor for sentencing a person who has been convicted of a violent crime against a sex trafficker if the offender was the victim of the sex trafficker not more than one year before the violent crime was committed. The bill also applies to inmates serving a sentence imposed before the bill became effective. Under the bill, an inmate may petition the sentencing court for a sentence modification if he or she was sentenced before the mitigating factor became law, and the court may modify the sentence if it determines that a modification is appropriate for that inmate based on the mitigating factor created in the bill.

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

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

ASSEMBLY BILL 1197**SECTION 1**

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

6 **SECTION 2.** 911.01 (4) (c) of the statutes, as affected by 2021 Wisconsin Act 76,
7 is amended to read:

8 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
9 rendition; sentencing, granting or revoking probation, modification of a bifurcated
10 sentence under s. 302.113 (9g), or adjustment of a bifurcated sentence under s.
11 973.195 (~~1r~~) or 973.198; hearings for the freezing of assets of a person charged with
12 financial exploitation of an elder person under s. 971.109; issuance of subpoenas or
13 warrants under s. 968.375, arrest warrants, criminal summonses, and search
14 warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1r) (c);
15 proceedings with respect to pretrial release under ch. 969 except where habeas
16 corpus is utilized with respect to release on bail or as otherwise provided in ch. 969;
17 or proceedings under s. 165.76 (6) to compel provision of a biological specimen for
18 deoxyribonucleic acid analysis.

19 **SECTION 3.** 973.01 (4) of the statutes is amended to read:

20 973.01 (4) NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. A
21 person sentenced to a bifurcated sentence under sub. (1) shall serve the term of
22 confinement in prison portion of the sentence without reduction for good behavior.
23 The term of confinement in prison portion is subject to extension under s. 302.113 (3)
24 and, if applicable, to reduction under s. 302.045 (3m), 302.05 (3) (c) 2. a., 302.113 (9g),
25 973.195 (~~1r~~), or 973.198.

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1 **SECTION 4.** 973.017 (2) (b) of the statutes is amended to read:

2 973.017 **(2)** (b) Any applicable mitigating factors and any applicable
3 aggravating factors, including the mitigating and aggravating factors specified in
4 subs. (3) to ~~(8)~~ (8m).

5 **SECTION 5.** 973.017 (8m) of the statutes is created to read:

6 973.017 **(8m)** MITIGATING FACTORS; OFFENSES COMMITTED BY VICTIM OF SEX
7 TRAFFICKING. (a) In this subsection:

8 1. “Sex trafficking victim offender” means a person who has been convicted of
9 a violent crime and who the court finds, by clear and convincing evidence, was the
10 victim of sex trafficking under s. 940.302 (2) or 948.051.

11 2. “Violent crime” means a violation of s. 940.01, 940.02, 940.03, 940.05, 940.06,
12 940.08, 940.19, 940.20, 940.201, 940.203, 940.205, 940.207, 940.208, 940.21, 940.23,
13 940.235, 940.24, 940.30, 940.305, 940.31, 941.30, 941.327, 943.02, 943.10, 943.23
14 (1g) or (1r), or 943.32.

15 (b) When making a sentencing decision concerning a sex trafficking victim
16 offender, the court may consider as a mitigating factor the effect of trauma on the
17 conduct of the sex trafficking victim offender if one of the following applies:

18 1. The violent crime was committed against a person who engaged in conduct
19 against the the sex trafficking victim offender that is a violation of s. 940.302 (2) or
20 948.051 not more than one year before the commission of the violent crime.

21 2. The violent crime was committed against a person who was the patron of a
22 commercial sex act, as defined in s. 940.302 (1) (a), performed by the sex trafficking
23 victim offender not more than one year before the commission of the violent crime.

24 (c) This subsection applies without regard to whether anyone was prosecuted
25 or convicted for the violation of s. 940.302 (2) or 948.051.

ASSEMBLY BILL 1197**SECTION 6**

1 **SECTION 6.** 973.195 (2) of the statutes is created to read:

2 973.195 (2) SEX TRAFFICKING VICTIM OFFENDERS. (a) An inmate who is serving
3 a sentence for a violent crime, as defined in s. 973.017 (8m) (a) 2., that was imposed
4 before the effective date of this subsection [LRB inserts date], may petition the
5 sentencing court for a sentence adjustment based on the mitigating factor under s.
6 973.017 (8m) (b).

7 (b) Upon receipt of a petition under par. (a), the sentencing court shall hold a
8 hearing to determine whether the inmate was a sex trafficking victim offender, as
9 defined in s. 973.017 (8m) (a) 1., and to determine whether a sentence adjustment
10 is appropriate under s. 973.017 (8m) (b).

11 (c) The court may reduce the term of a bifurcated sentence imposed under s.
12 973.01 or may convert a life sentence imposed under s. 973.014 to a bifurcated
13 sentence under s. 973.01.

14 (d) An inmate eligible to seek a sentence modification under this subsection has
15 a right to be represented by counsel. An inmate may apply to the state public
16 defender for determination of indigency and appointment of counsel under s. 977.05
17 (4) (jo) before or after the filing of a petition under this subsection. If an inmate whose
18 petition has been filed under par. (a) is without counsel, the court shall refer the
19 matter to the state public defender for determination of indigency and appointment
20 of counsel under s. 977.05 (4) (jo).

21 **SECTION 7.** 973.198 (6) of the statutes is amended to read:

22 973.198 (6) An inmate who submits a petition under this section may not apply
23 for adjustment of the same sentence under s. 973.195 (1r) for a period of one year from
24 the date of the petition.

25 **SECTION 8.** 977.05 (4) (jo) of the statutes is created to read:

