



## 1995 ASSEMBLY BILL 298

April 8, 1995 - Introduced by Representatives KAUFERT, KREIBICH, MUSSER, HANDRICK, OWENS, NASS, BRANDEMUEHL, DOBYNS, OLSEN and SILBAUGH, cosponsored by Senators A. LASEE, FARROW, ANDREA, PETAK and ZIEN. Referred to Committee on Criminal Justice and Corrections.

1     **AN ACT to renumber** 939.50 (1) (a), 939.50 (3) (a) and 973.015; **to renumber and**  
2     **amend** 940.01 (1); **to amend** 161.335 (1), 301.048 (2) (b), 302.11 (1m), 303.065  
3     (1), 304.02 (5), 304.06 (1) (b), 304.071 (2), 939.30 (2), 939.31, 939.32 (1) (a),  
4     939.50 (2), 939.60, 939.624 (2), 939.625 (1) (b) 2., 939.63 (1) (a) 2., 971.17 (1),  
5     972.03, 972.13 (6), 973.013 (1) (b), 973.0135 (3), 973.014 (1) (intro.), 973.032 (2)  
6     (b), 973.09 (1) (c) and 978.07 (1) (c) 1.; and **to create** 161.335 (1m), 301.046 (3)  
7     (cm), 304.06 (1t), 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1) (b), 940.01  
8     (1) (c), 940.01 (1) (d), 967.02 (1m), 973.015, 973.016 and 973.017 of the statutes;  
9     **relating to:** providing a penalty of either death or life imprisonment for certain  
10    kinds of first-degree intentional homicide, affecting parole eligibility and  
11    granting rule-making authority.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, no state crime is punishable by the death penalty. This bill provides for either a death penalty (by lethal injection) or life imprisonment (with or without parole eligibility restrictions) for 5 different kinds of first-degree intentional homicide committed by a person who is 16 years old or older: 1) homicide of a child under the age of 14 years; 2) homicide of a fire fighter, peace officer or corrections employe; 3) homicide for hire; 4) serial or multiple homicide; or 5) homicide in connection with a kidnapping or sexual assault. Other kinds of first-degree homicide remain punishable by life imprisonment.

A determination of whether or not the death penalty will be imposed is the subject of a proceeding separate from the regular trial. After a conviction finding

that one of the 5 types of homicide has occurred, the court reconvenes the trial jury, or, if there was no jury trial or the trial jury is unable to continue, a new jury is summoned. The defendant may waive the right to a jury. Evidence is then presented regarding various aggravating or mitigating circumstances relating to the crime and the defendant.

If the jury is not waived, the jury hears the evidence, and then gives an advisory sentence, to the court, of either life imprisonment or death. If the jury recommends life imprisonment, it may further recommend a complete or substantial restriction of the defendant's parole eligibility. The court, not bound by the advisory sentence, then weighs the aggravating and mitigating circumstances and enters the sentence of either life imprisonment or death. If life imprisonment is imposed, the court may completely or substantially restrict the defendant's parole eligibility. If the court chooses the death sentence it must set forth its findings in writing. Any death sentence is subject to automatic appellate review by the supreme court.

The court that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner. One physician and 12 citizen witnesses must be present at the execution.

This bill applies only to those offenses committed on or after its effective date (the day after publication).

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 161.335 (1) of the statutes is amended to read:

2           161.335 (1) ~~Upon~~ Except as provided in sub. (1m), upon application, the  
3 controlled substances board may issue a permit authorizing a person to  
4 manufacture, obtain, possess, use, administer or dispense a controlled substance for  
5 purposes of scientific research, instructional activities, chemical analysis or other  
6 special uses, without restriction because of enumeration. No person shall may  
7 engage in any such activity without a permit issued under this section, except that  
8 an individual may be designated and authorized to receive the permit for a college  
9 or university department, research unit or similar administrative organizational  
10 unit and students, laboratory technicians, research specialists or chemical analysts

1 under his or her supervision may be permitted possession and use of controlled  
2 substances for these purposes without obtaining an individual permit.

3 **SECTION 2.** 161.335 (1m) of the statutes is created to read:

4 161.335 **(1m)** Upon the application of the secretary of corrections for a permit  
5 to obtain a controlled substance for purposes of an execution under s. 973.017, the  
6 controlled substances board shall issue a permit under this section.

