



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1997 ASSEMBLY BILL 431**

November 12, 1997 - Offered by COMMITTEE ON JUDICIARY.

1     **AN ACT** *to renumber and amend* 51.20 (13) (ct) 1., 51.20 (13) (ct) 2., 301.45 (7)  
2           (c) 1. and 2., 938.34 (15m) (a), 938.34 (15m) (b), 971.17 (1m) (b) 1., 971.17 (1m)  
3           (b) 2., 973.048 (1) and 973.048 (2); **to amend** 301.45 (1) (intro.), 301.45 (1) (e),  
4           301.45 (7) (c) (intro.) and 948.13 (2); and **to create** 51.20 (13) (ct) 3., 301.45 (1m),  
5           301.45 (7) (c) 2m., 301.46 (2m) (at), 938.34 (15m) (c), 948.13 (2m), 971.17 (1m)  
6           (b) 3. and 973.048 (3) of the statutes; **relating to:** exempting certain persons  
7           from the sex offender registration requirements and the prohibition on child sex  
8           offenders working with children.

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

9           **SECTION 1.** 51.20 (13) (ct) 1. of the statutes, as created by 1995 Wisconsin Act  
10          440, is renumbered 51.20 (13) (ct) 2m. and amended to read:

11           51.20 (13) (ct) 2m. If the subject individual is before the court on a petition filed  
12          under a court order under s. 938.30 (5) (c) 1. and is found to have committed a

1 violation, or to have solicited, conspired or attempted to commit a violation, of s.  
2 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,  
3 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor  
4 and the subject individual was not the victim's parent, the court shall require the  
5 individual to comply with the reporting requirements under s. 301.45 unless the  
6 court determines, after a hearing on a motion made by the individual, that the  
7 individual is not required to comply under s. 301.45 (1m).

8 **SECTION 2.** 51.20 (13) (ct) 2. of the statutes, as created by 1995 Wisconsin Act  
9 440, is renumbered 51.20 (13) (ct) 1m. and amended to read:

10 51.20 (13) (ct) 1m. Except as provided in subd. 1. 2m., if the subject individual  
11 is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and  
12 is found to have committed any violation, or to have solicited, conspired or attempted  
13 to commit any violation, of ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may  
14 require the subject individual to comply with the reporting requirements under s.  
15 301.45 if the court determines that the underlying conduct was sexually motivated,  
16 as defined in s. 980.01 (5), and that it would be in the interest of public protection to  
17 have the subject individual report under s. 301.45.

18 **SECTION 3.** 51.20 (13) (ct) 3. of the statutes is created to read:

19 51.20 (13) (ct) 3. In determining under subd. 1m. whether it would be in the  
20 interest of public protection to have the subject individual report under s. 301.45, the  
21 court may consider any of the following:

22 a. The ages, at the time of the violation, of the subject individual and the victim  
23 of the violation.

24 b. The relationship between the subject individual and the victim of the  
25 violation.

1 c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to  
2 the victim.

3 d. Whether the victim suffered from a mental illness or mental deficiency that  
4 rendered him or her temporarily or permanently incapable of understanding or  
5 evaluating the consequences of his or her actions.

6 e. The probability that the subject individual will commit other violations in  
7 the future.

8 f. The report of the examination conducted under s. 301.45 (1m) (d).

9 g. Any other factor that the court determines may be relevant to the particular  
10 case.

11 **SECTION 4.** 301.45 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Act  
12 440, is amended to read:

13 301.45 (1) WHO IS COVERED. (intro.) ~~A~~ Except as provided in sub. (1m), a person  
14 shall comply with the reporting requirements under this section if he or she meets  
15 any of the following criteria:

16 **SECTION 5.** 301.45 (1) (e) of the statutes, as affected by 1995 Wisconsin Act 440,  
17 is amended to read:

18 301.45 (1) (e) Is ordered by a court under s. 51.20 (13) (ct) 1m., 938.34 (15m)  
19 (am), 971.17 (1m) (b) 2. 1m. or 973.048 (1m) to comply with the reporting  
20 requirements under this section.

21 **SECTION 6.** 301.45 (1m) of the statutes is created to read:

22 301.45 (1m) EXCEPTION TO REGISTRATION REQUIREMENT. (a) A person is not  
23 required to comply with the reporting requirements under this section if all of the  
24 following apply:

1           1. The person meets the criteria under sub. (1) (a) to (dh) based on any violation,  
2 or on the solicitation, conspiracy or attempt to commit any violation, of s. 948.02 (1)  
3 or (2) or 948.025 or of a law of another state that is comparable to s. 948.02 (1) or (2)  
4 or 948.025.

5           2. At the time of the violation, or of the solicitation, conspiracy or attempt to  
6 commit the violation, of s. 948.02 (1) or (2) or 948.025 or of a law of another state that  
7 is comparable to s. 948.02 (1) or (2) or 948.025, the person had not attained the age  
8 of 19 years and was not more than 4 years older or not more than 4 years younger  
9 than the child.

10           3. It is not necessary, in the interest of public protection, to require the person  
11 to comply with the reporting requirements under this section.

12           (b) If a person believes that he or she is not required under par. (a) to comply  
13 with the reporting requirements under this section and the person is not before the  
14 court under s. 51.20 (13) (ct), 938.34 (15m), 971.17 (1m) (b) or 973.048, the person  
15 may move a court to make a determination of whether the person satisfies the  
16 criteria specified in par. (a). A motion made under this paragraph shall be filed with  
17 the circuit court for the county in which the person was convicted, adjudicated  
18 delinquent, found in need of protection or services or found not guilty or not  
19 responsible by reason of mental disease or defect, except that if the person meets the  
20 criteria of sub. (1) (dh) the person shall file the motion in the circuit court for the  
21 county in which he or she resides.

22           (be) A person who files a motion under par. (b) shall send a copy of the motion  
23 to the district attorney for the county in which the motion is filed. The district  
24 attorney shall make a reasonable attempt to contact the victim of the crime that is

1 the subject of the person's motion to inform the victim of his or her right to make or  
2 provide a statement under par. (bv).

3 (bm) A court shall hold a hearing on a motion made by a person under par. (b).  
4 The district attorney who receives a copy of a motion under par. (be) may appear at  
5 the hearing.

6 (bv) Before deciding a motion filed under par. (b), the court shall allow the  
7 victim of the crime that is the subject of the motion to make a statement in court at  
8 the hearing under par. (bm) or to submit a written statement to the court. A  
9 statement under this paragraph must be relevant to the determinations that a court  
10 must make under par. (b).

11 (d) 1. Before deciding a motion filed by a person under par. (b) or s. 51.20 (13)  
12 (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a  
13 determination of whether the person is required to comply with the reporting  
14 requirements under this section, a court may request the person to be examined by  
15 a physician, psychologist or other expert approved by the court. If the person refuses  
16 to undergo an examination requested by the court under this subdivision, the court  
17 shall deny the person's motion without prejudice.

18 2. If a person is examined by a physician, psychologist or other expert under  
19 subd. 1., the physician, psychologist or other expert shall file a report of his or her  
20 examination with the court, and the court shall provide copies of the report to the  
21 person and, if he or she requests a copy, to the district attorney. The contents of the  
22 report shall be confidential until the physician, psychologist or other expert has  
23 testified at the hearing held under par. (bm). The report shall contain an opinion  
24 regarding whether it would be in the interest of public protection to have the person  
25 register under this section and the basis for that opinion.

1           3. A person who is examined by a physician, psychologist or other expert under  
2       subd. 1. is responsible for paying the cost of the services provided by the physician,  
3       psychologist or other expert, except that if the person is indigent the cost of the  
4       services provided by the physician, psychologist or other expert shall be paid by the  
5       county. If the person claims or appears to be indigent, the court shall refer the person  
6       to the authority for indigency determinations under s. 977.07 (1), except that the  
7       person shall be considered indigent without another determination under s. 977.07  
8       (1) if the person is represented by the state public defender or by a private attorney  
9       appointed under s. 977.08.

10           (e) At the hearing held under par. (bm), the person who filed the motion under  
11       par. (b) has the burden of proving by clear and convincing evidence that he or she  
12       satisfies the criteria specified in par. (a). In deciding whether the person has satisfied  
13       the criterion specified in par. (a) 3., the court may consider any of the following:

14           1. The ages, at the time of the violation, of the person and of the child with whom  
15       the person had sexual contact or sexual intercourse.

16           2. The relationship between the person and the child with whom the person had  
17       sexual contact or sexual intercourse.

