



State of Wisconsin
2021 - 2022 LEGISLATURE

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2021 SENATE BILL 862

January 13, 2022 - Introduced by Senators JOHNSON, ROYS, LARSON and WIRCH, cosponsored by Representatives NOVAK, SPIROS, BOWEN, ARMSTRONG, ANDRACA, BALDEH, BILLINGS, BROSTOFF, CONSIDINE, DRAKE, GOYKE, JAMES, KITCHENS, MOORE OMOKUNDE, MURSAU, L. MYERS, NEUBAUER, RIEMER, ROZAR, SCHRAA, SHELTON, SNODGRASS, SPREITZER, STUBBS, SUBECK and VRUWINK. Referred to Committee on Veterans and Military Affairs and Constitution and Federalism.

1 **AN ACT** *to amend* 302.113 (2), 302.114 (1), 302.114 (2), 303.065 (1) (b) 1., 304.02
2 (5), 304.06 (1) (b), 304.071 (2), 939.62 (2m) (b) (intro.), 950.04 (1v) (g), 950.04 (1v)
3 (gm), 950.04 (1v) (m), 973.01 (3), 973.01 (4), 973.014 (1) (intro.), 973.014 (1g) (a)
4 (intro.), 973.15 (2m) (a) 1. and 978.07 (1) (c) 1.; and **to create** 302.114 (5) (cs),
5 304.06 (1) (a) 3., 304.06 (1) (bc), 973.014 (3), 973.017 (2c), 973.018 and 977.05
6 (4) (i) 10. of the statutes; **relating to:** sentencing for crimes committed by a
7 person who is under the age of 18.

Analysis by the Legislative Reference Bureau

This bill creates a sentence adjustment procedure for a “youthful offender,” defined under the bill as an individual who committed the crime for which the individual is being sentenced before he or she turned 18 years old. This bill also prohibits a court from sentencing a youthful offender to life imprisonment without the possibility of parole or release to extended supervision, and creates new mitigating factors that a court must consider when sentencing a youthful offender. Finally, this bill eliminates statutory mandatory life sentences without parole or release to extended supervision for youthful offenders in order to align with federal constitutional law.

Sentence adjustment procedure for youthful offenders

This bill creates a new procedure for an incarcerated youthful offender to petition the sentencing court for a sentence adjustment after serving 15 years of his

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or her sentence in prison, or, if the person is serving a sentence for a crime that is a felony that caused the death of a person or is a felony sexual assault of a child, after serving 20 years in prison. Under the bill, one year before the youthful offender is eligible to petition for the sentence adjustment, the Department of Corrections is required to notify the youthful offender of his or her eligibility. If the youthful offender files a petition, the court is required to hold a hearing on the petition and is required to consider the sentencing factors on mitigation for youth created under the bill in determining whether to adjust the youthful offender's sentence. Notice of the youthful offender's eligibility for a sentence adjustment hearing, of the petition, and of the hearing must be sent to the district attorney and the crime victim. The youthful offender has the right to present evidence and cross-examine witnesses at the hearing and the crime victim has the right to be heard.

If the court finds that the interests of justice warrant a sentence adjustment, the court may reduce the term of confinement in prison for the youthful offender and may modify the conditions of extended supervision. If the youthful offender is serving an indeterminate sentence or a life sentence without parole or release to extended supervision, the court may convert the sentence to a bifurcated sentence and set a date on which the petitioner will be eligible for release to extended supervision. Under the bill, the sentencing court may reduce the overall sentence length, but may not impose a term of extended supervision that is less than three years. Under the bill, if the youthful offender is serving multiple sentences concurrently or consecutively, the concurrent or consecutive sentences are treated as a single sentence for the purposes of the sentence adjustment procedure.