7 **SECTION 3.** 301.046 (3) (cm) of the statutes is created to read:

8 301.046 **(3)** (cm) The prisoner is not awaiting imposition of a death sentence.

9 **SECTION 4.** 301.048 (2) (b) of the statutes is amended to read:

10 301.048 **(2)** (b) He or she is a prisoner serving a felony sentence for a felony not  
11 punishable by death or life imprisonment and the department directs him or her to  
12 participate in the program.

13 **SECTION 5.** 302.11 (1m) of the statutes is amended to read:

14 302.11 **(1m)** An inmate serving a life term is not entitled to mandatory release.  
15 Except as provided in ss. 304.06 (1t), 939.62 (2m) and 973.014, the parole commission  
16 may parole the inmate as specified in s. 304.06 (1). An inmate awaiting imposition  
17 of a death sentence is not eligible for parole.

18 **SECTION 6.** 303.065 (1) of the statutes is amended to read:

19 303.065 **(1)** The department may grant work release privileges to any person  
20 incarcerated within the state prisons, except that no person serving a life sentence  
21 may be considered for work release until he or she has reached parole eligibility  
22 under s. 304.06 (1) (b) or (1t) or 973.014, whichever is applicable, and no person  
23 serving a life sentence under s. 939.62 (2m) or awaiting imposition of a death  
24 sentence may be considered for work release.

25 **SECTION 7.** 304.02 (5) of the statutes is amended to read:

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

4           **SECTION 8.** 304.06 (1) (b) of the statutes is amended to read:

5           304.06 (1) (b) Except as provided in sub. (1m) or s. 161.49 (2), 302.045 (3) or  
6 973.0135, the parole commission may parole an inmate of the Wisconsin state  
7 prisons or any felon or any person serving at least one year or more in a county house  
8 of correction or a county reforestation camp organized under s. 303.07, when he or  
9 she has served 25% of the sentence imposed for the offense, or 6 months, whichever  
10 is greater. Except as provided in sub. (1t) or s. 939.62 (2m) or 973.014, the parole  
11 commission may parole an inmate serving a life term when he or she has served 20  
12 years, as modified by the formula under s. 302.11 (1) and subject to extension using  
13 the formulas under s. 302.11 (2). The person serving the life term shall be given  
14 credit for time served prior to sentencing under s. 973.155, including good time under  
15 s. 973.155 (4). The secretary may grant special action parole releases under s.  
16 304.02. The department or the parole commission shall not provide any convicted  
17 offender or other person sentenced to the department's custody any parole eligibility  
18 or evaluation until the person has been confined at least 60 days following  
19 sentencing. The parole commission may not parole an inmate who is awaiting  
20 imposition of a death sentence.

21           **SECTION 9.** 304.06 (1t) of the statutes is created to read:

22           304.06 (1t) If the prisoner is serving a life term imposed under s. 973.015, the  
23 prisoner is eligible for parole only when authorized by the sentencing court under s.  
24 973.015 (3) (b).

25           **SECTION 10.** 304.071 (2) of the statutes is amended to read:

1           304.071 (2) If a prisoner is not eligible for parole under s. 161.49 (2), 304.06 (1)  
2           (b) or (1t), 939.62 (2m) or 973.032 (5), he or she is not eligible for parole under this  
3           section.

4           **SECTION 11.** 939.22 (7) of the statutes is created to read:

5           939.22 (7) "Crime punishable by death or life imprisonment" means a crime for  
6           which one or more of the possible penalties is death or life imprisonment.

7           **SECTION 12.** 939.30 (2) of the statutes is amended to read:

8           939.30 (2) For a solicitation to commit a crime ~~for which the penalty is~~  
9           punishable by death or life imprisonment, the actor is guilty of a Class C felony. For  
10          a solicitation to commit a Class E felony, the actor is guilty of a Class E felony.

11          **SECTION 13.** 939.31 of the statutes is amended to read:

12          **939.31 Conspiracy.** Except as provided in ss. 161.41 (1x), 940.43 (4) and  
13          940.45 (4), whoever, with intent that a crime be committed, agrees or combines with  
14          another for the purpose of committing that crime may, if one or more of the parties  
15          to the conspiracy does an act to effect its object, be fined or imprisoned or both not  
16          to exceed the maximum provided for the completed crime; except that for a  
17          conspiracy to commit a crime ~~for which the penalty is~~ punishable by death or life  
18          imprisonment, the actor is guilty of a Class B felony.

