

1993 Senate Bill 781

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1993 WISCONSIN ACT 289

AN ACT to renumber and amend 973.014; to amend 302.11 (1m), 303.065 (1), 304.06 (1) (b), 304.071 (2), 973.12 (title), 973.12 (1) and 978.07 (1) (c) 1; and to create 304.02 (5), 939.62 (2m) and 973.014 (2) of the statutes, relating to: persistent serious felony offenders and providing penalties.

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

SECTION 5. 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) and 973.014, the parole commission may parole the inmate as specified in s. 304.06 (1).

SECTION 6. 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, whichever is applicable, and no person serving a life sentence under s. 939.62 (2m) may be considered for work release.

SECTION 7. 304.02 (5) of the statutes is created to read:

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

SECTION 8. 304.06 (1) (b) of the statutes, as affected by 1993 Wisconsin Acts 79 and 89, is amended to read:

304.06 (1) (b) Except as provided in sub. (1m) or s. 161.49 (2) or 302.045 (3), 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) 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 9. 304.071 (2) of the statutes is amended to read:

304.071 (2) If a prisoner is not eligible for parole under s. 161.49 (2), 939.62 (2m) or s. 973.032 (5), he or she is not eligible for parole under this section.

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

939.62 (2m) (a) In this subsection, "serious felony" means any of the following:

1. Any felony under s. 161.41 (1), (1m) or (1x) if the felony is punishable by a maximum prison term of 30 years or more.

2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.19 (2), 940.21, 940.225 (1) or

(2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2), 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

4. A crime at any time under federal law or the law of any other state or, prior to the effective date of this subdivision [revisor inserts date], under the law of this state that is comparable to a crime specified in subd. 1, 2 or 3.

(b) The actor is a persistent repeater if he or she 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 is immaterial that the sentence for a previous conviction was stayed, withheld or suspended, or that he or she was pardoned, unless the pardon was granted on the ground of innocence. 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.

(d) If a prior conviction is being considered as being covered under par. (a) 4. as comparable to a felony specified under par. (a) 1., 2. or 3., 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 if committed by an adult in this state.

SECTION 11. 973.014 of the statutes is renumbered 973.014 (1), and 973.014 (1) (intro.) and (b), as renumbered, are amended to read:

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

(b) The person is eligible for parole on a date set by the court. Under this ~~subsection~~ paragraph, the court may set any later date than that provided in s. 304.06 (1), but may not set a date that occurs before the earliest possible parole eligibility date as calculated under s. 304.06 (1).

SECTION 12. 973.014 (2) of the statutes is created to read:

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

SECTION 13. 973.12 (title) of the statutes is amended to read:

973.12 (title) **Sentence of a repeater or persistent repeater.**

SECTION 14. 973.12 (1) of the statutes is amended to read:

973.12 (1) Whenever a person charged with a crime will be a repeater ~~as defined in~~ or a persistent repeater under s. 939.62 if convicted, any applicable prior convictions may be alleged in the complaint, indictment or information or amendments so alleging at any time before or at arraignment, and before acceptance of any plea. The court may, upon motion of the district attorney, grant a reasonable time to investigate possible prior convictions before accepting a plea. If ~~such~~ the prior convictions are admitted by the defendant or proved by the state, he or she shall be subject to sentence under s. 939.62 unless he or she establishes that he or she was pardoned on grounds of innocence for any crime necessary to constitute him or her a repeater or a persistent repeater. An official report of the F.B.I. or any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any conviction or sentence therein reported. Any sentence so reported shall be deemed prima facie to have been fully served in actual confinement or to have been served for such period of time as is shown or is consistent with the report. The court shall take judicial notice of the statutes of the United States and foreign states in determining whether the prior conviction was for a felony or a misdemeanor.

SECTION 15. 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 or 50 years after the commencement of the action, whichever occurs later. If there is no parole eligibility date, the district attorney may destroy the case record after the defendant's death.

SECTION 15m. Nonstatutory provisions. The department of administration shall monitor and study sentencing in this state for the period beginning on June 1, 1995, and ending on June 1, 1997, to assess the fiscal impact that will occur by reason of this act. In its study, the department of administration shall assess the fiscal impact on district attorneys, the courts, the office of the state public defender, the department of justice and the department of corrections. By August 1, 1997, the department of administration shall report the results of its study to the legislature in the manner provided under section 13.172 (2) of the statutes.

SECTION 16. Initial applicability. The treatment of section 939.62 (2m) of the statutes first applies to serious felonies committed on the effective date of this SECTION, but does not preclude the counting of other serious felonies as prior serious felonies for sentencing a person as

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a persistent repeater under section 939.62 (2m) of the statutes, as created by this act.