18           3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to  
19       the child with whom the person had sexual contact or sexual intercourse.

20           4. Whether the child with whom the person had sexual contact or sexual  
21       intercourse suffered from a mental illness or mental deficiency that rendered the  
22       child temporarily or permanently incapable of understanding or evaluating the  
23       consequences of his or her actions.

24           5. The probability that the person will commit other violations in the future.

25           6. The report of the examination conducted under par. (d).

1           7. Any other factor that the court determines may be relevant to the particular  
2 case.

3           **SECTION 7.** 301.45 (7) (c) (intro.) of the statutes, as affected by 1995 Wisconsin  
4 Act 440, is amended to read:

5           301.45 (7) (c) (intro.) A person about whom information is maintained in the  
6 registry under sub. (2) may request expungement of all pertinent information in the  
7 registry ~~on~~ if any of the grounds that his or her following applies:

8           1m. The person's conviction, delinquency adjudication, finding of need of  
9 protection or services or commitment has been reversed, set aside or vacated.

10           (d) The department shall purge all of ~~that~~ the information maintained in the  
11 registry under sub. (2) concerning a person to whom par. (c) applies if the department  
12 receives all of the following:

13           **SECTION 8.** 301.45 (7) (c) 1. and 2. of the statutes, as affected by 1995 Wisconsin  
14 Act 440, are renumbered 301.45 (7) (d) 1. and 2., and 301.45 (7) (d) 2., as renumbered,  
15 is amended to read:

16           301.45 (7) (d) 2. A certified copy of the court order reversing, setting aside or  
17 vacating the conviction, delinquency adjudication, finding of need of protection or  
18 services or commitment or a certified copy of the court's determination under sub.  
19 (1m) (b).

20           **SECTION 9.** 301.45 (7) (c) 2m. of the statutes is created to read:

21           301.45 (7) (c) 2m. A court has determined under sub. (1m) (b) that the person  
22 is not required to comply with the reporting requirements under this section.

23           **SECTION 10.** 301.46 (2m) (at) of the statutes is created to read:

1           301.46 **(2m)** (at) Paragraphs (a) and (am) do not apply to a person if a court has  
2 determined under s. 301.45 (1m) (b) that the person is not required to comply with  
3 the reporting requirements under s. 301.45.

4           **SECTION 11.** 938.34 (15m) (a) of the statutes, as created by 1995 Wisconsin Act  
5 440, is renumbered 938.34 (15m) (bm) and amended to read:

6           938.34 **(15m)** (bm) If the child juvenile is adjudicated delinquent on the basis  
7 of a violation, or the solicitation, conspiracy or attempt to commit a violation, of s.  
8 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,  
9 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor  
10 and the child juvenile was not the victim's parent, the court shall require the person  
11 juvenile to comply with the reporting requirements under s. 301.45 unless the court  
12 determines, after a hearing on a motion made by the juvenile, that the juvenile is not  
13 required to comply under s. 301.45 (1m).

14           **SECTION 12.** 938.34 (15m) (b) of the statutes, as created by 1995 Wisconsin Act  
15 440, is renumbered 938.34 (15m) (am) and amended to read:

16           938.34 **(15m)** (am) Except as provided in par. (a) ~~(bm)~~, if the child juvenile is  
17 adjudicated delinquent on the basis of any violation, or the solicitation, conspiracy  
18 or attempt to commit any violation, under ch. 940, 944 or 948 or ss. 943.01 to 943.15,  
19 the court may require the child juvenile to comply with the reporting requirements  
20 under s. 301.45 if the court determines that the underlying conduct was sexually  
21 motivated, as defined in s. 980.01 (5), and that it would be in the interest of public  
22 protection to have the child juvenile report under s. 301.45.

23           **SECTION 13.** 938.34 (15m) (c) of the statutes is created to read:



1           938.34 **(15m)** (c) In determining under par. (am) whether it would be in the  
2 interest of public protection to have the juvenile report under s. 301.45, the court may  
3 consider any of the following:

4           1. The ages, at the time of the violation, of the juvenile and the victim of the  
5 violation.

6           2. The relationship between the juvenile and the victim of the violation.

7           3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to  
8 the victim.

9           4. Whether the victim suffered from a mental illness or mental deficiency that  
10 rendered him or her temporarily or permanently incapable of understanding or  
11 evaluating the consequences of his or her actions.

12           5. The probability that the juvenile will commit other violations in the future.

13           6. The report of the examination conducted under s. 301.45 (1m) (d).

14           7. Any other factor that the court determines may be relevant to the particular  
15 case.

16           **SECTION 14.** 948.13 (2) of the statutes is amended to read:

17           948.13 **(2)** Whoever has been convicted of a serious child sex offense and  
18 subsequently engages in an occupation or participates in a volunteer position that  
19 requires him or her to work or interact primarily and directly with children under  
20 16 years of age is guilty of a Class C felony. This subsection does not apply to a person  
21 who is exempt under a court order issued under sub. (2m).

22           **SECTION 15.** 948.13 (2m) of the statutes is created to read:

23           948.13 **(2m)** (a) A person who has been convicted of a crime under s. 948.025  
24 (1) may petition the court in which he or she was convicted to order that the person  
25 be exempt from sub. (2) and permitted to engage in an occupation or participate in

1 a volunteer position that requires the person to work or interact primarily and  
2 directly with children under 16 years of age. The court may grant a petition filed  
3 under this paragraph if the court finds that all of the following apply:

4 1. At the time of the commission of the crime under s. 948.025 (1) the person  
5 had not attained the age of 19 years and was not more than 4 years older or not more  
6 than 4 years younger than the child with whom the person had sexual contact or  
7 sexual intercourse.

8 1m. The child with whom the person had sexual contact or sexual intercourse  
9 had attained the age of 13 but had not attained the age of 16.

10 2. It is not necessary, in the interest of public protection, to require the person  
11 to comply with sub. (2).

12 (b) A person filing a petition under par. (a) shall send a copy of the petition to  
13 the district attorney who prosecuted the person. The district attorney shall make a  
14 reasonable attempt to contact the victim of the crime that is the subject of the  
15 person's petition to inform the victim of his or her right to make or provide a  
16 statement under par. (d).

17 (c) A court may hold a hearing on a petition filed under par. (a) and the district  
18 attorney who prosecuted the person may appear at the hearing.

19 (d) Before deciding a petition filed under par. (a), the court shall allow the  
20 victim of the crime that is the subject of the petition to make a statement in court at  
21 any hearing held on the petition or to submit a written statement to the court. A  
22 statement under this paragraph must be relevant to the issues specified in par. (a)  
23 1., 1m. and 2.

24 (e) 1. Before deciding a petition filed under par. (a), the court may request the  
25 person filing the petition to be examined by a physician, psychologist or other expert

1 approved by the court. If the person refuses to undergo an examination requested  
2 by the court under this subdivision, the court shall deny the person's petition without  
3 prejudice.

4 2. If a person is examined by a physician, psychologist or other expert under  
5 subd. 1., the physician, psychologist or other expert shall file a report of his or her  
6 examination with the court, and the court shall provide copies of the report to the  
7 person and, if he or she requests a copy, to the district attorney. The contents of the  
8 report shall be confidential until the physician, psychologist or other expert has  
9 testified at the hearing held under par. (c). The report shall contain an opinion  
10 regarding whether it would be in the interest of public protection to require the  
11 person to comply with sub. (2) and the basis for that opinion.

12 3. A person who is examined by a physician, psychologist or other expert under  
13 subd. 1. is responsible for paying the cost of the services provided by the physician,  
14 psychologist or other expert, except that if the person is indigent the cost of the  
15 services provided by the physician, psychologist or other expert shall be paid by the  
16 county. If the person claims or appears to be indigent, the court shall refer the person  
17 to the authority for indigency determinations under s. 977.07 (1), except that the  
18 person shall be considered indigent without another determination under s. 977.07  
19 (1) if the person is represented by the state public defender or by a private attorney  
20 appointed under s. 977.08.

21 (f) The person who filed the petition under par. (a) has the burden of proving  
22 by clear and convincing evidence that he or she satisfies the criteria specified in par.  
23 (a) 1., 1m. and 2. In deciding whether the person has satisfied the criterion specified  
24 in par. (a) 2., the court may consider any of the following:

1           1. The ages, at the time of the violation, of the person who filed the petition and  
2 the victim of the crime that is the subject of the petition.

3           2. The relationship between the person who filed the petition and the victim  
4 of the crime that is the subject of the petition.