19          **SECTION 14.** 939.32 (1) (a) of the statutes is amended to read:

20          939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is~~  
21          punishable by death or life imprisonment is guilty of a Class B felony.

22          **SECTION 15.** 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).

23          **SECTION 16.** 939.50 (1) (ag) of the statutes is created to read:

24          939.50 (1) (ag) Class AA felony.

25          **SECTION 17.** 939.50 (2) of the statutes is amended to read:

1           939.50 (2) A felony is a Class AA, A, B, C, D or E felony when it is so specified  
2 in chs. 939 to 951.

3           **SECTION 18.** 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).

4           **SECTION 19.** 939.50 (3) (ag) of the statutes is created to read:

5           939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined  
6 under s. 973.015.

7           **SECTION 20.** 939.60 of the statutes is amended to read:

8           **939.60 Felony and misdemeanor defined.** A crime punishable by death or  
9 imprisonment in the Wisconsin state prisons is a felony. Every other crime is a  
10 misdemeanor.

11          **SECTION 21.** 939.624 (2) of the statutes is amended to read:

12          939.624 (2) If a person has one or more prior convictions for a serious violent  
13 crime or a crime punishable by death or life imprisonment and subsequently  
14 commits a serious violent crime, the court shall sentence the person to not less than  
15 5 years' imprisonment, but otherwise the penalties for the crime apply, subject to any  
16 applicable penalty enhancement. The court shall not place the defendant on  
17 probation.

18          **SECTION 22.** 939.625 (1) (b) 2. of the statutes is amended to read:

19          939.625 (1) (b) 2. If the maximum term of imprisonment for a felony is more  
20 than 5 years or is a life term or the felony is punishable by death, the maximum term  
21 of imprisonment for the felony may be increased by not more than 5 years.

22          **SECTION 23.** 939.63 (1) (a) 2. of the statutes is amended to read:

23          939.63 (1) (a) 2. If the maximum term of imprisonment for a felony is more than  
24 5 years or is a life term or the felony is punishable by death, the maximum term of  
25 imprisonment for the felony may be increased by not more than 5 years.

1           **SECTION 24.** 940.01 (1) of the statutes is renumbered 940.01 (1) (a) and  
2 amended to read:

3           940.01 (1) (a) Except as provided in par. (b) and sub. (2), whoever causes the  
4 death of another human being with intent to kill that person or another is guilty of  
5 a Class A felony.

6           **SECTION 25.** 940.01 (1) (b) of the statutes is created to read:

7           940.01 (1) (b) Except as provided in pars. (c) and (d) and sub. (2), whoever  
8 causes the death of another human being with intent to kill that person or another  
9 is guilty of a Class AA felony if the offense involves any of the following courses of  
10 conduct:

- 11           1. Homicide of a person who has not attained the age of 14 years.
- 12           2. Homicide of any fire fighter, as defined in s. 102.475 (8) (b), peace officer or  
13 corrections employe, acting in the line of duty.
- 14           3. Homicide committed for pecuniary gain by a person after being hired by any  
15 other person.
- 16           4. Homicide committed as part of a series or group of other homicides related  
17 by a common design or transaction.
- 18           5. Homicide committed in the perpetration of sexual assault or kidnapping.

19           **SECTION 26.** 940.01 (1) (c) of the statutes is created to read:

20           940.01 (1) (c) Notwithstanding s. 939.05, a person is subject to par. (b) as a party  
21 to a crime only if that person had intended that a person be killed.

22           **SECTION 27.** 940.01 (1) (d) of the statutes is created to read:

23           940.01 (1) (d) A person is subject to par. (b) only if the person is 16 years old  
24 or older when he or she commits the offense.

25           **SECTION 28.** 967.02 (1m) of the statutes is created to read:

1           967.02 (1m) “Crime punishable by death or life imprisonment” has the  
2 meaning given in s. 939.22 (7).

3           **SECTION 29.** 971.17 (1) of the statutes is amended to read:

4           971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason  
5 of mental disease or mental defect, the court shall commit the person to the  
6 department of health and social services for a specified period not exceeding  
7 two-thirds of the maximum term of imprisonment that could be imposed under s.  
8 973.15 (2) (a) against an offender convicted of the same crime or crimes, including  
9 imprisonment authorized by ss. 161.48, 939.62, 939.621, 939.63, 939.635, 939.64,  
10 939.641 and 939.645 and other penalty enhancement statutes, as applicable, subject  
11 to the credit provisions of s. 973.155. If the ~~maximum term of imprisonment is life~~  
12 crime is punishable by death or life imprisonment, the commitment period specified  
13 by the court may be life, subject to termination under sub. (5).