If the court denies the petition under the bill, or adjusts the sentence to provide a date for release to extended supervision that is more than three years after the hearing, the court must provide in writing the reasons for the denial or the delayed release eligibility date. A youthful offender may petition again after three years. Under the bill, DOC is required to send a notice regarding the petition process to all youthful offenders who are eligible to petition for a sentence adjustment at the time the bill becomes law or who will become eligible within one year of that date. The bill also specifies that DOC must consider an individual's status as a youthful offender and proximity to a sentence adjustment hearing date when determining the individual's eligibility for available programming.

Under current law, an inmate who is serving a bifurcated sentence for a crime other than a Class B felony can petition to reduce the confinement portion of his or her bifurcated sentence after serving a certain proportion of the sentence. An inmate who is serving a life sentence can petition to be released to extended supervision or parole after serving at least 20 years of his or her sentence or after another date set by the sentencing court.

Sentencing; mitigating factors

Under current law, when a court makes a sentencing decision, it must consider certain factors, including whether there were any aggravating factors present. Under this bill, when a court is sentencing a youthful offender, it must also consider mitigating factors related to the age and maturity of the youthful offender. Under the bill, these mitigating factors must also be considered when a court hears a

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petition for a sentence adjustment for a youthful offender, and must be considered by the Parole Commission when determining whether to parole a youthful offender.

Eliminating life sentences without parole or extended supervision for youthful offenders

Under current law, if a person is sentenced to a term of life imprisonment, the sentencing court must either set a date on which the person is eligible for release to parole or extended supervision, or determine that the person is not eligible for release to parole or extended supervision. Under this bill, when the court sentences a youthful offender to life imprisonment, it must set a date on which the person is eligible for release to parole or extended supervision.

Under current law, if a person is convicted of a serious felony on three separate occasions or a serious child sex offense on two separate occasions, the person is a repeat offender subject to a mandatory life sentence without the possibility of parole or extended supervision. However, in *Miller v. Alabama*, 567 U.S. 460 (2012), the U.S. Supreme Court held that imposing a mandatory life sentence without parole for a juvenile constitutes cruel and unusual punishment and therefore violates the eighth amendment of the U.S. Constitution. This bill clarifies that the statutory mandatory sentence of life imprisonment without the possibility of parole or extended supervision for repeat offenders does not apply to youthful offenders.

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:

1 **SECTION 1.** 302.113 (2) of the statutes is amended to read:

2 302.113 (2) Except as provided in subs. (3) and (9), an inmate subject to this
3 section is entitled to release to extended supervision after he or she has served the
4 term of confinement in prison portion of the sentence imposed under s. 973.01, as
5 modified by the sentencing court under sub. (9g) or s. 302.045 (3m) (b) 1., 302.05 (3)
6 (c) 2. a., 973.018, 973.195 (1r), or 973.198, if applicable.

7 **SECTION 2.** 302.114 (1) of the statutes is amended to read:

8 302.114 (1) An inmate is subject to this section if he or she is serving a life
9 sentence imposed under s. 973.014 (1g) (a) 1. or 2. or (3) (c). An inmate serving a life

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1 sentence under s. 939.62 (2m) or 973.014 (1g) (a) 3. is not eligible for release to
2 extended supervision under this section.

3 **SECTION 3.** 302.114 (2) of the statutes is amended to read:

4 302.114 (2) Except as provided in subs. (3) and (9), an inmate subject to this
5 section may petition the sentencing court for release to extended supervision after
6 he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a)
7 1., or after he or she has reached the extended supervision eligibility date set by the
8 court, if the inmate was sentenced under s. 973.014 (1g) (a) 2. or (3) (c).

9 **SECTION 4.** 302.114 (5) (cs) of the statutes is created to read:

10 302.114 (5) (cs) If the inmate is a youthful offender, as defined in s. 973.014 (3)
11 (a), the court shall consider the mitigating factors under s. 973.017 (2c) (a) to (o) and
12 any relevant information described in s. 973.018 (5) (b) when determining eligibility
13 for release to extended supervision under this subsection.