5           3. Whether the crime that is the subject of the petition resulted in bodily harm  
6 to the victim.

7           4. Whether the victim of the crime that is the subject of the petition suffered  
8 from a mental illness or mental deficiency that rendered him or her temporarily or  
9 permanently incapable of understanding or evaluating the consequences of his or her  
10 actions.

11           5. The probability that the person who filed the petition will commit other  
12 serious child sex offenses in the future.

13           6. The report of the examination conducted under par. (e).

14           7. Any other factor that the court determines may be relevant to the particular  
15 case.

16           **SECTION 16.** 971.17 (1m) (b) 1. of the statutes, as created by 1995 Wisconsin Act  
17 440, is renumbered 971.17 (1m) (b) 2m. and amended to read:

18           971.17 **(1m)** (b) 2m. If the defendant under sub. (1) is found not guilty by reason  
19 of mental disease or defect for a violation, or for the solicitation, conspiracy or  
20 attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02  
21 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s.  
22 940.30 or 940.31 if the victim was a minor and the defendant was not the victim's  
23 parent, the court shall require the defendant to comply with the reporting  
24 requirements under s. 301.45 unless the court determines, after a hearing on a

1 motion made by the defendant, that the defendant is not required to comply under  
2 s. 301.45 (1m).

3 **SECTION 17.** 971.17 (1m) (b) 2. of the statutes, as created by 1995 Wisconsin Act  
4 440, is renumbered 971.17 (1m) (b) 1m. and amended to read:

5 971.17 **(1m)** (b) 1m. Except as provided in subd. 1. 2m., if the defendant under  
6 sub. (1) is found not guilty by reason of mental disease or defect for any violation, or  
7 for the solicitation, conspiracy or attempt to commit any violation, of ch. 940, 944 or  
8 948 or ss. 943.01 to 943.15, the court may require the defendant to comply with the  
9 reporting requirements under s. 301.45 if the court determines that the underlying  
10 conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in  
11 the interest of public protection to have the defendant report under s. 301.45.

12 **SECTION 18.** 971.17 (1m) (b) 3. of the statutes is created to read:

13 971.17 **(1m)** (b) 3. In determining under subd. 1m. whether it would be in the  
14 interest of public protection to have the defendant report under s. 301.45, the court  
15 may consider any of the following:

16 a. The ages, at the time of the violation, of the defendant and the victim of the  
17 violation.

18 b. The relationship between the defendant and the victim of the violation.

19 c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to  
20 the victim.

21 d. Whether the victim suffered from a mental illness or mental deficiency that  
22 rendered him or her temporarily or permanently incapable of understanding or  
23 evaluating the consequences of his or her actions.

24 e. The probability that the defendant will commit other violations in the future.

25 f. The report of the examination conducted under s. 301.45 (1m) (d).

1           g. Any other factor that the court determines may be relevant to the particular  
2 case.

3           **SECTION 19.** 973.048 (1) of the statutes, as created by 1995 Wisconsin Act 440,  
4 is renumbered 973.048 (2m) and amended to read:

5           973.048 **(2m)** If a court imposes a sentence or places a person on probation for  
6 a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s.  
7 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,  
8 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was  
9 a minor and the person was not the victim's parent, the court shall require the person  
10 to comply with the reporting requirements under s. 301.45 unless the court  
11 determines, after a hearing on a motion made by the person, that the person is not  
12 required to comply under s. 301.45 (1m).

13           **SECTION 20.** 973.048 (2) of the statutes, as created by 1995 Wisconsin Act 440,  
14 is renumbered 973.048 (1m) and amended to read:

15           973.048 **(1m)** Except as provided in sub. (1) (2m), if a court imposes a sentence  
16 or places a person on probation for any violation, or for the solicitation, conspiracy  
17 or attempt to commit any violation, under ch. 940, 944 or 948 or ss. 943.01 to 943.15,  
18 the court may require the person to comply with the reporting requirements under  
19 s. 301.45 if the court determines that the underlying conduct was sexually  
20 motivated, as defined in s. 980.01 (5), and that it would be in the interest of public  
21 protection to have the person report under s. 301.45.

22           **SECTION 21.** 973.048 (3) of the statutes is created to read:

23           973.048 **(3)** In determining under sub. (1m) whether it would be in the interest  
24 of public protection to have the person report under s. 301.45, the court may consider  
25 any of the following:

