

2005 SENATE BILL 176

April 18, 2005 – Introduced by Senators ROBSON, HANSEN and LEIBHAM, cosponsored by Representatives SHERIDAN, BERCEAU, KAUFERT, HINES and PRIDEMORE. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to renumber* 302.11 (4m); *to renumber and amend* 980.08 (5); *to*
2 *amend* 46.10 (2), 51.42 (3) (aw) 1. d., 302.11 (1), 302.116 (1) (a), 302.116 (2),
3 304.06 (2m) (a), 971.17 (3) (a), 971.17 (3) (e), 971.17 (4) (d), 980.08 (4) (c) and
4 980.08 (6m); and *to create* 302.11 (1g) (b) 3., 302.11 (4m) (b), 304.02 (4t), 304.06
5 (2m) (af), 304.06 (2s), 971.17 (4f), 973.09 (8), 975.10 (1m), 980.08 (4) (b) 3.,
6 980.08 (5) (a) 2. and 980.08 (5) (b) of the statutes; **relating to:** the residence of
7 sex offenders.

Analysis by the Legislative Reference Bureau

Current law restricts where persons who have been convicted of first or second degree sexual assault, first or second degree sexual assault of a child, repeated sexual assault of a child, incest with a child, or child enticement (a “serious sex offense”) may reside if they are living in the community. First, no person who has been convicted of a serious sex offense (a “sex offender”) may be paroled to any county where there is a correctional institution that has a specialized sex offender treatment program, unless that county was the person’s county of residence at the time of the person’s offense. Second, any sex offender who is released to extended supervision must agree, as a condition of extended supervision, to live in a residence that the Department of Corrections (DOC) has approved.

Under this bill, a sex offender who is being placed in the community under the supervision of DOC (through parole, extended supervision, or probation) may not

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establish or reestablish a residence or, if the person is being placed on probation, remain at his or her residence if it is within one mile of the residence of the victim of the serious sex offense that the person has committed. The bill imposes the same restriction on: 1) a person being placed in the community on conditional release after having been found not guilty by reason of mental disease or defect of a serious sex offense; and 2) a person placed on supervised release after having been committed for treatment as a sexually violent person. (In the latter case, the restriction also applies in cases in which the sexually violent person was committed based on an offense other than a serious sex offense, such as kidnapping.) The bill also broadens the definition of “serious sex offense” so that the residency restrictions described above, including those contained in current law, apply to a person who has committed third- or fourth-degree sexual assault or committed sexual exploitation by a therapist.

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.** 46.10 (2) of the statutes is amended to read:
2 46.10 **(2)** Except as provided in subs. (2m) and (14) (b) and (c), any person,
3 including but not limited to a person admitted, committed, or placed under s. 975.01,
4 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,
5 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12), and (13), 55.05, 55.06, 971.14
6 (2) and (5), 971.17 (1), 975.06, and 980.06, receiving care, maintenance, services, and
7 supplies provided by any institution in this state including University of Wisconsin
8 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
9 care, maintenance, services, and supplies, any person receiving care and services
10 from a county department established under s. 51.42 or 51.437 or from a facility
11 established under s. 49.73, and any person receiving treatment and services from a
12 public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4)
13 (e) or 980.08 (5) (c) and the person's property and estate, including the homestead,
14 and the spouse of the person, and the spouse's property and estate, including the

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1 homestead, and, in the case of a minor child, the parents of the person, and their
2 property and estates, including their homestead, and, in the case of a foreign child
3 described in s. 48.839 (1) who became dependent on public funds for his or her
4 primary support before an order granting his or her adoption, the resident of this
5 state appointed guardian of the child by a foreign court who brought the child into
6 this state for the purpose of adoption, and his or her property and estate, including
7 his or her homestead, shall be liable for the cost of the care, maintenance, services,
8 and supplies in accordance with the fee schedule established by the department
9 under s. 46.03 (18). If a spouse, widow, or minor, or an incapacitated person may be
10 lawfully dependent upon the property for ~~their~~ his or her support, the court shall
11 release all or such part of the property and estate from the charges that may be
12 necessary to provide for ~~those persons~~ that person. The department shall make every
13 reasonable effort to notify the liable persons as soon as possible after the beginning
14 of the maintenance, but the notice or the receipt thereof is not a condition of liability.