14           **SECTION 30.** 972.03 of the statutes is amended to read:

15           **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory  
16 challenges except as otherwise provided in this section. When the crime charged is  
17 punishable by death or life imprisonment the state is entitled to 6 peremptory  
18 challenges and the defendant is entitled to 6 peremptory challenges. If there is more  
19 than one defendant, the court shall divide the challenges as equally as practicable  
20 among them; and if their defenses are adverse and the court is satisfied that the  
21 protection of their rights so requires, the court may allow the defendants additional  
22 challenges. If the crime is punishable by death or life imprisonment, the total  
23 peremptory challenges allowed the defense shall not exceed 12 if there are only 2  
24 defendants and 18 if there are more than 2 defendants; in other cases 6 challenges  
25 if there are only 2 defendants and 9 challenges if there are more than 2. Each side



1 shall be allowed one additional peremptory challenge if additional jurors are to be  
2 impaneled under s. 972.04 (1).

3 **SECTION 31.** 972.13 (6) of the statutes is amended to read:

4 972.13 (6) The following forms may be used for judgments:

5 STATE OF WISCONSIN

6 .... County

7 In .... Court

8 The State of Wisconsin

9 vs.

10 ....(Name of defendant)

11 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

12 IT IS ADJUDGED That the defendant has been convicted upon the defendant's  
13 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)  
14 (no contest) on the .... day of ....., 19.., of the crime of .... in violation of s. ....; and the  
15 court having asked the defendant whether the defendant has anything to state why  
16 sentence should not be pronounced, and no sufficient grounds to the contrary being  
17 shown or appearing to the court.

18 \*IT IS ADJUDGED That the defendant is guilty as convicted.

19 \*IT IS ADJUDGED That the defendant shall be executed by lethal injection.

20 \*IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin  
21 state prisons (county jail of .... county) for an indeterminate term of not more than....

22 \*IT IS ADJUDGED That the defendant is placed in the intensive sanctions  
23 program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes  
24 and the following conditions:....

1           \*IT IS ADJUDGED That the defendant is hereby committed to detention in  
2 (the defendant's place of residence or place designated by judge) for a term of not  
3 more than....

4           \*IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the  
5 costs of this action).

6           \*IT IS ADJUDGED That the defendant pay restitution to....

7           \*IT IS ADJUDGED That the defendant is restricted in his or her use of  
8 computers as follows:....

9           \*The .... at .... is designated as the Reception Center to which the defendant  
10 shall be delivered by the sheriff.

11           \*IT IS ORDERED That the clerk deliver a duplicate original of this judgment  
12 to the sheriff who shall forthwith execute the same and deliver it to the warden.

13 Dated this .... day of ....., 19...

14 BY THE COURT ....

15 Date of Offense .....,

16 District Attorney .....,

17 Defense Attorney ....

18 \*Strike inapplicable paragraphs.

19 STATE OF WISCONSIN

20 .... County

21 In .... Court

22 The State of Wisconsin

23 vs.

24 ....(Name of defendant)

1           On the .... day of ....., 19.., the district attorney appeared for the state and the  
2 defendant appeared in person and by .... the defendant's attorney.

3           UPON ALL THE FILES, RECORDS AND PROCEEDINGS

4           IT IS ADJUDGED That the defendant has been found not guilty by the verdict  
5 of the jury (by the court) and is therefore ordered discharged forthwith.

6           Dated this .... day of ....., 19...

7           BY THE COURT ....

8           **SECTION 32.** 973.013 (1) (b) of the statutes is amended to read:

9           973.013 (1) (b) The sentence shall have the effect of a sentence at hard labor  
10 for the maximum term fixed by the court, subject to the power of actual release from  
11 confinement by parole by the department or by pardon as provided by law. If a person  
12 is sentenced for a definite time for an offense for which the person may be sentenced  
13 under this section, the person is in legal effect sentenced as required by this section,  
14 said definite time being the maximum period. ~~A~~ Except as provided in s. 973.015,  
15 a defendant convicted of a crime for which the minimum penalty is life shall be  
16 sentenced for life.

