



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5495/1
EAW:emw

2021 ASSEMBLY BILL 829

January 7, 2022 - Introduced by Representatives BRANDTJEN, ALLEN, BEHNKE, GUNDRUM, JAMES, KUGLITSCH, MAGNAFICI, MURPHY, PENTERMAN, SANFELIPPO and THIESFELDT, cosponsored by Senators STROEBEL, JACQUE and NASS. Referred to Committee on Judiciary.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to amend* 973.12 (1) and 973.12 (2); and *to create* 939.6197 of the
2 statutes; **relating to:** mandatory minimum sentence for three or more
3 convictions for retail theft and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill imposes a mandatory minimum sentence of incarceration for 180 days for a third conviction for the offense of retail theft that occurs within 10 years of the previous two convictions. Under current law, depending on the circumstances, retail theft can be a Class A misdemeanor, punishable by up to 9 months of imprisonment, or a Class G, H, or I felony, punishable by up to 10 years, 6 years, or 3.5 years of imprisonment, respectively.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

4 **SECTION 1.** 939.6197 of the statutes is created to read:
5 **939.6197 Mandatory minimum sentence for repeat retail theft.** If a
6 person is convicted for a violation of s. 943.50 and has 2 or more prior convictions for

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1 violations of s. 943.50 for acts that were committed on separate days no more than
2 10 years before the date that the person committed the act for which the person is
3 sentenced under this section, the court shall sentence the person to a term of
4 confinement in jail or prison for not less than 180 days, but otherwise the penalties
5 for the crime apply, subject to any applicable penalty enhancement. The court may
6 not place the defendant on probation.

7 **SECTION 2.** 973.12 (1) of the statutes is amended to read:

8 973.12 (1) Whenever a person charged with a crime will be a repeater or a
9 persistent repeater under s. 939.62 or subject to a penalty under s. 939.6195 or
10 939.6197 if convicted, any applicable prior convictions may be alleged in the
11 complaint, indictment or information or amendments so alleging at any time before
12 or at arraignment, and before acceptance of any plea. The court may, upon motion
13 of the district attorney, grant a reasonable time to investigate possible prior
14 convictions before accepting a plea. If the prior convictions are admitted by the
15 defendant or proved by the state, he or she shall be subject to sentence under s.
16 939.6195, 939.6197, or 939.62 unless he or she establishes that he or she was
17 pardoned on grounds of innocence for any crime necessary to constitute him or her
18 a repeater or a persistent repeater. An official report of the F.B.I. or any other
19 governmental agency of the United States or of this or any other state shall be prima
20 facie evidence of any conviction or sentence therein reported. Any sentence so
21 reported shall be deemed prima facie to have been fully served in actual confinement
22 or to have been served for such period of time as is shown or is consistent with the
23 report. The court shall take judicial notice of the statutes of the United States and
24 foreign states in determining whether the prior conviction was for a felony or a
25 misdemeanor.

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1 **SECTION 3.** 973.12 (2) of the statutes is amended to read:

2 973.12 (2) In every case of sentence under s. 939.6195, 939.6197, or 939.62, the
3 sentence shall be imposed for the present conviction, ~~but if.~~ If the court indicates in
4 passing sentence how much thereof is imposed because the defendant is a repeater,
5 it shall not constitute reversible error, but the combined terms shall be construed as
6 a single sentence for the present conviction.

7 **SECTION 4. Initial applicability.**

8 (1) This act first applies to a person who violates s. 943.50 on the effective date
9 of this subsection, but does not preclude counting violations committed before the
10 effective date of this subsection as prior violations for the purposes of sentencing a
11 person under s. 939.6197.

12

(END)