15 **SECTION 2.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

16 51.42 **(3)** (aw) 1. d. Provide treatment and services that are specified in a
17 conditional release plan approved by a court for a person who is a county resident and
18 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
19 release plan approved by a court under s. 980.06 (2) (c), 1997 stats., or s. 980.08 (5)
20 (d). If the county department provides treatment and services under this
21 subdivision, the department of health and family services shall, from the
22 appropriation under s. 20.435 (2) (bj), pay the county department for the costs of the
23 treatment and services.

24 **SECTION 3.** 302.11 (1) of the statutes is amended to read:

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1 302.11 (1) The warden or superintendent shall keep a record of the conduct of
2 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),
3 (1m), (1q), (1z), (4m) (b), (7), and (10), each inmate is entitled to mandatory release
4 on parole by the department. The mandatory release date is established at
5 two-thirds of the sentence. Any calculations under this subsection or sub. (1q) (b)
6 or (2) (b) resulting in fractions of a day shall be rounded in the inmate's favor to a
7 whole day.

8 **SECTION 4.** 302.11 (1g) (b) 3. of the statutes is created to read:

9 302.11 (1g) (b) 3. Refusal by the inmate, if the inmate is a sex offender, as
10 defined in s. 302.116 (1) (b), to comply with s. 304.06 (2s).

11 **SECTION 5.** 302.11 (4m) of the statutes is renumbered 302.11 (4m) (a).

12 **SECTION 6.** 302.11 (4m) (b) of the statutes is created to read:

13 302.11 (4m) (b) A sex offender, as defined in s. 302.116 (1) (b), is not entitled
14 to mandatory release on parole under this section unless he or she agrees, as a
15 condition of parole, to comply with s. 304.06 (2s).

16 **SECTION 7.** 302.116 (1) (a) of the statutes is amended to read:

17 302.116 (1) (a) "Serious sex offense" means a violation of s. 940.22 (2), 940.225
18 ~~(1) or (2)~~, 948.02 (1) or (2), 948.025, 948.06, or 948.07 or a solicitation, conspiracy, or
19 attempt to commit a violation of s. 940.22 (2), 940.225 ~~(1) or (2)~~, 948.02 (1) or (2),
20 948.025, 948.06, or 948.07.

21 **SECTION 8.** 302.116 (2) of the statutes is amended to read:

22 302.116 (2) As a condition of extended supervision, a sex offender shall live in
23 a residence that the department has approved. The department may not approve a
24 residence that a sex offender is establishing or reestablishing if it is within one mile

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1 of the residence of the victim of the serious sex offense for which the sex offender is
2 serving a sentence.

3 **SECTION 9.** 304.02 (4t) of the statutes is created to read:

4 304.02 **(4t)** Notwithstanding subs. (1) to (3), a sex offender, as defined in s.
5 302.116 (1) (b), may not be paroled under this section unless he or she agrees, as a
6 condition of parole, to comply with s. 304.06 (2s).

7 **SECTION 10.** 304.06 (2m) (a) of the statutes is amended to read:

8 304.06 **(2m)** (a) In this subsection, “serious sex offense” means a violation of
9 s. 940.22 (2), 940.225 (1) ~~or (2)~~, 948.02 (1) or (2), 948.025, 948.06, or 948.07 or a
10 solicitation, conspiracy, or attempt to commit a violation of s. 940.22 (2), 940.225 (1)
11 ~~or (2)~~, 948.02 (1) or (2), 948.025, 948.06, or 948.07.

12 **SECTION 11.** 304.06 (2m) (af) of the statutes is created to read:

13 304.06 **(2m)** (af) Neither the parole commission nor the department may parole
14 a prisoner serving a sentence for a serious sex offense unless he or she agrees, as a
15 condition of parole, comply with s. 304.06 (2s).