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

15 303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence
16 specified in subd. 2., may be considered for work release only after he or she has
17 reached parole eligibility under s. 304.06 (1) (b) or 973.014 (1) (a) or (b) or (3) (b),
18 whichever is applicable, or he or she has reached his or her extended supervision
19 eligibility date under s. 302.114 (9) (am) or 973.014 (1g) (a) 1. or 2. or (3) (c), whichever
20 is applicable.

21 **SECTION 6.** 304.02 (5) of the statutes is amended to read:

22 304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
23 sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) ~~or~~, (1g), or (3) (c) is not eligible for
24 release to parole supervision under this section.

25 **SECTION 7.** 304.06 (1) (a) 3. of the statutes is created to read:

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1 304.06 (1) (a) 3. “Youthful offender” has the meaning given in s. 973.014 (3) (a).

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

3 304.06 (1) (b) Except as provided in s. 961.49 (2), 1999 stats., sub. (1m) or s.
4 302.045 (3), 302.05 (3) (b), 973.01 (6), ~~or 973.0135,~~ or 973.018, the parole commission
5 may parole an inmate of the Wisconsin state prisons or any felon or any person
6 serving at least one year or more in a county house of correction or a county
7 rehabilitation camp organized under s. 303.07, when he or she has served 25 percent
8 of the sentence imposed for the offense, or 6 months, whichever is greater. Except
9 as provided in s. 939.62 (2m) (c) or 973.014 (1) (b) or (c), ~~(1g) or (2),~~ or (3) (b) or (c),
10 the parole commission may parole an inmate serving a life term when he or she has
11 served 20 years, as modified by the formula under s. 302.11 (1) and subject to
12 extension under s. 302.11 (1q) and (2), if applicable. The person serving the life term
13 shall be given credit for time served prior to sentencing under s. 973.155, including
14 good time under s. 973.155 (4). The secretary may grant special action parole
15 releases under s. 304.02. The department or the parole commission shall not provide
16 any convicted offender or other person sentenced to the department’s custody any
17 parole eligibility or evaluation until the person has been confined at least 60 days
18 following sentencing.

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

20 304.06 (1) (bc) 1. If the inmate who applies for parole under this subsection is
21 a youthful offender, the parole commission shall consider the mitigating factors
22 under s. 973.017 (2c) (a) to (o) and any relevant information described in s. 973.018
23 (5) (b) when determining whether to release the inmate to parole.

24 2. A youthful offender has the right to attend and may be represented by
25 counsel at any interviews or hearings concerning his or her application for parole.

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1 3. If the parole commission denies a youthful offender's application for parole,
2 the parole commission shall provide in writing the reasons for the denial, and shall
3 set a date for reconsideration that is no more than 3 years after the date of the
4 hearing.

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

6 304.071 (2) If a prisoner is not eligible for parole under s. 961.49 (2), 1999 stats.,
7 or s. 939.62 (2m) (c), 973.01 (6), 973.014 (1) (c) ~~or (1g), or (3) (c), 973.018,~~ or 973.032
8 (5), he or she is not eligible for parole under this section.

9 **SECTION 11.** 939.62 (2m) (b) (intro.) of the statutes is amended to read:

10 939.62 (2m) (b) (intro.) The actor is a persistent repeater if the offense for which
11 he or she is presently being sentenced was committed on or after the date he or she
12 attained the age of 18 and one of the following applies:

13 **SECTION 12.** 950.04 (1v) (g) of the statutes is amended to read:

14 950.04 (1v) (g) To have reasonable attempts made to notify the victim of
15 hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6),
16 938.27 (4m) and (6), 938.273 (2), 971.095 (3) ~~and~~, 972.14 (3) (b), and 973.018 (5).

17 **SECTION 13.** 950.04 (1v) (gm) of the statutes is amended to read:

18 950.04 (1v) (gm) To have reasonable attempts made to notify the victim of
19 petitions for sentence adjustment as provided under s. 973.018 (4) (a) and (e), 973.09
20 (3m), 973.195 (1r) (d), or 973.198.

21 **SECTION 14.** 950.04 (1v) (m) of the statutes is amended to read:

22 950.04 (1v) (m) To provide statements concerning sentencing, disposition, or
23 parole, as provided under ss. 304.06 (1) (e), 938.32 (1) (b) 1g., 938.335 (3m) (ag), ~~and~~
24 972.14 (3) (a), and 973.018 (5) (d).

25 **SECTION 15.** 973.01 (3) of the statutes is amended to read:

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1 973.01 (3) NOT APPLICABLE TO LIFE SENTENCES. If a person is being sentenced for
2 a felony that is punishable by life imprisonment, he or she is not subject to this
3 section but shall be sentenced under s. 973.014 (1g) or (3).

4 **SECTION 16.** 973.01 (4) of the statutes is amended to read:

5 973.01 (4) NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. A
6 person sentenced to a bifurcated sentence under sub. (1) shall serve the term of
7 confinement in prison portion of the sentence without reduction for good behavior.
8 The term of confinement in prison portion is subject to extension under s. 302.113 (3)
9 and, if applicable, to reduction under s. 302.045 (3m), 302.05 (3) (c) 2. a., 302.113 (9g),
10 973.018, 973.195 (1r), or 973.198.

11 **SECTION 17.** 973.014 (1) (intro.) of the statutes is amended to read:

12 973.014 (1) (intro.) Except as provided in ~~sub.~~ subs. (2) and (3), when a court
13 sentences a person to life imprisonment for a crime committed on or after July 1,
14 1988, but before December 31, 1999, the court shall make a parole eligibility
15 determination regarding the person and choose one of the following options:

16 **SECTION 18.** 973.014 (1g) (a) (intro.) of the statutes is amended to read:

17 973.014 (1g) (a) (intro.) Except as provided in ~~sub.~~ subs. (2) and (3), when a
18 court sentences a person to life imprisonment for a crime committed on or after
19 December 31, 1999, the court shall make an extended supervision eligibility date
20 determination regarding the person and choose one of the following options:

21 **SECTION 19.** 973.014 (3) of the statutes is created to read:

22 973.014 (3) (a) In this subsection, “youthful offender,” when used to refer to a
23 person who is sentenced for an offense, means a person who committed the offense
24 before he or she attained the age of 18 years.

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1 (b) When a court sentences a youthful offender to life imprisonment for a crime
2 committed before December 31, 1999, the court shall set a date on which the youthful
3 offender is eligible for parole.

4 (c) When a court sentences a youthful offender to life imprisonment for a crime
5 committed on or after December 31, 1999, the court shall set a date on which the
6 youthful offender is eligible for release to extended supervision.

7 (d) When sentencing a youthful offender to life imprisonment under par. (b) or
8 (c), the court shall inform the youthful offender of the procedure for petitioning for
9 a sentence adjustment under s. 973.018.

10 (e) When sentencing a youthful offender to life imprisonment under par. (b) or
11 (c), the court shall consider, in addition to all other relevant factors, the factors for
12 mitigation for youth under s. 973.017 (2c).

13 **SECTION 20.** 973.017 (2c) of the statutes is created to read:

14 973.017 (2c) MITIGATION FOR YOUTH. When making a sentencing decision for a
15 person who had not attained the age of 18 years at the time the crime was committed,
16 the court shall consider all of the following mitigating factors with regard to the
17 defendant:

18 (a) Age at the time of the offense.

19 (b) Impetuosity.

20 (c) Family and community environment.

21 (d) Ability to appreciate the risks and consequences of the conduct.

22 (e) Intellectual capacity.

23 (f) The findings of any comprehensive mental health evaluation that is
24 available to the court.

25 (g) Peer or familial pressure.

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- 1 (h) Level of participation in the offense.
- 2 (i) Ability to participate meaningfully in his or her defense.
- 3 (j) Capacity for rehabilitation.
- 4 (k) School records and special education evaluations.
- 5 (L) History of trauma.
- 6 (m) Faith and community involvement.
- 7 (n) Involvement in the child welfare system.
- 8 (o) Any other mitigating factor or circumstance that the court determines is
9 relevant.

