

Guilty verdict reached in 'Megan's Law' case

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Frank Jacobs III / Associated Press pool

Jesse Timmendequas listens to the verdict being read Friday in Trenton, N.J. Timmendaquas was found guilty of raping and strangling 7-year-old Megan Kanka, and could be sentenced to death.

By John J. Goldman / Los Angeles Times

NEW YORK -- After brief deliberations, a jury found a twice-convicted sex offender guilty Friday of murdering and raping seven-year-old Megan Kanka -- a crime that sparked laws throughout the nation requiring public disclosure when sexual predators move into neighborhoods.

The decision means that Jesse K. Timmendequas, who lured the little girl into his home with the promise of seeing a puppy then attacked and strangled her, could receive the death penalty when jurors consider the punishment phase of the case.

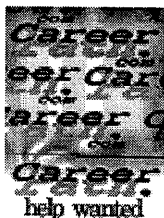
Timmendequas, 36, sat silently and showed no outward emotion when the six-

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Timmendequas, 38, sat silently and showed no outward emotion when the six-man, six-woman jury which had pondered his fate for a little more than four hours rendered its verdict.

He also was found guilty of kidnapping, four counts of aggravated sexual assault and two counts of felony murder for killing the child while committing other crimes.

Maureen Kanka, Megan's mother, who attended court each day in Trenton, N.J. gasped when the forewoman of the jury announced "guilty" to the top count of murder. Her eyes filled with tears and she lowered her face into her hands as reading of the verdict continued.

Tears also welled up in the eyes of her husband, Richard.

President Clinton issued a statement saying that members of the Kanka family (they have two other children) "took their pain and helped guide the nation to adopt legislation that is going to protect other children from those who would harm them."

"We owe the Kanka family not only our sympathy but a debt of gratitude as well," the president said.

The same jury will return to determine whether Timmendequas will die by lethal injection for the murder on July 9, 1994.

If there is not unanimous agreement on the death sentence, Timmendequas could face 30 years to life in prison for the murder charge.

Prosecutors presented dramatic, emotionally wrenching evidence during the three-week trial, who sat quietly in court and did not take the witness stand.

At one point, Robert E. O'Dwyer, a detective, choked back tears as he testified that Timmendequas confessed to touching his seven-year-old neighbor, strangling her with a belt, tying a plastic bag over her head, carrying the body out of his house in a toy chest and dumping it in a nearby park.

Quoting from what police said were Timmendequas' own words, O'Dwyer said the defendant choked Megan, because "I just didn't want her to get away" and that the child struggled for five minutes before she collapsed.

Other police officers told the jury that Timmendequas at first denied any knowledge of the crime. Then a roommate -- one of two convicted sex offenders he shared the house with -- was brought into the area where the questioning was taking place.

Chris Pukenas, a New Jersey State Police detective, testified that as soon as Brian R. Jenin, the roommate, saw Timmendequas, he started speaking.

"They got you, they got you, they got you," the detective related Jenin said. "You're going to need a friend on the outside, I'll be that friend."

Pukenas said at that point, Timmendequas lowered his head then confessed that the body was in the park.

With tears filling her eyes at times, Maureen Kanka identified stained and bloody fragments of clothing her daughter wore the July night she was killed. She told the jury she never knew sex offenders lived across the street.

She told of her panic when Megan disappeared and how she asked Timmendequas if he knew of her whereabouts.

Kanka said the defendant replied he had seen Megan with a friend.

"That man, the defendant, had been watching that little girl for months," prosecutor Kathryn Flicker charged. "...Unsuspecting, trusting seven-year-old Megan walked into the defendant's house. She would never walk out. ...She would scream. She would run. She would fight. Megan had no chance."

Defense lawyers called no witnesses, instead arguing that police had managed to

cajole the confessions from Timmendequas and that portions of the physical evidence against him were flawed.

Prosecutors said both of Timmendequas' companions were shopping during the time Megan was strangled.

After the murder, Maureen Kanka campaigned tirelessly to change the nation's laws and require public notification when a convicted sex offender moves into a neighborhood.

On May 17, 1996 with members of Megan's family in the Oval office, President Clinton signed a federal law mandating such statutes or risk losing a portion of federal funds.

Many of the laws and being challenged in the courts both on practical and Constitutional grounds of due process.

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NOVEMBER 1998

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Rep. Walker

March 2, 2000

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 613: Sex Offender Registration and Community Notification

On December 1, 1999, Assembly Bill 613 was introduced and the Assembly Committee on Corrections and the Courts recommended the bill for passage on an 11 to 0 vote. Assembly Amendment 1 to AB 613 was offered on December 21, 1999.