16 **SECTION 12.** 304.06 (2s) of the statutes is created to read:

17 304.06 **(2s)** As a condition of parole, a person serving a sentence for a serious
18 sex offense may not establish or reestablish a residence that is within one mile of the
19 residence of the victim of that offense.

20 **SECTION 13.** 971.17 (3) (a) of the statutes is amended to read:

21 971.17 **(3)** (a) An order for commitment under this section shall specify either
22 institutional care or conditional release. The court shall order institutional care if
23 it finds by clear and convincing evidence that conditional release of the person would
24 pose a significant risk of bodily harm to himself or herself or to others or of serious
25 property damage. If or that the person refuses to comply with sub. (4f), if applicable.

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1 ~~Otherwise, the court does not make this finding, it shall order conditional release.~~
2 In determining whether ~~commitment shall be for institutional care or conditional~~
3 ~~release~~ the person would pose a significant risk of bodily harm to himself or herself
4 or to others or of serious property damage, the court may consider, without limitation
5 because of enumeration, the nature and circumstances of the crime, the person's
6 mental history and present mental condition, where the person will live, how the
7 person will support himself or herself, what arrangements are available to ensure
8 that the person has access to and will take necessary medication, and what
9 arrangements are possible for treatment beyond medication.

10 **SECTION 14.** 971.17 (3) (e) of the statutes is amended to read:

11 971.17 (3) (e) An order for conditional release places the person in the custody
12 and control of the department of health and family services. A conditionally released
13 person is subject to the conditions set by the court ~~and~~, to the rules of the department
14 of health and family services, and, if applicable, to sub. (4f). Before a person is
15 conditionally released by the court under this subsection, the court shall so notify the
16 municipal police department and county sheriff for the area where the person will
17 be residing. The notification requirement under this paragraph does not apply if a
18 municipal department or county sheriff submits to the court a written statement
19 waiving the right to be notified. If the department of health and family services
20 alleges that a released person has violated any condition or rule, or that the safety
21 of the person or others requires that conditional release be revoked, he or she may
22 be taken into custody under the rules of the department. The department of health
23 and family services shall submit a statement showing probable cause of the
24 detention and a petition to revoke the order for conditional release to the committing
25 court and the regional office of the state public defender responsible for handling

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1 cases in the county where the committing court is located within 48 hours after the
2 detention. The court shall hear the petition within 30 days, unless the hearing or
3 time deadline is waived by the detained person. Pending the revocation hearing, the
4 department of health and family services may detain the person in a jail or in a
5 hospital, center or facility specified by s. 51.15 (2). The state has the burden of
6 proving by clear and convincing evidence that any rule or condition of release has
7 been violated, or that the safety of the person or others requires that conditional
8 release be revoked. If the court determines after hearing that any rule or condition
9 of release has been violated, or that the safety of the person or others requires that
10 conditional release be revoked, it may revoke the order for conditional release and
11 order that the released person be placed in an appropriate institution under s. 51.37
12 (3) until the expiration of the commitment or until again conditionally released
13 under this section.

14 **SECTION 15.** 971.17 (4) (d) of the statutes is amended to read:

15 971.17 (4) (d) The court, without a jury, shall hear the petition within 30 days
16 after the report of the court-appointed examiner is filed with the court, unless the
17 petitioner waives this time limit. Expenses of proceedings under this subsection
18 shall be paid as provided under s. 51.20 (18). The court shall grant the petition unless
19 it finds by clear and convincing evidence that the person would pose a significant risk
20 of bodily harm to himself or herself or to others or of serious property damage if
21 conditionally released. In making this determination or that the person refuses to
22 comply with sub. (4f), if applicable. In determining whether the person would pose
23 a significant risk of bodily harm to himself or herself or to others or of serious
24 property damage, the court may consider, without limitation because of
25 enumeration, the nature and circumstances of the crime, the person's mental history

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1 and present mental condition, where the person will live, how the person will support
2 himself or herself, what arrangements are available to ensure that the person has
3 access to and will take necessary medication, and what arrangements are possible
4 for treatment beyond medication.

5 **SECTION 16.** 971.17 (4f) of the statutes is created to read:

6 **971.17 (4f) RESIDENCY OF SEX OFFENDERS ON CONDITIONAL RELEASE.** A person who
7 has been found not guilty by reason of mental disease or defect of a serious sex
8 offense, as defined in s. 302.116 (1) (a), and who is conditionally released under sub.
9 (3) or (4) (e) may not, as a condition of the person's release, establish or reestablish
10 a residence that is within one mile of the residence of the victim of that offense.

11 **SECTION 17.** 973.09 (8) of the statutes is created to read:

12 **973.09 (8)** If the court places a person on probation for a serious sex offense,
13 as defined in s. 302.116 (1) (a), the court shall prohibit the probationer, as a condition
14 of probation, from moving to a residence that is within one mile of the residence of
15 the victim of that offense. If, at the time he or she is placed on probation, the
16 probationer resides within one mile of the residence of the victim, the court shall
17 require the probationer, as a condition of probation, to move to a residence that is at
18 least one mile from the residence of the victim.

19 **SECTION 18.** 975.10 (1m) of the statutes is created to read:

20 **975.10 (1m)** A person who is released on parole under sub. (1) may not establish
21 or reestablish a residence that is within one mile of the residence of the victim of any
22 crime that formed a basis for the person's commitment under this chapter. A person
23 may not be released on parole under sub. (1) unless he or she agrees to comply with
24 this prohibition as a condition of parole.

25 **SECTION 19.** 980.08 (4) (b) 3. of the statutes is created to read:

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1 980.08 (4) (b) 3. That the person who is the subject of the petition refuses to
2 comply with sub. (5) (a) 2.

3 **SECTION 20.** 980.08 (4) (c) of the statutes is amended to read:

4 980.08 (4) (c) In making a decision under par. (b) 1. or 2., the court may consider,
5 without limitation because of enumeration, the nature and circumstances of the
6 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),
7 the person's mental history and present mental condition, where the person will live,
8 how the person will support himself or herself, and what arrangements are available
9 to ensure that the person has access to and will participate in necessary treatment,
10 including pharmacological treatment using an antiandrogen or the chemical
11 equivalent of an antiandrogen if the person is a serious child sex offender. A decision
12 under par. (b) 1. or 2. on a petition filed by a person who is a serious child sex offender
13 may not be made based on the fact that the person is a proper subject for
14 pharmacological treatment using an antiandrogen or the chemical equivalent of an
15 antiandrogen or on the fact that the person is willing to participate in
16 pharmacological treatment using an antiandrogen or the chemical equivalent of an
17 antiandrogen.

18 **SECTION 21.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) 1. and
19 amended to read:

20 980.08 (5) (a) 1. If the court finds that the person is appropriate for supervised
21 release, the court shall notify the department. The Subject to subd. 2., the
22 department shall make its best effort to arrange for placement of the person in a
23 residential facility or dwelling that is in the person's county of residence, as
24 determined by the department under s. 980.105. ~~The department and the county~~
25 ~~department under s. 51.42 in the county of residence of the person shall prepare a~~

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1 ~~plan that identifies the treatment and services, if any, that the person will receive~~
2 ~~in the community. The plan shall address the person's need, if any, for supervision,~~
3 ~~counseling, medication, community support services, residential services, vocational~~
4 ~~services, and alcohol or other drug abuse treatment.~~ In developing a plan for where
5 the person may reside while on supervised release, the department shall consider the
6 proximity of any potential placement to the residence of other persons on supervised
7 release and to the residence of persons who are in the custody of the department of
8 corrections and regarding whom a sex offender notification bulletin has been issued
9 to law enforcement agencies under s. 301.46 (2m) (a) or (am).

10 (c) The plan prepared under par. (b) shall address the person's need, if any, for
11 supervision, counseling, medication, community support services, residential
12 services, vocational services, and alcohol or other drug abuse treatment. If the
13 person is a serious child sex offender, the plan shall address the person's need for
14 pharmacological treatment using an antiandrogen or the chemical equivalent of an
15 antiandrogen. The department may contract with a county department, under s.
16 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide
17 the treatment and services identified in the plan. The plan shall specify who will be
18 responsible for providing the treatment and services identified in the plan.

19 (d) The plan prepared under par. (b) shall be presented to the court for its
20 approval within 60 days after the court finding that the person is appropriate for
21 supervised release, unless the department, county department, and person to be
22 released request additional time to develop the plan. If the county department of the
23 person's county of residence declines to prepare a plan, the department may arrange
24 for another county to prepare the plan if that county agrees to prepare the plan and
25 if the person will be living in that county. If the department is unable to arrange for

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1 ~~another county to prepare a plan, the court shall designate a county department to~~
2 ~~prepare the plan, order the county department to prepare the plan and place the~~
3 ~~person on supervised release in that county, except that the court may not so~~
4 ~~designate the county department in any county where there is a facility in which~~
5 ~~persons committed to institutional care under this chapter are placed unless that~~
6 ~~county is also the person's county of residence.~~

7 **SECTION 22.** 980.08 (5) (a) 2. of the statutes is created to read:

8 980.08 (5) (a) 2. A person committed under s. 980.06 may not, as a condition
9 of supervised release, establish or reestablish a residence that is within one mile of
10 the residence of the victim of any sexually violent offense committed by the person.

11 **SECTION 23.** 980.08 (5) (b) of the statutes is created to read:

12 980.08 (5) (b) If the person will be living in his or her county of residence, the
13 department and the county department under s. 51.42 in that county shall prepare
14 a plan that identifies the treatment and services, if any, that the person will receive
15 in the community. If the county department of the person's county of residence
16 declines to prepare a plan, the department may arrange for another county to
17 prepare the plan if that county agrees to prepare the plan and if the person will be
18 living in that county. If the department is unable to arrange for another county to
19 prepare a plan, the court shall designate a county department to prepare the plan,
20 order the county department to prepare the plan, and place the person on supervised
21 release in that county, except that the court may not so designate the county
22 department in any county where there is a facility in which persons committed to
23 institutional care under this chapter are placed unless that county is also the
24 person's county of residence.

25 **SECTION 24.** 980.08 (6m) of the statutes is amended to read:

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1 **980.08 (6m)** An order for supervised release places the person in the custody
2 and control of the department. The department shall arrange for control, care, and
3 treatment of the person in the least restrictive manner consistent with the
4 requirements of the person and in accordance with the plan for supervised release
5 approved by the court under sub. (5) (d). A person on supervised release is subject
6 to the conditions set by the court and to the rules of the department. Before a person
7 is placed on supervised release by the court under this section, the court shall so
8 notify the municipal police department and county sheriff for the municipality and
9 county in which the person will be residing. The notification requirement under this
10 subsection does not apply if a municipal police department or county sheriff submits
11 to the court a written statement waiving the right to be notified. If the department
12 alleges that a released person has violated any condition or rule, or that the safety
13 of others requires that supervised release be revoked, he or she may be taken into
14 custody under the rules of the department. The department shall submit a
15 statement showing probable cause of the detention and a petition to revoke the order
16 for supervised release to the committing court and the regional office of the state
17 public defender responsible for handling cases in the county where the committing
18 court is located within 72 hours after the detention, excluding Saturdays, Sundays,
19 and legal holidays. The court shall hear the petition within 30 days, unless the
20 hearing or time deadline is waived by the detained person. Pending the revocation
21 hearing, the department may detain the person in a jail or in a hospital, center, or
22 facility specified by s. 51.15 (2). The state has the burden of proving by clear and
23 convincing evidence that any rule or condition of release has been violated, or that
24 the safety of others requires that supervised release be revoked. If the court
25 determines after hearing that any rule or condition of release has been violated, or

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1 that the safety of others requires that supervised release be revoked, it may revoke
2 the order for supervised release and order that the released person be placed in an
3 appropriate institution until the person is discharged from the commitment under
4 s. 980.09 or until again placed on supervised release under this section.

5

(END)