



## 1997 ASSEMBLY BILL 291

April 17, 1997 - Introduced by Representatives GOETSCH, LADWIG, PORTER, ZIEGELBAUER, MUSSER, F. LASEE, KELSO, GREEN, SERATTI and ALBERS, cosponsored by Senators DRZEWIECKI and BUETTNER. Referred to Committee on Criminal Justice and Corrections.

1     **AN ACT to renumber and amend** 939.62 (2) and 939.62 (2m) (b); **to amend**  
2             302.11 (1m), 303.065 (1), 304.02 (5), 304.06 (1) (b), 304.071 (2), 939.62 (2m) (d),  
3             939.62 (3) (a), 939.62 (3) (b), 939.626 (3) and 973.014 (2); and **to create** 938.396  
4             (2) (cm), 939.62 (2) (a) 2., 939.62 (2) (a) 4., 939.62 (2m) (b) 2., 939.623 (3), 939.624  
5             (3) and 939.626 (2m) of the statutes; **relating to:** using delinquency  
6             adjudications for purposes of certain penalty enhancers and providing  
7             penalties.

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

Under current law, a person who has been convicted of a crime and who has certain prior criminal convictions may be sentenced as a repeater or a persistent repeater. A person is a repeater if, during the 5-year period immediately preceding the commission of the crime for which he or she is being sentenced, the person was convicted of either one felony or 3 misdemeanors. If a person is a repeater, the maximum imprisonment for the crime for which he or she is being sentenced may be increased by a certain number of years, depending on the crime. A person is a persistent repeater under current law if he or she has 2 convictions for any of certain serious felonies and is then convicted a 3rd time for another serious felony (the so-called "3 strikes, you're out" law). A person who is a persistent repeater must be sentenced to life without parole.

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In addition, current law provides minimum or increased penalties for persons who commit a certain type of crime after having been previously convicted of that same type of crime. A person who has one or more prior convictions for a serious sex crime and who is subsequently convicted of committing another serious sex crime must be sentenced to at least 5 years' imprisonment and may not be placed on probation. Likewise, a person who has one or more prior convictions for a serious violent crime and who is subsequently convicted of committing another serious violent crime must be sentenced to at least 5 years' imprisonment and may not be placed on probation. Finally, if a person has one or more prior convictions for a child sex crime and he or she is subsequently convicted of committing another child sex crime, the maximum term of imprisonment for the subsequent child sex crime may be increased by not more than 10 years.

This bill provides that delinquency adjudications may be used like prior convictions for the purpose of determining whether a person is a repeater or persistent repeater and for the purpose of imposing minimum or increased penalties in cases involving serious sex crimes, serious violent crimes and child sex crimes. Specifically, the changes that the bill makes are as follows:

1. The bill provides that a person is a repeater if he or she has been: 1) adjudicated delinquent for any felony; or 2) adjudicated delinquent for one misdemeanor and convicted for 2 misdemeanors as an adult. Like prior convictions under current law, the delinquency adjudication must have occurred within 5 years of the commission of the crime for which the person is being sentenced.

2. The bill provides that, under the "3 strikes, you're out" law, one or more delinquency adjudications for any of the serious felonies covered by the law may count as one "strike", and one "strike" only. Thus, under the bill, a person with one or more delinquency adjudications for serious felonies will be a persistent repeater only if he or she also has two convictions for serious felonies as an adult. In addition, a person's delinquency adjudications can no longer be considered after a person reaches the age of 25; instead, a person 25 years of age or older is a persistent repeater only if he or she satisfies the requirements under current law.

3. Under the bill, if a person has a delinquency adjudication for a serious sex crime, a serious violent crime or a child sex crime and he or she subsequently is convicted of committing another such crime, the person will be subject to the minimum or increased penalties provided under current law. As with repeaters and persistent repeaters, a person's delinquency adjudications can no longer be considered after a person reaches the age of 25; instead, a person 25 years of age or older will be subject to the minimum or increased penalties for a serious sex crime, a serious violent crime or a child sex crime only if he or she satisfies the requirements under current law.

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:***

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

2           302.11 **(1m)** An inmate serving a life term is not entitled to mandatory release.  
3           Except as provided in ss. 939.62 (2m) (c) and 973.014, the parole commission may  
4           parole the inmate as specified in s. 304.06 (1).

5           **SECTION 2.** 303.065 (1) of the statutes is amended to read:

6           303.065 **(1)** The department may grant work release privileges to any person  
7           incarcerated within the state prisons, except that no person serving a life sentence  
8           may be considered for work release until he or she has reached parole eligibility  
9           under s. 304.06 (1) (b) or 973.014 (1) (a) or (b), whichever is applicable, and no person  
10          serving a life sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) may be considered  
11          for work release.

12          **SECTION 3.** 304.02 (5) of the statutes is amended to read:

13          304.02 **(5)** Notwithstanding subs. (1) to (3), a prisoner who is serving a life  
14          sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) is not eligible for release to parole  
15          supervision under this section.

