



1995 ASSEMBLY BILL 86

January 31, 1995 - Introduced by Representatives DOBYNS, LADWIG, GOETSCH, DUFF, MUSSER, FOTI, BRANDEMUEHL, SILBAUGH, HANDRICK, OWENS, JENSEN, AINSWORTH, KRUSICK, SERATTI, LA FAVE, ALBERS, SKINDRUD, FREESE, OTT, VRAKAS and OTTE, cosponsored by Senator A. LASEE. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to repeal** 941.20 (2) (intro.); **to amend** 939.63 (2), 941.20 (2) (a) and
2 941.20 (2) (b); and **to create** 304.02 (6), 304.06 (1v), 304.071 (3) and 939.63 (3)
3 of the statutes; **relating to:** committing a felony while using a firearm and
4 providing a penalty..

Analysis by the Legislative Reference Bureau

Under current law, a person who commits a felony while possessing, using or threatening to use a dangerous weapon is subject, upon conviction, to a 3-year minimum sentence for the first violation and a 5-year minimum sentence for any subsequent violation. The terms are presumptive minimum terms because the court may give a lesser sentence or probation if it states its reasons for doing so on the record.

This bill provides a mandatory minimum sentence under certain circumstances. If a person commits a felony listed in the criminal code or the controlled substances (dangerous drugs) act while using a firearm, the court must sentence him or her to at least 5 years imprisonment. The court may not place the person on probation. Further, the person is not eligible for parole until he or she has served 30 months or 25% of the sentence, whichever is greater. These new provisions do not apply to any felony punishable by life imprisonment.

For further information see the *state* 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:

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

1 304.02 **(6)** Notwithstanding subs. (1) to (3), a prisoner who is serving a sentence
2 under s. 939.63 (3) (a) 1. is not eligible for release to parole supervision under this
3 section until he or she is eligible for parole under s. 304.06 (1v).

4 **SECTION 2.** 304.06 (1v) of the statutes is created to read:

5 304.06 **(1v)** The parole commission may parole an inmate serving a sentence
6 under s. 939.63 (3) (a) 1. when he or she has served 25% of the sentence imposed for
7 the felony or has served 30 months, whichever is greater. The person is not eligible
8 for the waiver under sub. (1m).

9 **SECTION 3.** 304.071 (3) of the statutes is created to read:

10 304.071 **(3)** If a prisoner is sentenced under s. 939.63 (3) (a) 1., he or she is not
11 eligible for parole under this section.

12 **SECTION 4.** 939.63 (2) of the statutes is amended to read:

13 939.63 **(2)** Whoever is convicted of committing a felony while possessing, using
14 or threatening to use a dangerous weapon shall be sentenced to a minimum term of
15 years in prison, unless the sentencing court otherwise provides. The minimum term
16 for the first application of this subsection is 3 years. The minimum term for any
17 subsequent application of this subsection is 5 years. If the court places the person
18 on probation or imposes a sentence less than the presumptive minimum sentence,
19 it shall place its reasons for so doing on the record. If sub. (3) applies to a felony
20 conviction, this subsection does not apply.

21 **SECTION 5.** 939.63 (3) of the statutes is created to read:

22 939.63 **(3)** (a) 1. If a person is convicted of committing a felony covered under
23 subd. 2. while using a firearm, the court shall sentence the person to not less than
24 5 years of imprisonment. The court shall not place the person on probation.