SUMMARY OF BILL

In 1999 Assembly Bill 613, various modifications and additions to the statutes are made related to the registration of sex offenders and community notification. A number of the modifications are, in part, being proposed in order to comply with federal law relating to sex offender registration. These provisions include: (a) the registration of offenders from other states who are in Wisconsin for school or work or to reside; (b) the required lifetime registration for anyone convicted of first or second degree sexual assault, first or second degree sexual assault of a child or repeated sexual assault of the same child; (c) the registration of any offender convicted in federal, tribal or military court of a sex offense; (d) the notification of registrants by Corrections to register in other states whenever the offender reports a change in residence, employment or school attendance in another state; (e) the determination of the term and frequency of registration for all offenders in the state; (f) the expansion of registration requirements to all offenders convicted of a sexual offense against a minor; (g) the inclusion of a notation in the registry concerning the treatment that a person found to be a sexually violent person is receiving for his or her mental disorder; and (h) the requirement that Corrections verify information in the registry and obtain fingerprints, photographs and other information from all registrants including those no longer under probation, extended supervision or parole. States that fail to comply with the revised federal law

could have their federal Byrne Law Enforcement Grant reduced by 10% annually. For federal fiscal year 2000, 10% of the state's estimated Byrne grant would be \$929,200.

This summary is divided as follows: (a) sex offender registration requirements; (b) the release of information from the sex offender registry; (c) lie detector tests for sex offenders; and (d) notices regarding sex offenders prior to the sale or rental of property. Subsequent to the summary of the bill, AA 1 to AB 613 is summarized.

Sex Offender Registration Requirements

Under current law, a person must generally register as a sex offender if he or she has been convicted, found not guilty by reason of mental disease or defect or adjudicated delinquent of certain sex offenses. The sex offenses covered under current law include sexual exploitation by a therapist, first, second and three degree sexual assault, first and second degree sexual assault of a child, incest, repeated sexual assault of the same child, sexual exploitation of a child, causing a child to view or listen to sexual activity, child enticement, soliciting a child for prostitution, exposing a child to harmful material, and certain cases of false imprisonment or kidnapping of a child. Current law also requires a person to register as a sex offender if he or she has been found to be a sexually violent person under Chapter 980 or was committed under the sex crimes law before that law was repealed in 1980. Further, current law allows a court to order a person to register as a sex offender if he or she has committed certain serious felony offenses that are not sex offenses if the court finds that the offense was sexually motivated and that registration would be in the interest of public protection. Offenders are required to register while on supervision in the community and for either 15 years after supervision ends or for life depending on the offense and the order of the court.

The sex offender registry is maintained by the Department of Corrections and contains the following information about persons required to register:

- a. The person's name, including any aliases used by the person.
- b. Information sufficient to identify the person, including date of birth, gender, race, height, weight and hair and eye color.
- c. The statute the person violated that subjects the person to the registration requirements, the date of conviction, adjudication or commitment, and the county or, if the state is not Wisconsin, the state in which the person was convicted, adjudicated or committed.
- d. Whichever of the following is applicable: (1) the date the person was placed on probation, supervision, conditional release, conditional transfer or supervised release; (2) the date the person was or is to be released from confinement, whether on parole, extended supervision or otherwise, or discharged or terminated from a sentence or commitment; (3) the date the person

entered the state; or (4) the date the person was ordered to comply with the registration requirements.

- e. The address at which the person is or will be residing.
- f. The name of the agency supervising the person, if applicable, and the office or unit and telephone number of the office or unit that is responsible for the supervision of the person.
- g. A description of any motor vehicle that the person owns or that is registered in the person's name. The information provided must include a description of the vehicle, including make, model, license number and any other information which Corrections may reasonably require for proper identification of the vehicle.
- h. The name and address of the place at which the person is or will be employed.
- i. The name and location of any school in which the person is or will be enrolled.
- j. The most recent date on which the information in the registry was updated.

A person registered as a sex offender must also periodically provide updated information to Corrections if the information originally provided to the registry changes. Most registrants must provide updated information annually. However, individuals found to be sexually violent persons must update information every 90 days. Whenever any of the above information changes, all registrants are required to provide Corrections with the updated information within 10 days of the change.

Under Assembly Bill 613, the following changes would be made in the sex offender registration law:

Newly Included Offenses. Assembly Bill 613 would add the following crimes to the current list of sex offenses covered by the registration requirement: (a) possession of child pornography; (b) child sex offender working or volunteering with children; and (c) sexual assault of a student by a school instructional staff person. In addition, AB 613 would specify that only the felony portions of the crime of exposing a child to harmful material are applicable to the sex offender registry requirement. Anyone convicted or adjudicated delinquent for one of the new offenses on or after December 25, 1993, would be required to register. Likewise, anyone in prison, a secured correctional facility, a secured child caring institution, or on parole, probation or aftercare supervision, found not guilty or not responsible by reason of mental disease or defect, in institutional care or on conditional transfer on or after December 25, 1993, for one of the new offenses would be required to register. Individuals covered by the new offenses in AB 613 would be required to register within six months of enactment of the bill.

Persons Required to Register. Assembly Bill 613 would expand the coverage of the sex offender registry by requiring the following persons to register:

a. A person who has been placed on lifetime supervision on or after June 26, 1998, by a Wisconsin court after being convicted of a serious sex offense. Under current law, a serious sex offense covered by lifetime supervision includes a violation, or the solicitation, conspiracy or attempt to commit a violation, of the statutes related to sexual exploitation by a therapist, first, second or third degree sexual assault, first or second degree sexual assault of a child, repeated sexual assault of the same child, sexual exploitation of a child, causing a child to view or listen to sexual activity, incest, child enticement, soliciting a child for prostitution, exposing a child to harmful material, possession of child pornography or child sex offender working with children. In addition, an individual may be placed on lifetime supervision by a court for a violation, or the solicitation, conspiracy or attempt to commit a violation, other serious felony offenses that are not sex offenses, if a court determines that one of the purposes for the conduct constituting the violation was for the individual's sexual arousal or gratification.

b. A juvenile who has been adjudicated delinquent in another state based on a sex offense and who is under supervision in Wisconsin under the interstate compact on the placement of juveniles.

c. On or after the first day of the seventh month after the effective date of the bill, a person who is registered as a sex offender in another state or with the Federal Bureau of Investigation (FBI) and who is living in Wisconsin or is temporarily in Wisconsin while working or going to school.

d. On or after the first day of the seventh month after the effective date of the bill, a person who has been convicted of a sex offense or found not guilty by reason of mental disease or defect of a sex offense in another state, in federal court, in a military court or in a tribal court and who is living in Wisconsin or is temporarily in Wisconsin while working or going to school, unless the person was released from confinement or placed on supervision for the offense more than ten years before he or she enters Wisconsin.

In addition, under the bill, if the court requires any adult or juvenile offender to register as a sex offender, the clerk of the court in which the order is entered would be required to promptly forward a copy of the order to Corrections. If the finding on which the order is based is reversed, set aside or vacated, the court clerk would also be required to promptly forward to Corrections a certificate stating that the finding has been reversed, set aside or vacated.

Children/Juveniles in Need of Protection or Services. Under current law, if a juvenile or child is found to be in need of protection or services (JIPS and CHIPS cases, respectively) for acts that would constitute a sex offense if committed by an adult, the juvenile or child must register as a sex offender.

Assembly Bill 613 would eliminate the ability of a court to order registration for CHIPS cases and would eliminate the mandatory registration requirement for JIPS cases for a sex offense. Instead, under AB 613, if the court finds that a juvenile is in need of protection or services on the basis of a violation, or the solicitation, conspiracy or attempt to commit a violation of certain criminal offenses, the court would be authorized to require the juvenile to comply with the sex offender reporting requirements if the court determines that the underlying conduct was sexually motivated and that it would be in the interest of public protection to have the juvenile report. In determining whether it would be in the interest of public protection to have the juvenile report, the court may consider any of the following: (a) the ages, at the time of the violation, of the juvenile and the victim of the violation; (b) the relationship between the juvenile and the victim of the violation; (c) whether the violation resulted in bodily harm to the victim; (d) whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions; (e) the probability that the juvenile will commit other violations in the future; and (f) any other factor that the court determines may be relevant to the particular case.

Under AB 613, Corrections would be required to purge all information in the registry relating to a child or juvenile who is registered solely because they had been found to be in need of protection or services on or after December 25, 1993, for a sex offense. Before any registration is purged, Corrections would be required to notify the county of the court that found the juvenile or child in need of protection or services. The county would be authorized, if it chose to do so, to request the district attorney or corporation counsel to file a petition to require the person to continue to comply with the registration requirements. If a petition is filed, the court would hold a hearing on the petition and decide whether to grant or deny the petition based on the interest of public protection. Corrections would be authorized to proceed with the purgation of the registration only if the court denies the petition.

The Committee should note that there is an inconsistency in the bill that requires technical correction. The bill would delete statutory authority for the registration of CHIPS cases and would provide, under nonstatutory language, a procedure for purging these records. However, the nonstatutory provision would also allow a district attorney or corporation counsel to petition the court to have a person who, under current law, is required to register as the result of a CHIPS disposition, to continue to register. Under the nonstatutory provision, if the court grants the petition, the person would be required to continue to register. A technical amendment is, therefore, needed to provide statutory authorization for these potential CHIPS registrants.

Length of Registration Period. Under current law, a person generally must continue to register as a sex offender for 15 years after the date on which he or she is discharged from his or her sentence, commitment or other type of supervision. However, a person who has been convicted of a sex offense on two or more separate occasions and any person found to be a sexually violent predator must register for life.

Under AB 613, when a court orders a person to register as a sex offender (including juveniles) for any offense included under the registration statutes, the court would be provided discretionary authority to require that the person must register for the rest of his or her life. The bill would also require a person to register for the rest of his or her life if he or she has been convicted in Wisconsin of first or second degree sexual assault, first or second degree sexual assault of a child or repeated sexual assault of a child, or if the person has been convicted by another jurisdiction of any crime that is comparable to first or second degree sexual assault, first or second degree sexual assault of a child or repeated sexual assault of a child.

Assembly Bill 613 would specify the length of the registration period for persons who would be newly required to register under the bill:

- a. Lifetime Supervision. A person who must register as a sex offender because he or she has been placed on lifetime supervision generally would be required to register for the rest of his or her life. However, if a court decides to terminate the lifetime supervision of the person, the court may also order that the person no longer has to register as a sex offender.
- b. Juveniles Under Interstate Compacts. A juvenile who has been adjudicated delinquent in another state based on a sex offense and who is under supervision in Wisconsin under the interstate compact on the placement of juveniles would be required to register within ten days after entering the state and must remain registered until 15 years after being discharged from the supervision or for as long as he or she is in this state, whichever is less.
- c. Individuals from Other States Temporarily in Wisconsin. A person who is registered as a sex offender in another state or with the FBI and who is living in Wisconsin or is temporarily in Wisconsin while working or going to school generally would be required to register for as long as he or she is in the state or for as long as he or she is required to register with the other state or the FBI, whichever is less. If the person is required to register with the other state or the FBI for less than ten years from the date he or she was released from confinement or placed on supervision for the sex offense, then the person would be required to register for as long as he or she is in Wisconsin or for ten years from the date of being released or placed on supervision, whichever is less.
- d. Individuals from Other States. A person who has been convicted of a sex offense or found not guilty by reason of mental disease or defect of a sex offense in another state, in federal court, in a military court or in a tribal court and who is living in Wisconsin or is temporarily in Wisconsin while working or going to school would be required to register for as long as he or she is in the state or for ten years from the date of being released or placed on supervision, whichever is less.

Restriction on the Exemption from Registration. Currently, a person may ask a court to exempt himself or herself from the sex offender registration requirements if the following apply: (a) the person is required to register based on a sexual assault of a child that he or she committed in

Wisconsin or under comparable laws of another state before reaching the age of 19; (b) the victim was within four years of age of the offender; and (c) the court determines that it is not necessary, in the interest of public protection, to require the person to register as a sex offender. Assembly Bill 613 would restrict the ability to request exemption from the sex offender registration requirements by providing that a person is not eligible for an exemption if the sexual assault of the child involved sexual intercourse with a child under the age of 12 or sexual intercourse by the use or threat of force or violence. Further, AB 613 would eliminate the statutory language which specifies that offenses could have been committed under comparable laws of another state.

Registration Verification. Assembly Bill 613 would allow Corrections to require a person registered as a sex offender to verify within ten days of receiving a request, in a manner determined by the Department, the accuracy of any information that the person has provided to Corrections for inclusion in the registry. In addition, the bill would allow Corrections to require the person to provide a photograph, fingerprints and other information for inclusion in the registry. The person may be ordered to appear at any place necessary to collect the photograph, fingerprints or other information, including a police station. The bill would also provide Corrections employees involved in the administration of the sex offender registry with access to confidential Department of Revenue tax records for the purpose of verifying information provided by the person.

In addition, the bill would modify the current law requirement that Corrections notify registrants of their need to comply with the registration requirements to provide that, if a registrant is under the age of 18, Corrections may annually (or every 90 days, if the registrant is a lifetime registrant) notify the registrant's parent, guardian or legal custodian of the registrant's need to comply with the reporting requirements.

Penalty for Failure to Register. Under current law, a person who intentionally fails to comply with the sex offender registration requirement may be fined not more than \$10,000 or imprisoned for not more than nine months or both. Assembly Bill 613 would provide that a person who knowingly fails to comply with the requirements is subject to the current penalty for a first offense, while for a second or subsequent offense the person may be fined not more than \$10,000 or imprisoned for not more than five years or both. In addition, AB 613 would create an identical penalty provision for a second or subsequent offense, classified as a Class H felony (punishable by up to three years in prison and three years on extended supervision) under the proposed reclassification included in Assembly Bill 465 (truth-in-sentencing). The Class H felony would not become effective unless AB 465 is enacted before July 1, 2000.

Under current law, if an adult or juvenile offender is subject to a proceeding for violating the sex offender registration requirements, the venue for the proceeding may be: (a) in the person's county of residence at the time that the petition is filed; or (b) if the person does not have a county of residence in this state, any county in which the person has resided while subject to the registration requirements. Assembly Bill 613 would provide that, if the person does not have a county of residence in this state at the time the petition is filed, or if the person's county of residence is unknown at the time that the petition is filed, venue may be in: (a) any county in which the person

has resided while subject to the registration requirements; or (b) the county in which the person was convicted, adjudicated delinquent or found not responsible by reason of mental disease or defect for the sex offense that requires the person to register. If the person is required to register due to a status of a sexually violent person, the venue may be the county in which the person was found to be a sexually violent person. If the person is a resident, a student, an employe or carries on a vocation in Wisconsin and is required to register due to an offense committed in another state, the venue may be in any county in which the person has been a student, an employe or carrying on a vocation in this state.

Vehicle Description. Under current law, a registrant is required to provide a description of any vehicle he or she owns, and the information must be included as part of specific information that is provided to community organizations and the public, upon request. Assembly Bill 613 would delete the statutory provisions related to vehicle descriptions.

Program Funding. Assembly Bill 613 would provide \$134,800 GPR in 2000-01 and 4.0 GPR positions beginning January 1, 2001, to the Department of Corrections for sex offender registration and community notification activities.

Release of Information from Sex Offender Registry

Under current law, the information in the sex offender registry is generally confidential. However, when a person first registers as a sex offender or when a registered sex offender updates information in the registry, Corrections must make the information available to local law enforcement agencies. A local law enforcement agency may in turn release information from the registry that it has received (other than information concerning children who are required to register and information concerning juvenile adjudications for sex offenses) if the local law enforcement agency believes that release of the information is necessary to protect to the public. In addition, Corrections and other state agencies may release certain information to specified community organizations and to members of the general public if an organization or a member of the general public requests the information.

Assembly Bill 613 would require Corrections to establish an internet site containing information from the sex offender registry no later than the first day of the 13th month after the effective date of the bill. The internet site must be organized in a manner that allows a person to get the information that Corrections is currently authorized or required to provide to the person. In addition, the site may provide access to any other information that Corrections determines necessary to release for protection of the public. Corrections would also be required to keep the site secure against unauthorized alteration.

Lie Detector Tests for Sex Offenders

Under AB 613, Corrections would be authorized to require a person to submit to a lie detector test while the person is in a correctional institution as a part of the person's correctional programming or the person's care or treatment, if the person will be required to register as a sex offender upon his or her release from the institution. Under current law, if a person who is registered as a sex offender is on probation, parole or extended supervision, Corrections may require, as a condition of the person's probation, parole or extended supervision, that the person submit to a lie detector test when directed to do so by Corrections.

Notices Regarding Sex Offenders Prior to the Sale or Rental of Property

Under current law, with certain exceptions, owners who wish to sell residential real property must give prospective buyers a form, known as a real estate condition report, on which the owner discloses certain conditions of which the owner is aware related to the real property. The form also includes some additional information, such as how long the owner has lived on the property and a notice that the prospective buyer and the owner may wish to obtain professional advice or inspections of the property.

Assembly Bill 613 would require the form to include a notice that advises the prospective buyer that anyone may obtain information from Corrections about persons required to register with the sex offender registry and that the prospective buyer may wish to obtain information about any person registered with the sex offender registry who resides in the neighborhood or community in which the property is located. The notice would provide the address, telephone number and internet address of Corrections. If the real estate condition report provided to a prospective buyer includes this notice, the owner of the property would be absolved from any duty to disclose to the prospective buyer any information about the sex offender registry or any information related to the fact that any particular person is required to register with the sex offender registry. In addition, after sale of the property, the former owner would not be liable to the buyer, or any person on the property with the permission of the buyer, for damages resulting from the actions of a person required to register with the sex offender registry. If a prospective buyer learns, after receiving a real estate condition report, that a person who is required to register with the sex offender registry resides, is employed or attends school within one-eighth of a mile of the property, the prospective buyer would be allowed, within two business days after receiving the report, to rescind the contract of sale.

Currently, owners of nonresidential property are not required to provide to prospective buyers any report on the condition of the property. Assembly Bill 613, however, would require that an owner of nonresidential property may provide to a prospective buyer, before the prospective buyer submits to the owner a contract of sale or option contract, a notice that advises the prospective buyer, along with the address, telephone number and internet address of Corrections, that anyone may obtain information from the Department about persons required to register with the sex

offender registry and that the prospective buyer may wish to obtain information about any person registered with the sex offender registry who resides in the neighborhood or community in which the property is located. If the owner provides the notice to a prospective buyer, the owner would be absolved from any duty to disclose to the prospective buyer any information about the sex offender registry or any information related to the fact that any particular person is required to register with the sex offender registry. In addition, after the sale of the property, the owner would not be liable to the buyer, or any person on the property with the permission of the buyer, for damages resulting from the actions of a person required to register with the sex offender registry.

Assembly Bill 613 would provide that a landlord may provide to a prospective tenant, before the tenant enters into a lease, a notice that advises the prospective tenant, along with the address, telephone number and internet address of Corrections, that anyone may obtain information from Corrections about persons required to register with the sex offender registry and that the prospective tenant may wish to obtain information about any person registered with the sex offender registry who resides in the neighborhood or community in which the property is located. If the landlord provides the notice to a prospective tenant, the landlord would be absolved from any duty to disclose to the prospective tenant, before or after entering into a lease, any information about the sex offender registry or any information related to the fact that any particular person is required to register with the sex offender registry. In addition, if the tenant enters into a lease, the owner would not be liable to the tenant, a guest of the tenant or any other occupant of the rented property for damages resulting from the actions of a person required to register with the sex offender registry.

SUMMARY OF ASSEMBLY AMENDMENT 1 TO AB 613

On December 21, 1999, Assembly Amendment 1 to AB 613 was introduced. The amendment would delete the provisions related to notices regarding sex offenders prior to the sale or rental of property and instead would create a statutory provision that specifies that "a person is immune from liability for any act or omission related to not disclosing that any particular person is required to register as a sex offender" or any information about the sex offender registry. This amendment has not yet been adopted.