10 **SECTION 21.** 973.018 of the statutes is created to read:

11 **973.018 Sentence adjustment for youthful offenders. (1) DEFINITION.** In
12 this section, “youthful offender” has the meaning given in s. 973.014 (3) (a).

13 **(2) SENTENCE ADJUSTMENT; FACTORS.** A court may reduce a term of
14 imprisonment, including life imprisonment, for a youthful offender who is eligible
15 under sub. (3) if the court finds that the interests of justice warrant a reduction. In
16 making its determination, the court shall consider the factors for mitigation for
17 youth under s. 973.017 (2c) and the youthful offender’s subsequent growth, behavior,
18 and rehabilitation while incarcerated.

19 **(3) ELIGIBILITY.** (a) A youthful offender is eligible for a sentence adjustment
20 under this section if one of the following applies:

21 1. The youthful offender is serving a sentence for a crime other than a crime
22 described in subd. 2. and has been incarcerated for no less than 15 years.

23 2. The youthful offender is serving a sentence for a felony that caused the death
24 of a person or a felony sexual assault of a child and has been incarcerated for no less
25 than 20 years.

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1 (b) A youthful offender who has been incarcerated for the requisite amount of
2 time under par. (a) 1. or 2. is eligible for sentence adjustment under this section,
3 regardless of whether the youthful offender is serving a single sentence or concurrent
4 or consecutive sentences. Concurrent and consecutive sentences shall be treated as
5 a single sentence for the purposes of this section.

6 **(4) PETITION FOR SENTENCE ADJUSTMENT.** (a) One year before a youthful offender
7 becomes eligible for a sentence adjustment under this section, the department shall
8 provide written notice of the eligibility to the youthful offender, the sentencing court,
9 the district attorney for the county in which the youthful offender was sentenced, the
10 state public defender, and, in accordance with s. 950.04 (1v) (gm), any victims. Notice
11 under this paragraph shall include notice of the youthful offender's right to counsel
12 and notice that if the youthful offender believes that he or she cannot afford an
13 attorney, the youthful offender may ask the state public defender to represent him
14 or her.

15 (b) A youthful offender has a right to counsel in the sentence adjustment
16 proceedings under this section. The right to counsel begins at the service of notice
17 under par. (a).

18 (c) After service of notice under par. (a) and upon request by the youthful
19 offender or the youthful offender's attorney, the court shall make documents from the
20 sentencing hearing available to the youthful offender or his or her attorney, including
21 the presentence investigation report in accordance with s. 972.15 (4m) and the
22 transcript from the sentencing hearing.

23 (d) A youthful offender may file a petition for a sentence adjustment under this
24 section. The youthful offender shall file the petition and any affidavits and other
25 written support for the petition in the sentencing court no more than 90 days before

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1 the youthful offender's eligibility date. A copy of the petition shall be served on the
2 district attorney in the county in which the youthful offender was sentenced.

3 (e) Upon receipt of a petition under par. (d), the district attorney shall notify
4 any victims of the crime in accordance with s. 950.04 (1v) (gm).

5 **(5) HEARING.** (a) The court shall hold a hearing within 120 days of a petition
6 filed under sub. (4) (d), unless all parties agree to an extension for the hearing date.

7 (b) The court shall consider relevant information, including expert testimony
8 and other information about the youthful offender's participation in any available
9 educational, vocational, volunteer, community service, or other programs, the
10 youthful offender's work reports and psychological evaluations, evidence of the
11 youthful offender's remorse, and the youthful offender's major violations of
12 institutional rules, if any.

13 (c) The youthful offender has the right to attend the hearing, the right to be
14 represented by counsel, and the right to testify, present evidence, and cross-examine
15 witnesses.

16 (d) The victim shall be provided notice of the hearing as required under s.
17 950.04 (1v) (g) and given the opportunity to provide a statement concerning
18 sentencing in accordance with s. 950.04 (1v) (m).

19 (e) A hearing under this subsection shall be recorded.

20 (f) The decision of the court on a petition under sub. (4) is a final adjudication
21 subject to appeal under s. 809.30.

22 **(6) ORDER.** (a) If the court finds that the interests of justice warrant a sentence
23 adjustment, the court may amend the judgment of conviction and adjust the sentence
24 as follows:

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1 1. If the youthful offender is serving a sentence for a crime committed before
2 December 31, 1999, the court may convert an indeterminate sentence to a bifurcated
3 sentence under s. 973.01. If the court converts the indeterminate sentence to a
4 bifurcated sentence, the court shall set a date for release to extended supervision
5 under s. 302.113 that is no later than the original parole eligibility date. The court
6 may also modify the conditions of parole or extended supervision.

7 2. If the youthful offender is serving a bifurcated sentence for a crime
8 committed on or after December 31, 1999, the court may reduce the term of
9 confinement in prison and modify the conditions of extended supervision. The court
10 may also reduce the total length of the bifurcated sentence. Notwithstanding s.
11 973.01 (2) (d), the court shall provide for at least 3 years of extended supervision
12 under s. 302.113.

13 4. If the youthful offender is serving a life sentence, including a life sentence
14 without the possibility of parole or release to extended supervision, the court may
15 convert the sentence to a bifurcated sentence under s. 973.01 or a life sentence under
16 s. 973.014 (3) (c) and set a date for release to extended supervision under s. 302.113
17 or a date of eligibility for release under s. 302.114 and establish conditions for
18 extended supervision accordingly.

19 (b) If the court denies the petition for sentence adjustment or sets a date for
20 release to extended supervision that is more than 3 years after the date of the hearing
21 under this subsection, the court shall provide in writing the reasons for the denial
22 or delayed eligibility for release.

23 **(7) SUBSEQUENT PETITIONS.** A youthful offender is eligible to file a subsequent
24 petition under sub. (4) no earlier than 3 years after a hearing is held under sub. (5),
25 unless the court sets an earlier date.

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1 **(8) ACCESS TO PROGRAMMING.** The department shall consider an individual's
2 status as a youthful offender and the proximity to the date of the individual's
3 eligibility for sentence adjustment under this section when determining the
4 individual's eligibility for available programming.

5 **(9) SENTENCE ADJUSTMENT ON OTHER GROUNDS.** Nothing in this section limits the
6 youthful offender's right to resentencing, sentence adjustment, or sentence
7 modification on other grounds, including under s. 302.113 (9g) or 302.114.

8 **SECTION 22.** 973.15 (2m) (a) 1. of the statutes is amended to read:

9 973.15 **(2m)** (a) 1. "Determinate sentence" means a bifurcated sentence
10 imposed under s. 973.01 or a life sentence under which a person is eligible for release
11 to extended supervision under s. 973.014 (1g) (a) 1. or 2. or (3) (c).

12 **SECTION 23.** 977.05 (4) (i) 10. of the statutes is created to read:

13 977.05 **(4)** (i) 10. Cases involving youthful offenders under s. 973.018.

14 **SECTION 24.** 978.07 (1) (c) 1. of the statutes is amended to read:

15 978.07 **(1)** (c) 1. Any case record of a felony punishable by life imprisonment
16 or a related case, after the defendant's parole eligibility date under s. 304.06 (1) or
17 973.014 (1) or (3) (b) or date of eligibility for release to extended supervision under
18 s. 973.014 (1g) (a) 1. or 2. or (3) (c), whichever is applicable, or 50 years after the
19 commencement of the action, whichever occurs later. If there is no parole eligibility
20 date or no date for release to extended supervision, the district attorney may destroy
21 the case record after the defendant's death.

22 **SECTION 25. Nonstatutory provisions.**

23 (1) No later than the first day of the 6th month beginning after the effective date
24 of this subsection, the department of corrections shall provide written notice under
25 s. 973.018 (4) (a) to all of the following:

