



1997 ASSEMBLY BILL 26

January 28, 1997 - Introduced by Representatives DOBYNS, LA FAVE, ALBERS, PORTER, MUSSER, KAUFERT, PLALE, LADWIG, HANDRICK, MURAT, NASS, FREESE, RILEY, SERATTI, GREEN, BRANDEMUEHL, JENSEN, SYKORA, WALKER, OLSEN, OTT, VRAKAS and GUNDERSON, cosponsored by Senators WELCH, BUETTNER, DRZEWIECKI, ZIEN, SCHULTZ and ROSENZWEIG. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT** *to renumber and amend* 939.63 (2); and *to create* 939.63 (2) (a) 2. and
2 939.63 (2) (b) of the statutes; **relating to:** committing certain crimes while
3 possessing, using or threatening to use a firearm and providing penalties.

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 narrows the coverage of the law, shortens the minimum terms and makes the terms mandatory. Under the bill, if a person commits a specified violent or drug-related felony while possessing, using or threatening to use a firearm, the person is subject, upon conviction, to a one-year mandatory minimum sentence for the first violation and a 3-year mandatory minimum sentence for any subsequent violation. The court must sentence the person to at least the applicable minimum sentence and may not place the person on probation.

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:

ASSEMBLY BILL 26**SECTION 1**

1 **SECTION 1.** 939.63 (2) of the statutes is renumbered 939.63 (2) (a) 1. and
2 amended to read:

3 939.63 (2) (a) 1. ~~Whoever~~ If a person is convicted of committing a felony covered
4 under subd. 2. while possessing, using or threatening to use a ~~dangerous weapon~~
5 ~~shall be sentenced to a minimum term of years in prison, unless the sentencing court~~
6 ~~otherwise provides. The minimum term for the first application of this subsection~~
7 ~~is 3 years. The minimum term for any subsequent application of this subsection is~~
8 ~~5 years. If the court places the person on probation or imposes a sentence less than~~
9 ~~the presumptive minimum sentence, it shall place its reasons for so doing on the~~
10 ~~record~~ firearm, the court shall sentence the person to not less than one year of
11 imprisonment for the first application of this subdivision and to not less than 3 years
12 of imprisonment for any subsequent application of this subdivision. The court may
13 not place the person on probation.

14 **SECTION 2.** 939.63 (2) (a) 2. of the statutes is created to read:

15 939.63 (2) (a) 2. Subdivision 1. applies to any felony violation of any of the
16 following:

17 a. Section 940.02, 940.03, 940.05 (1), 940.06, 940.19, (2), (3), (4), (5) or (6),
18 940.20, 940.203 (2), 940.205 (2), 940.207 (2), 940.21, 940.225 (1), (2) or (3), 940.23,
19 940.30, 940.305 (2), 940.31 (1) or (2) (b), 940.43, 940.45, 940.46, 941.12 (1), 941.21,
20 941.30, 941.32, 941.37 (3) or (4), 943.012, 943.013, 943.015, 943.02, 943.03, 943.04,
21 943.05, 943.06, 943.10, 943.12, 943.32, 944.32, 944.33 (2), 944.34, 946.02, 946.03,
22 946.42 (3), 946.43, 946.44, 946.47, 948.02 (1) or (2), 948.025, 948.03 (2) or (3), 948.04
23 (1), 948.05, 948.055, 948.35, 961.41 (1), (1m), (1n), (x), (2), (3g) (a) or (4) or 961.455.

24 b. Section 940.09 (1g) (a) or (b) if the violation involved the operation or
25 handling of a firearm.

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1 c. Section 940.29 or 940.295 if the violation involved abuse.

2 **SECTION 3.** 939.63 (2) (b) of the statutes is created to read:

3 939.63 (2) (b) If the felony under par. (a) has a maximum period of
4 imprisonment, including all applicable penalty enhancement statutes, of less than
5 the applicable mandatory minimum period specified in par. (a), the maximum period
6 of imprisonment is increased to equal the applicable minimum period.

7 **SECTION 4. Initial applicability.**

8 (1) This act first applies to offenses committed on the effective date of this
9 subsection, but does not preclude the counting of offenses committed prior to the
10 effective date of this subsection as prior offenses for sentencing a person.

11 (END)