FISCAL EFFECT

Fiscal estimates for AB 613 have been submitted by the Department of Corrections, District Attorneys, the Department of Regulation and Licensing and the State Public Defender.

Department of Corrections. Under the bill: (a) the list of crimes for which registration would be required would increase by including possession of child pornography, child sex offender working or volunteering with children and sexual assault of a student by a school instructional staff person; (b) the number of offenders potentially required to register for life would increase by including persons placed on lifetime supervision, persons convicted of an aggravated sex offense

and persons ordered by the court to register for life; (c) the number of persons required to register would be expanded to include persons convicted of a sex offense in a military, tribal or federal court, sex offenders required to register in another state who are not under any form of interstate compact supervision in Wisconsin and who reside, are employed or attend school in Wisconsin, and juveniles in Wisconsin under an interstate compact; and (d) Corrections would be required to establish an internet site with sex offender registry information organized in such a manner that organizations and individuals currently authorized or required to have access to such information could access the information electronically. The bill appropriates \$134,800 GPR in 2000-01 to support an additional 4.0 GPR positions in Corrections associated with the sex offender registry beginning January 1, 2001.

According to Corrections' fiscal note, the Department plans to reallocate the one-time dollars associated with the design and development of the sex offender registry web site from existing funds. "Based on the experience of other states that have completed similar projects, it is estimated that the one-time cost will range from \$200,000 to \$350,000. The actual cost will be dependent upon DOC completing a competitive procurement process."

Corrections indicates that the increased workload associated with the changes in the sex offender registry and the establishment and maintenance of the sex offender registration web site will be addressed utilizing the funding and positions provided in the bill. According to the Department's fiscal note, 3.0 of the positions (2.0 sex offender registrations specialists and 1.0 program assistant) would be used for the increased sex offender registry verification requirements under the bill. The additional sex offender registry staff would increase the total number of registration specialists statewide from 8.0 to 10.0. The remaining 1.0 position in the bill would be an information systems project leader specialist. This position would provide ongoing support for the registry web site, including web site security. On an annualized basis, Corrections estimates that the positions provided in the bill will cost \$205,600.

In Corrections' fiscal note, prepared on December 1, 1999, the Department estimated that the real estate notification requirements in AB 613 "to potential home buyers and persons leasing property will have a substantial impact in the residential placement and supervision of sex offenders on community supervision as currently experienced by Special Bulletin Notification cases." Corrections indicated that the provision would require additional staff with specialized skills and knowledge related to community-based sex offender management, housing, public relations and community outreach. Corrections estimated that an additional 9.0 positions and \$539,000 annually would be needed to coordinate and manage the real estate notification requirements.

On December 23, 1999, Corrections submitted a supplemental fiscal estimate based on the changes proposed in AA 1 to AB 613 which would eliminate the real estate notification requirements. Accordingly, the supplemental fiscal estimate indicates that AA 1 would reduce the costs of the bill by \$539,000 annually. The note further indicates that, under the remaining provisions of the bill, there could be costs to the Department as a result of increased contacts with law enforcement, the public and the media, but that these costs cannot be estimated at this time.

Regulation and Licensing. The Department of Regulation and licensing indicates that AB 613 would have "little or no fiscal impact to the agency."

District Attorneys. According to the fiscal estimate submitted by the District Attorneys (DAs), the bill would increase the penalty for a second or subsequent violation of the sex offender registration requirements. The bill would also expand the number of DA offices that could bring an action against a person who violates the sex offender registration requirements. The DA fiscal estimate states, however, that neither change would have a material impact on overall DA office workload.

State Public Defender. The fiscal estimate submitted by the State Public Defender (SPD) indicates that some of the bill's provisions may have a fiscal impact on the SPD. Specifically, the bill would make it a crime to knowingly fail (instead of intentionally fail, which is current law) to comply with the sex offender registration requirements. Although the first offense of knowing or intentional noncompliance of the registration requirements would be a misdemeanor, the bill would make a second or subsequent offense a felony. The SPD reasons that because felony cases are more expensive than misdemeanor cases, this provision in the bill could increase costs to the SPD. However, the SPD is unable to estimate the increase in costs because it is not known how many people would violate this law a second or subsequent time and, of those who would violate the law, how many would qualify for SPD representation.

Second, the bill would eliminate the mandatory registration requirement for juveniles found in need of protection or services (JIPS) for a sex offense and would establish a procedure for Corrections to purge such information from the sex offender registry. However, under the bill, some JIPS juveniles could be required to continue to register if, after a hearing, the court determines that they should continue to register. As a result, the SPD argues that it is possible that the SPD would represent these juveniles at these hearings. Such additional representation could increase the SPD's costs. The SPD's fiscal estimate states, however, that it cannot estimate the costs associated with these hearings because it is not known how many of these hearings would occur.

Prepared by: Jere Bauer, Art Zimmerman and Barbara Zabawa



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: November 17, 1999

TO: REPRESENTATIVE SCOTT WALKER, CHAIRPERSON, AND MEMBERS OF THE ASSEMBLY COMMITTEE ON CORRECTIONS AND THE COURTS

FROM: Mary Matthias, Senior Staff Attorney

SUBJECT: LRB-1021/2, An Assembly Amendment to 1999 Assembly Bill ____ (LRB-1407/2), Relating to Sex Offender Registration, Release of Information From the Sex Offender Registry, Honesty Testing of Sex Offenders, Making an Appropriation and Providing a Penalty

This memorandum describes LRB-1021/2, an Assembly amendment to 1999 Assembly Bill ____ (LRB-1407/2), relating to sex offender registration, release of information from the sex offender registry, honesty testing of sex offenders, making an appropriation and providing a penalty. The Assembly Committee on Corrections and the Courts has scheduled a hearing on the bill for November 17, 1999.

The amendment does all of the following:

1. Provides an exemption from certain liability for a landlord or a person who sells real property if certain information regarding the sex offender registry is provided to the prospective tenant or buyer of the property in a timely fashion.
2. Provides that a prospective home buyer may rescind a contract of sale based on information contained in the sex offender registry, under certain circumstances.
3. Specifies that a real estate broker or salesperson is not required to disclose any information related to the fact that a particular person is required to register as a sex offender, or any information about the sex offender registry.

These provisions are described in detail below.

The bill does not contain any provisions relating to the duties of landlords, real estate brokers or salespersons or persons selling real property.

1. Real Estate Brokers and Salespersons: No Duty to Disclose Information Relating to Sex Offenders

The amendment provides that a real estate broker or salesperson is not required to disclose to any person in connection with the sale, exchange, purchase or rental of real property, any information related to the fact that a particular person is required to register as a sex offender under s. 301.45, Stats., or any information about the sex offender registry under s. 301.45, Stats.

2. Liability Exemption for Landlords and Their Agents if Notice Regarding the Sex Offender Registry is Provided

The amendment provides that a landlord is exempt from liability for any damages resulting from the actions of a person required to register as a sex offender if, before a prospective tenant enters into a lease or rental agreement, the landlord or his or her agent provides a notice regarding the sex offender registry to the prospective tenant.

The notice which must be provided must be in substantially the following form:

**NOTICE REGARDING ACCESS TO THE SEX
OFFENDER REGISTRY**

Anyone may obtain information from the department of corrections about persons required to register with the sex offender registry under section 301.45, Wisconsin Statutes. The department of corrections provides access to the information on the Internet and by other means. THE PROSPECTIVE TENANT MAY WISH TO OBTAIN INFORMATION ABOUT ANY PERSON REGISTERED WITH THE SEX OFFENDER REGISTRY WHO RESIDES IN THE NEIGHBORHOOD OR COMMUNITY IN WHICH THIS PROPERTY IS LOCATED. FOR MORE INFORMATION, CONTACT THE DEPARTMENT OF CORRECTIONS AT (ADDRESS), (TELEPHONE NUMBER), (INTERNET ADDRESS).

If the landlord provides this notice to the prospective tenant before the tenant enters into a lease or rental agreement with the landlord, then both of the following apply:

a. The landlord or his or her agent have no duty to disclose to the prospective tenant, or to the tenant after the lease or rental agreement is entered into, any information related to the fact that a particular person is required to register as a sex offender under s. 301.45, Stats., or any information about the sex offender registry under s. 301.45, Stats.

b. The landlord or his or her agent is not liable to the tenant, a guest of the tenant, or to any other occupant of the rental property after the lease or rental agreement is entered into, for

damages resulting from the actions of a person required to register as a sex offender under s. 301.45, Stats.

The amendment states that the provisions described above shall not be construed to impose any liability on a landlord or his or her agent that did not exist under common law on the date of that the provisions go into effect. Further, those provisions shall not be construed to protect a landlord or his or her agent from suit or liability for any damage, loss or injury caused by the intentional or wanton misconduct of the landlord or his or her agent.

3. Liability Exemption for Owners of Residential Real Estate and Their Agents if Notice Regarding Sex Offender Registry is Provided

The amendment provides that if the owner of residential property or his or her agent provides to a prospective buyer a real estate condition report that contains certain information regarding the sex offender registry, then the owner and his or her agent are exempt from liability for damages resulting from the actions of a person required to register as a sex offender.

The information which must be included in the real estate condition report in order to trigger the liability exemption is the following:

**NOTICE REGARDING ACCESS TO THE SEX
OFFENDER REGISTRY**

GM. Anyone may obtain information from the department of corrections about persons required to register with the sex offender registry under section 301.45, Wisconsin Statutes. The department of corrections provides access to the information on the Internet and by other means. THE PROSPECTIVE BUYER MAY WISH TO OBTAIN INFORMATION ABOUT ANY PERSON REGISTERED WITH THE SEX OFFENDER REGISTRY WHO RESIDES IN THE NEIGHBORHOOD OR COMMUNITY IN WHICH THIS PROPERTY IS LOCATED. FOR MORE INFORMATION, CONTACT THE DEPARTMENT OF CORRECTIONS AT (ADDRESS), (TELEPHONE NUMBER), (INTERNET ADDRESS).

If the notice described above is included in the real estate condition report, then both of the following apply:

a. The owner or agent has no duty to disclose to the prospective buyer any information related to the fact that a particular person is required to register as a sex offender or any information about the sex offender registry.

b. The owner or agent is not liable to the buyer or any person on the property with the permission of the buyer for damages resulting from the actions of a person required to register as a sex offender.

The amendment specifies that the provisions described above shall not be construed to impose any liability on an owner or his or her agent that did not exist under common law on the effective date of the provisions. Further, those provisions may not be construed to protect an owner or his or her agent from suit or liability for any damage, loss or injury caused by the intentional or wanton misconduct of the owner or his or her agent.

4. Residential Property: Buyer's Right to Rescind

Under current law, the owner of residential property must, in general, provide a real estate condition report to a prospective buyer of the property not later than 10 days after acceptance of a contract of sale or option contract regarding the property. The statutes prescribe the form and contents of the report. If the prospective buyer does not receive the real estate condition report within the 10-day period, the prospective buyer may rescind the contract of sale within two business days after the end of the 10-day period. [ss. 709.02 and 709.03, Stats.]

If a prospective buyer of residential property receives the real estate condition report after submission of the contract of sale, and the report discloses a defect of which the buyer was not aware at the time the buyer submitted the contract of sale, the buyer may rescind the contract within two days after receiving the report. A prospective buyer may not rescind a contract on the basis of a defect if the buyer was aware of or had written notice of the nature and extent of the defect when the contract was submitted.

The amendment expands the rescission provision to provide that if a prospective buyer receives the real estate condition report after submission of a contract of sale and learns that a person who is required to register as a sex offender resides, is employed or attends school within 1/8th mile of the property, the prospective buyer may rescind the contract if the buyer was not aware of and did not have written notice of, the person's proximate residence, employment or attendance at school at the time that the contract of sale was submitted. As under current law, the buyer must rescind the contract within two business days after the buyer or the buyer's agent receives the report.

5. Liability Exemption for Owners of Real Property Other Than Residential Property if Notice Regarding Sex Offender Registry is Provided

The amendment provides that if the owner of property other than residential property, or his or her agent, provides the notice described below to a prospective buyer before submission of a contract of sale or option contract, then the following apply:

a. The owner or agent has no duty to disclose to the prospective buyer any information related to the fact that a particular person is required to register as a sex offender or any information about the sex offender registry.

b. The owner or agent is not liable to the buyer or any person on the property with the permission of the buyer for damages resulting from the actions of a person required to register as a sex offender.

The notice provided to the prospective buyer must be in substantially the following form:

Anyone may obtain information from the department of corrections about persons required to register with the sex offender registry under section 301.45, Wisconsin Statutes. The department of corrections provides access to the information on the Internet and by other means. THE PROSPECTIVE BUYER MAY WISH TO OBTAIN INFORMATION ABOUT ANY PERSON REGISTERED WITH THE SEX OFFENDER REGISTRY WHO RESIDES IN THE NEIGHBORHOOD OR COMMUNITY IN WHICH THIS PROPERTY IS LOCATED. FOR MORE INFORMATION, CONTACT THE DEPARTMENT OF CORRECTIONS AT (ADDRESS), (TELEPHONE NUMBER), (INTERNET ADDRESS).

The amendment specifies that the provisions described above shall not be construed to impose any liability on an owner or his or her agent that did not exist under common law on the effective date of the provisions. Further, those provisions may not be construed to protect an owner or his or her agent from suit or liability for any damage, loss or injury caused by the intentional or wanton misconduct of the owner or his or her agent.

Please contact me if you have any questions or would like more information. My direct telephone number is 266-0932.

MM:jal;wu

State must revise sex offender list

The state must revise its registry of sex offenders or it will lose nearly \$1 million in law enforcement grants, a state legislator says.

"We want to ensure that we lock up these federal funds," said Rep. Dean Kauter, R-Near Park.

A bill before the Joint Finance Committee would place a year-long lifetime supervision on anyone convicted of first or second degree sexual assault and a three-year term of supervision on anyone convicted of sexual abuse of a child.

The proposal would expand the state sex offender registry to people who have been convicted of child molestation and committing sex crimes against children they dealt with as part of their job.

The bill also would require the Department of Corrections to monitor any sex offender registry on the Internet.

John S. Vetter, director of the Bureau of Sex Offender Programs, said the bill would vastly expand public access to information about convicted sex offenders.

The bill would also require the state to maintain a list of sex offenders. The bill would add about 2,000 people to the list, but it would remove about 1,800 more than now.

National Sex Offender Registry

↳ all state registrants forwarded

350 special bulletins

about 1/3 result in level 3 - community meetings, etc.

lifetime registrations will go up

from 800 to 7,700 under bill

230% of registrants in non-compliance

DA offices consider low-priority

since a misdemeanor

reason 2nd-time becomes felony

Dare Co. has sex offender registry site

- law enforcement has full access to all info
- victims - special access code
- community (general public) limited access geographic info
- special bulletins
- persons deemed as non-compliant