17           **SECTION 33** 973.0135 (3) of the statutes is amended to read:

18           973.0135 (3) A person is not subject to this section if the current serious felony  
19 is punishable by death or life imprisonment.

20           **SECTION 34.** 973.014 (1) (intro.) of the statutes is amended to read:

21           973.014 (1) (intro.) Except as provided in sub. (2) and s. 973.015, when a court  
22 sentences a person to life imprisonment for a crime committed on or after July 1,  
23 1988, the court shall make a parole eligibility determination regarding the person  
24 and choose one of the following options:

25           **SECTION 35.** 973.015 of the statutes is renumbered 973.019.

1           **SECTION 36.** 973.015 of the statutes is created to read:

2           **973.015 Sentence of death or life imprisonment for Class AA felony. (1)**

3           (a) Upon conviction of a defendant of a Class AA felony, the court shall conduct a  
4           separate sentencing proceeding to determine whether the defendant should be  
5           sentenced to death or life imprisonment. The trial judge shall conduct the proceeding  
6           before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury  
7           is unable to reconvene for a hearing on the issue of the penalty, the trial judge may  
8           summon a new jury to determine the issue of the imposition of the penalty. If the trial  
9           jury has been waived, or if the defendant pleaded guilty, the court shall conduct the  
10          sentencing proceeding before a jury summoned for that purpose, unless waived by  
11          the defendant.

12          (b) In the proceeding, the court shall admit any evidence that may be relevant  
13          to the sentence regarding any mitigating circumstance. The court shall admit any  
14          other evidence according to the rules of evidence applicable at a criminal trial. The  
15          court shall provide the defendant with a fair opportunity to rebut any hearsay  
16          statements. This subsection does not authorize the introduction of any evidence  
17          secured in violation of the state or federal constitution. The state has the burden of  
18          proof, beyond a reasonable doubt, regarding the existence of aggravating  
19          circumstances. The defendant has the burden of proof, by a preponderance of the  
20          evidence, regarding mitigating circumstances. The court shall permit the state and  
21          the defendant or his or her counsel to present arguments for or against a sentence  
22          of death.

23          **(2)** (a) Unless the defendant waives the right to a jury, the jury shall deliberate  
24          after hearing all the evidence and, by a majority vote, shall render an advisory

1 sentence to the court of life imprisonment or death, based upon the following  
2 matters:

3 1. The existence of aggravating circumstances under sub. (5).

4 2. The existence of mitigating circumstances under sub. (6).

5 (b) If the jury recommends life imprisonment, it may further recommend  
6 restrictions on the defendant's eligibility for parole or recommend that the defendant  
7 not be eligible for parole.

8 (c) Upon the request of the defendant or the state, the court shall explain to the  
9 jury the court's options under sub. (3) (c) to sentence the defendant to life without the  
10 possibility of parole or with delayed parole eligibility.

11 **(3)** (a) Notwithstanding the recommendation of a majority of the jury, the court,  
12 after weighing the aggravating and mitigating circumstances, shall enter a sentence  
13 of life imprisonment or death, but if the court imposes a sentence of death, it shall  
14 set forth in writing its findings upon which the sentence of death is based as to the  
15 facts:

16 1. That sufficient aggravating circumstances exist under sub. (5); and

17 2. That there are insufficient mitigating circumstances under sub. (6) to  
18 outweigh the aggravating circumstances.

19 (b) In each case in which the court imposes the death sentence, the court must  
20 support its determination by specific written findings of fact based upon the  
21 circumstances in subs. (5) and (6) and upon the records of the trial and the sentencing  
22 proceedings. If the court does not make the findings requiring the death sentence,  
23 the court shall impose sentence of life imprisonment. If the court imposes life  
24 imprisonment, it may provide that the sentence is without the possibility of parole  
25 or choose any option under s. 973.014 (1).

1           (4) If a death sentence is imposed, the judgment of conviction and sentence of  
2 death is subject to automatic review by the supreme court within 60 days after  
3 certification by the sentencing court of the entire record, unless the supreme court,  
4 for good cause shown, extends the time for an additional period not to exceed 30 days.  
5 The review by the supreme court has priority over all other cases and shall be heard  
6 in accordance with rules promulgated by the supreme court.

7           (5) The court and jury shall consider one or more of the following as  
8 aggravating circumstances:

9           (a) The Class AA felony was committed by a person under a sentence of  
10 imprisonment.

11           (b) The defendant has been previously convicted of a Class AA felony or any  
12 other crime for which the death sentence may be imposed.

13           (c) The Class AA felony was committed for the purpose of avoiding or  
14 preventing a lawful arrest or effecting an escape from custody.

15           (d) The defendant knowingly created a great risk to many persons.

16           (e) The Class AA felony was committed to disrupt or hinder the lawful exercise  
17 of any governmental function or the enforcement of laws.

18           (f) The defendant intentionally caused bodily harm or mental anguish to the  
19 victim or another before the victim died.

20           (g) During the commission of the offense, the defendant enjoyed or was utterly  
21 indifferent to the suffering of another.

22           (h) The Class AA felony was committed in a cold, calculated and premeditated  
23 manner without any pretense of moral or legal justification.

24           (i) The defendant's attitude or behavior shows a lack of remorse.

1           **(6)** The court and jury shall consider as a mitigating factor any aspect of the  
2 defendant's character, background or record or any of the circumstances of the  
3 offense that the defendant offers as a basis for a sentence other than death.  
4 Mitigating circumstances may include, but are not limited to, any of the following:

5           (a) The defendant has no significant history of prior criminal activity.

6           (b) The Class AA felony was committed while the defendant was under the  
7 influence of extreme mental or emotional disturbance.

8           (c) The defendant was an accomplice in the Class AA felony committed by  
9 another person and the defendant's participation was relatively minor.

10          (d) The defendant acted under extreme duress or under the substantial  
11 domination of another person.

12          (e) The capacity of the defendant to appreciate the criminality of his or her  
13 conduct or to conform his or her conduct to the requirements of law was substantially  
14 impaired.

15          (f) The age of the defendant impaired his or her judgment at the time of the  
16 crime.

17          (g) The defendant cooperated with authorities in apprehending or prosecuting  
18 other participants in the Class AA felony.

19          (h) The attitude or behavior of the defendant shows remorse.

20          **(7)** The court that imposes a sentence of death shall set the date for execution.  
21 The defendant shall be committed to the Wisconsin state prisons pending the  
22 execution of the death sentence.

23          **(8)** The execution of a death sentence shall be by lethal injection.

24          **SECTION 37.** 973.016 of the statutes is created to read:

1           **973.016 Stay of execution of death sentence.** The execution of a death  
2 sentence may be stayed only by the governor or incident to an appeal.

3           **SECTION 38.** 973.017 of the statutes is created to read:

4           **973.017 Execution of death sentence.** The secretary of corrections shall  
5 designate the executioner who shall provide a person subject to a death sentence with  
6 an intravenous injection of one or more substances in a lethal quantity. The  
7 executioner must be a physician or acting under the direction of a physician. A  
8 person is immune from civil or criminal liability for his or her acts or omissions, in  
9 good faith, in regard to a lawful execution under this section. The secretary shall  
10 designate 12 citizens to witness the execution. The secretary shall direct a physician  
11 to be present and to announce when death has occurred. The convicted person may  
12 request that certain additional people be allowed to witness the execution. The  
13 secretary shall grant any such reasonable request. The secretary may allow  
14 representatives of the news media to witness the execution under rules of the  
15 department. No other persons may be allowed to witness the execution.

16           **SECTION 39.** 973.032 (2) (b) of the statutes is amended to read:

17           973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person  
18 under sub. (1) if he or she is convicted of a felony punishable by death or life  
19 imprisonment.

20           **SECTION 40.** 973.09 (1) (c) of the statutes is amended to read:

21           973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable  
22 by death or life imprisonment, the court shall not place the person on probation.

23           **SECTION 41.** 978.07 (1) (c) 1. of the statutes is amended to read:

24           978.07 (1) (c) 1. Any case record of a felony punishable by death or life  
25 imprisonment or a related case, after the defendant's parole eligibility date under s.



1 304.06 (1) or 973.014 or 50 years after the commencement of the action, whichever  
2 occurs later. If there is no parole eligibility date, the district attorney may destroy  
3 the case record after the defendant's death.

4 **SECTION 42. Initial applicability.**

5 (1) This act first applies to offenses committed on the effective date of this  
6 subsection.

7 (END)