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

17          304.06 **(1)** (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2) or  
18          973.0135, the parole commission may parole an inmate of the Wisconsin state  
19          prisons or any felon or any person serving at least one year or more in a county house  
20          of correction or a county reforestation camp organized under s. 303.07, when he or  
21          she has served 25% of the sentence imposed for the offense, or 6 months, whichever  
22          is greater. Except as provided in s. 939.62 (2m) (c) or 973.014, the parole commission  
23          may parole an inmate serving a life term when he or she has served 20 years, as  
24          modified by the formula under s. 302.11 (1) and subject to extension using the  
25          formulas under s. 302.11 (2). The person serving the life term shall be given credit

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1 for time served prior to sentencing under s. 973.155, including good time under s.  
2 973.155 (4). The secretary may grant special action parole releases under s. 304.02.  
3 The department or the parole commission shall not provide any convicted offender  
4 or other person sentenced to the department's custody any parole eligibility or  
5 evaluation until the person has been confined at least 60 days following sentencing.

6 **SECTION 5.** 304.071 (2) of the statutes is amended to read:

7 304.071 (2) If a prisoner is not eligible for parole under s. 939.62 (2m) (c), 961.49  
8 (2), 973.014 (1) (c) or 973.032 (5), he or she is not eligible for parole under this section.

9 **SECTION 6.** 938.396 (2) (cm) of the statutes is created to read:

10 938.396 (2) (cm) Upon request of a court of criminal jurisdiction or a district  
11 attorney to review court records for the purpose of investigating and determining  
12 whether a person is a repeater under s. 939.62 (2) (a) 2. or 4. or a persistent repeater  
13 under s. 939.62 (2m) (b) 2. or whether a person is subject to increased penalties under  
14 s. 939.623 (3), 939.624 (3) or 939.626 (2m), the court assigned to exercise jurisdiction  
15 under this chapter and ch. 48 shall open for inspection by authorized representatives  
16 of the requester the records of the court relating to any juvenile who has been  
17 adjudicated delinquent for an act that would be a felony if committed by an adult.

18 **SECTION 7.** 939.62 (2) of the statutes is renumbered 939.62 (2) (a) (intro.) and  
19 amended to read:

20 939.62 (2) (a) (intro.) The actor is a repeater if one of the following applies:

21 1. The actor was convicted of a felony during the 5-year period immediately  
22 preceding the commission of the crime for which the actor presently is being  
23 sentenced, or if the,

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1           3. The actor was convicted of a misdemeanor on 3 separate occasions during  
2           ~~that same period, which convictions the 5-year period immediately preceding the~~  
3           ~~commission of the crime for which the actor presently is being sentenced.~~

4           (b) To count as an adjudication or conviction under par. (a), the adjudication or  
5           ~~conviction must~~ remain of record and unreversed. It is immaterial that disposition  
6           ~~or~~ sentence was stayed, withheld or suspended, or that the actor was pardoned,  
7           unless such pardon was granted on the ground of innocence. In computing the  
8           preceding 5-year period under par. (a), time which the actor spent in actual  
9           confinement under a juvenile dispositional order or serving a criminal sentence shall  
10          be excluded.

11          **SECTION 8.** 939.62 (2) (a) 2. of the statutes is created to read:

12          939.62 **(2)** (a) 2. During the 5-year period immediately preceding the  
13          commission of the crime for which the actor is presently being sentenced, the actor  
14          was adjudicated delinquent for an act that if committed by an adult in this state  
15          would be a felony.

16          **SECTION 9.** 939.62 (2) (a) 4. of the statutes is created to read:

17          939.62 **(2)** (a) 4. During the 5-year period immediately preceding the  
18          commission of the crime for which the actor is presently being sentenced, the actor  
19          was adjudicated delinquent on one occasion for an act that if committed by an adult  
20          in this state would be a misdemeanor and was also convicted of a misdemeanor on  
21          2 separate occasions.

22          **SECTION 10.** 939.62 (2m) (b) of the statutes is renumbered 939.62 (2m) (b)  
23          (intro.) and amended to read:

24          939.62 **(2m)** (b) (intro.) The actor is a persistent repeater if he or she one of the  
25          following applies:

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1           1. The actor has been convicted of a serious felony on 2 or more separate  
2 occasions at any time preceding the serious felony for which he or she presently is  
3 being sentenced under ch. 973, which convictions remain of record and unreversed  
4 and, ~~that~~ of the 2 or more previous convictions, at least one conviction ~~must have~~  
5 occurred before the date of violation of at least one of the other felonies for which the  
6 actor was previously convicted. ~~It~~

7           **(bm)** For purposes of counting a conviction or adjudication under par. (b), it is  
8 immaterial that the sentence or disposition for a previous conviction or for the  
9 adjudication was stayed, withheld or suspended, or that ~~he or she~~ the actor was  
10 pardoned, unless the pardon was granted on the ground of innocence. ~~The~~

11           **(c)** If the actor is a persistent repeater, the term of imprisonment for the felony  
12 for which the persistent repeater presently is being sentenced under ch. 973 is life  
13 imprisonment without the possibility of parole.

14           **SECTION 11.** 939.62 (2m) (b) 2. of the statutes is created to read:

15           **939.62 (2m)** (b) 2. At any time preceding the serious felony for which he or she  
16 presently is being sentenced under ch. 973, the actor has on one occasion been  
17 adjudicated delinquent for an act that if committed by an adult in this state would  
18 be a serious felony and, on a separate occasion, has been convicted of a serious felony.  
19 The violation for which the actor was adjudicated delinquent must have occurred  
20 before the date of violation of the felony for which the actor was convicted, and both  
21 the adjudication and conviction must remain of record and unreversed. This  
22 subdivision does not apply if the actor was 25 years of age or older at the time of the  
23 commission of the crime for which the actor presently is being sentenced under ch.  
24 973.

25           **SECTION 12.** 939.62 (2m) (d) of the statutes is amended to read:

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1           939.62 **(2m)** (d) If a prior conviction or adjudication is being considered as being  
2 covered under par. (a) 4. as comparable to a felony specified under par. (a) 1., 2. or  
3 3., the conviction or adjudication may be counted as a prior conviction or adjudication  
4 under par. (b) only if the court determines, beyond a reasonable doubt, that the  
5 violation relating to that conviction or adjudication would constitute a felony  
6 specified under par. (a) 1., 2. or 3. if committed by an adult in this state.

7           **SECTION 13.** 939.62 (3) (a) of the statutes is amended to read:

8           939.62 **(3)** (a) In case of crimes committed in this state, the terms do not include  
9 motor vehicle offenses under chs. 341 to 349 and, except as provided in subs. (2) (a)  
10 2. and 4. and (2m) (b) 2., offenses handled through proceedings in the court assigned  
11 to exercise jurisdiction under chs. 48 and 938, but otherwise have the meanings  
12 designated in s. 939.60.

13           **SECTION 14.** 939.62 (3) (b) of the statutes is amended to read:

14           939.62 **(3)** (b) In case of crimes committed in other jurisdictions, the terms do  
15 not include those crimes which are equivalent to motor vehicle offenses under chs.  
16 341 to 349 or, except as provided in subs. (2) (a) 2. and 4. and (2m) (b) 2., to offenses  
17 handled through proceedings in the court assigned to exercise jurisdiction under chs.  
18 48 and 938. Otherwise, felony means a crime which under the laws of that  
19 jurisdiction carries a prescribed maximum penalty of imprisonment in a prison or  
20 penitentiary for one year or more. Misdemeanor means a crime which does not carry  
21 a prescribed maximum penalty sufficient to constitute it a felony and includes crimes  
22 punishable only by a fine.

23           **SECTION 15.** 939.623 (3) of the statutes is created to read:

24           939.623 **(3)** (a) If a person has been adjudicated delinquent for one or more  
25 serious sex crimes and subsequently commits a serious sex crime, the court shall

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1 sentence the person to not less than 5 years' imprisonment, but otherwise the  
2 penalties for the crime apply, subject to any applicable penalty enhancement. The  
3 court shall not place the person on probation.

4 (b) Paragraph (a) does not apply if the person was 25 years of age or older at  
5 the time he or she committed the subsequent serious sex crime.

6 (c) If a person is sentenced under par. (a), a court may not also impose an  
7 enhanced sentence under sub. (2).

8 **SECTION 16.** 939.624 (3) of the statutes is created to read:

9 939.624 (3) (a) If a person has been adjudicated delinquent for one or more  
10 serious violent crimes or crimes punishable by life imprisonment and subsequently  
11 commits a serious violent crime, the court shall sentence the person to not less than  
12 5 years' imprisonment, but otherwise the penalties for the crime apply, subject to any  
13 applicable penalty enhancement. The court shall not place the person on probation.

14 (b) Paragraph (a) does not apply if the person was 25 years of age or older at  
15 the time he or she committed the subsequent serious violent crime.

16 (c) If a person is sentenced under par. (a), a court may not also impose an  
17 enhanced sentence under sub. (2).

18 **SECTION 17.** 939.626 (2m) of the statutes is created to read:

19 939.626 (2m) (a) If a person has been adjudicated delinquent for one or more  
20 child sex crimes and subsequently commits a child sex crime, the maximum term of  
21 imprisonment for the current child sex crime may be increased by not more than 10  
22 years.

23 (b) Paragraph (a) does not apply if the person was 25 years of age or older at  
24 the time he or she committed the subsequent child sex crime.



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1 (c) If a person is sentenced under par. (a), a court may not also impose an  
2 enhanced sentence under sub. (2).

3 **SECTION 18.** 939.626 (3) of the statutes is amended to read:

4 939.626 (3) If a person is sentenced under ~~this section~~ sub. (2) or (2m), a court  
5 may not also impose an enhanced sentence under s. 939.62.

6 **SECTION 19.** 973.014 (2) of the statutes is amended to read:

7 973.014 (2) When a court sentences a person to life imprisonment under s.  
8 939.62 (2m) (c), the court shall provide that the sentence is without the possibility  
9 of parole.

10 **SECTION 20. Initial applicability.**

11 (1) This act applies to offenses committed on or after the effective date of this  
12 subsection, but does not preclude the counting of adjudications of delinquency for  
13 offenses that occurred before the effective date of this subsection.

14 (END)