



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 591

**Senate Substitute
Amendment 2 and Senate
Amendments 1 and 2 to the
Substitute Amendment**

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Assembly Bill 591 requires sex offenders who are placed in the community to be placed in their county of residence or conviction or in a sex offender treatment facility and requires global positioning system (GPS) tracking for certain child sex offenders.

SENATE SUBSTITUTE AMENDMENT 2

Placement of Sex Offenders

Under *current law*, the Department of Corrections (DOC) must work to minimize, to the greatest extent possible, the residential population density of sex offenders who are on probation, parole, or extended supervision or placed on supervised release as a sexually violent person under ch. 980, Stats. In addition, a person who is paroled after serving a sentence for a sex offense may not be paroled to any county where there is a correctional institution that has a specialized sex offender treatment program, unless that county is also the person's county of residence.

For a person who is placed on conditional release following a finding that he or she is not guilty by reason of mental disease or defect, the Department of Health and Family Services (DHFS) and the county department of community programs in the person's county of residence must prepare a plan that identifies the treatment and services the person will receive in the community. If the county department of the person's county of residence declines to prepare a plan, DHFS may arrange for another county to prepare the plan if that county agrees to do so and if the offender will be living in that county.

If a court finds that a sexually violent person is appropriate for supervised release, DHFS must make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence. DHFS and the county department of community programs in the person's county of residence must prepare a plan that identifies the treatment and services the person will receive in the community. If the county department of the person's county of residence declines to prepare a plan, DHFS may arrange for another county to prepare the plan if that county agrees to do so

and if the offender will be living in that county. If DHFS is unable to arrange for another county to prepare a plan, the court must designate a county department to prepare the plan and place the person on supervised release in that county, except that the court may not designate the county department in any county where there is a facility in which persons committed to institutional care under ch. 980, Stats., are placed unless that county is also the person's county of residence.

The *substitute amendment* provides that, in addition to the placement requirements under current law, DOC must place each person who has been convicted of a sex offense in one of the following locations upon his or her release to parole or extended supervision:

- The county in which the person resided on the date of the sex offense. If the county is a county that contains a first-class city (currently, only Milwaukee County), the person must be placed in the city, village, or town in which the person resided on the date of the sex offense.
- The county in which the person was convicted of the sex offense.
- A sex offender treatment facility that existed before January 1, 2006.

The substitute amendment retains the provision under which a parolee may not be placed in any county where there is a correctional institution that has a specialized sex offender treatment program, unless that county is also the person's county of residence. In addition, the substitute amendment provides that the new placement provision does not preclude DOC from authorizing a person to reside in another location if DOC initially placed the person in one of the listed locations.

For a person placed on conditional release following a finding of not guilty by reason of mental disease or defect for a sex offense or a sexually violent person placed on supervised release, if the county of residence prepares a plan and the county contains a first-class city, DHFS must place the person in the city, village, or town in which he or she resided on the date of the sex offense. If the county department of community programs for the person's county of residence declines to prepare the person's release plan, DHFS may arrange for any of the following counties to prepare a plan if the county agrees to do so:

- The county in which the person was found not guilty by reason of mental disease or defect or in which the person was convicted, if the person will be living in that county.
- A county in which a treatment facility for sex offenders is located, if the person will be living in that facility.

The substitute amendment also provides that a person placed on conditional release following a finding of not guilty by reason of mental disease or defect for a sex offense may not be placed in a facility that did not exist before January 1, 2006. The substitute amendment provides that, as a condition of supervised release for a sexually violent person, for the first year of supervised release, the court must restrict the person to the person's home except for outings that are under the direct supervision of a DOC escort and that are for employment purposes, for religious purposes, or for caring for the person's basic living needs.

Internet Site

Under *current law*, DOC is required to provide access to information concerning registered sex offenders by creating and maintaining an Internet site and by any other means that DOC determines is appropriate.

The *substitute amendment* requires DOC to provide the following information concerning registered sex offenders on the Internet site: (a) if the person is a sexually violent person, a notice, written in red letters, of that status; (b) a current color photograph of the person, if available, and a physical description; (c) the person's name and home address; (d) whether the person has responded to the last contact letter from DOC; (e) the crime committed for which the person must register; (f) any conditions of the person's supervised release unless it would reveal the identity of the victim; (g) the date, time, and place of any scheduled hearing for supervised release or discharge of a sexually violent person; (h) the name and court of the judge who authorized supervised release or discharge of the person; and (i) the most recent date on which the information was updated.

GPS Tracking

Persons Required to be Tracked

Under the substitute amendment, DOC must arrange for lifetime GPS tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone for all of the following:

- Any person who is placed on probation, extended supervision, or parole for committing a serious child sex offense.
- Any person who is placed on conditional release, discharged, or placed on parole after having been found not guilty of a serious child sex offense by reason of mental disease or defect.
- Any person who is placed on supervised release or discharged after having been found to be a sexually violent person under ch. 980, Stats.

The substitute amendment defines "serious child sex offense" as first-degree sexual assault of a child (sexual intercourse or contact with a person under 13 years of age). "Serious child sex offense" also includes second-degree sexual assault of a child (sexual intercourse or contact with a person under 16 years of age) if the court makes a finding, based upon a preponderance of the evidence, that the offense involved the use or a threat of force or violence.

The substitute amendment also requires DOC to have a person tracked using a GPS tracking device if: (a) the person has been convicted under federal law or the law of any other state of a crime that is comparable to a serious child sex offense or found not guilty or not responsible for such a crime by reason of mental disease or defect; and (b) the person resides, is employed or carrying on a vocation, or is a student in this state.

Under the substitute amendment, DOC *may* have a person tracked if the person is placed on probation, extended supervision, or parole for a sex offense that is not a serious child sex offense.

Exception to Tracking Requirements

Under the substitute amendment, a person who has committed a serious child sex offense is exempt from GPS tracking requirements if all of the following apply:

- The serious child sex offense did not involve sexual intercourse by the use or threat of force or violence and did not involve sexual intercourse with a victim under 12 years of age.
- At the time of the serious child sex offense, the person had not attained the age of 19 years, was not more than four years older than the child, and was not more than four years younger than the child.
- It is not necessary, in the interest of public protection, to subject the person to GPS tracking.

A person who believes that he or she is exempt from the GPS tracking requirement must prove by clear and convincing evidence that he or she satisfies the criteria for being exempt. In deciding whether it is necessary, in the interest of public protection, to subject the person to GPS tracking, the court may consider any of the following:

- The ages, at the time of the violation, of the person and of the child with whom the person had sexual contact or sexual intercourse.
- The relationship between the person and the child.
- Whether the violation resulted in bodily harm to the child.
- Whether the child suffered from a mental illness or mental deficiency that rendered the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
- The probability that the person will commit other violations in the future.
- The result of any court-requested examination of the person by a physician or psychologist.
- Any other factor that the court determines may be relevant to the particular case.

Supervision of Persons Subject to GPS Tracking

Under the substitute amendment, DOC is required to create individualized exclusion and inclusion zones for a person who is subject to GPS tracking, if necessary to protect public safety. “Exclusion zone” is defined as a zone in which a person who is GPS tracked is prohibited from entering except for purposes of traveling through to get to another destination. “Inclusion zone” is defined as a zone in which such a person is prohibited from leaving.

In creating exclusion zones, DOC must focus on areas where children congregate, with perimeters of 100 to 250 feet, and on areas where the person has been prohibited from going as a condition of probation, extended supervision, parole, conditional release, or supervised release.

The substitute amendment also requires DOC to ensure that the person's GPS tracking device, or any comparable technology used with respect to the person, immediately alerts DOC and the local law enforcement agency having jurisdiction over the exclusion or inclusion zone if: (a) the person stays in an exclusion zone that is created for him or her for any period longer than the time needed to travel through the zone to get to another destination; or (b) leaves any inclusion zone that is created for him or her.

Costs of GPS Tracking

The substitute amendment permits DOC to require a person who is subject to GPS tracking to pay the amount DOC finds the person is able to pay towards the cost of his or her GPS tracking. In determining how much of the costs of the tracking the person is able to pay, DOC may consider: (a) the person's financial resources; (b) the present and future earning ability of the person; (c) the needs and earning ability of the person's dependents; (d) any other costs that the person is required to pay in conjunction with his or her supervision by DOC or the Department of Health and Family Services; and (e) any other factors that DOC considers appropriate.

Petition for Termination of Lifetime Tracking

Under the substitute amendment, ***a person who is subject to lifetime tracking*** may file a petition requesting that lifetime tracking be terminated if: (a) the person has not been convicted of a crime that was committed during the period of lifetime tracking; and (b) the person's tracking began at least 20 years prior to the filing of the petition. Following a hearing, the court may grant the petition if it determines that lifetime tracking is no longer necessary to protect the public.

If a person's petition is denied, the person may not file a subsequent petition requesting termination of lifetime tracking until at least five years have elapsed since the most recent petition was denied.

A person who is subject to lifetime tracking based upon a finding that the person is a sexually violent person may not file a petition requesting termination of lifetime tracking.

The substitute amendment provides that ***DOC*** may file a petition requesting that a person's lifetime tracking be terminated if the person is permanently physically incapacitated. The petition must include affidavits from two physicians that explain the nature of the person's permanent physical incapacitation. Following a hearing, the court may grant the petition if it determines that the person to whom the petition relates is permanently physically incapacitated so that he or she is not a danger to the public.

Penalty for Tampering With GPS Tracking Device

The substitute amendment provides that whoever, without the authorization of DOC, intentionally tampers with a GPS tracking device or comparable technology provided because the person

is a sex offender is guilty of a Class I felony, punishable by a fine not to exceed \$1,000 and imprisonment not to exceed three years and six months (maximum 18 months confinement in prison and two years extended supervision).

Effective Date

Under the substitute amendment, the legislation takes effect on the first day of the sixth month following publication.

DIFFERENCES BETWEEN THE SUBSTITUTE AMENDMENT AND THE BILL

Senate Substitute Amendment 2 makes the following major changes to Assembly Bill 591:

- Under the substitute amendment, sex offenders who are required to be placed in their county of residence must be placed in the city, village, or town in which the person resided on the date of the sex offense if their county of residence contains a first-class city.
- The substitute amendment provides a person who is released to parole or extended supervision or placed on conditional release for a sex offense may not be placed in a sex offender treatment facility that did not exist before January 1, 2006.
- The substitute amendment creates a new provision under which, as a condition of supervised release for a sexually violent person, for the first year of supervised release, the court must restrict the person to the person's home except for outings that are under the direct supervision of a DOC escort and that are for employment purposes, for religious purposes, or for caring for the person's basic living needs.

SENATE AMENDMENT 1 TO THE SUBSTITUTE AMENDMENT

Senate Amendment 1 to the substitute amendment makes the following changes:

- The amendment changes the definition of "serious child sex offense" so that it means sexual assault of a child if any of the following applies: (a) the actor had sexual intercourse with a person who has not attained the age of 12 years; (b) the actor has sexual intercourse with a person who has not attained the age of 16 years by threat or use of force or violence; or (c) the actor has sexual contact with a person who has not attained the age of 16 years by threat or use of force or violence and the actor is at least 18 years of age at the time of the offense.
- The amendment creates a definition of "sexual intercourse" for purposes of GPS tracking. Under the amendment, "sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of an object into the genital or anal opening either by the defendant or upon the defendant's instruction. Under current law, "sexual intercourse" also includes the intrusion, however slight, of any part of a person's body into the genital or anal opening either by the defendant or upon the defendant's instruction.

- The amendment deletes the provisions permitting a person to petition the court to be exempt from GPS tracking requirements if the sex offense did not involve sexual intercourse by the use or threat of force or violence and did not involve sexual intercourse with a victim under the age of 12 years.
- The amendment creates a provision under which DOC may terminate a person's lifetime GPS tracking after 10 years if the victim of the serious child sex offense for which the person is being tracked is a relative of the person being tracked. The amendment defines "relative" as a child, brother, sister, first cousin, second cousin, nephew, niece, grandchild, or great grandchild, or any other person related by blood, marriage, or adoption.

SENATE AMENDMENT 2 TO THE SUBSTITUTE AMENDMENT

Senate Amendment 2 to the substitute amendment makes the following changes:

- The amendment deletes the requirement that DOC place a person who has been convicted of a sex offense in his or her city, village, or town of residence if his or her county of residence is Milwaukee County.
- The amendment permits DOC to place a person who has been convicted of a sex offense in a sex offender treatment facility whether or not the facility existed before January 1, 2006.
- The amendment permits DOC to use passive positioning tracking for a person who is subject to lifetime GPS tracking once the person completes his or her sentence, including any probation, parole, or extended supervision. "Passive positioning system tracking" is defined as tracking using a system that monitors, identifies, and records a person's position.
- The amendment provides that a sexually violent person who is placed on supervised release in Milwaukee County under ch. 980, Stats., may be placed outside the person's city, village, or town or residence if DHFS approves placement of the person with the person's spouse, parent, or adult sibling.
- The amendment requires DOC to submit to the Joint Committee on Finance a report on the contract entered into by DOC for GPS tracking services within six months of the effective date of the legislation.
- The amendment provides that the legislation takes effect on July 1, 2007.

Legislative History

Senate Substitute Amendment 2 was offered by Senator Lazich. Senate Amendment 1 to the substitute amendment was offered by Senators Darling and Grothman. On March 7, 2006, the Senate adopted Senate Amendment 1 to the substitute amendment on a voice vote.

Senate Amendment 2 to the substitute amendment was offered by the Joint Committee on Finance. On March 30, 2006, the Joint Committee on Finance unanimously adopted Senate Amendment 2 to the substitute amendment and adopted Senate Substitute Amendment 2, as amended, on a vote of

Ayes, 14; Noes, 2. On that date, the committee also recommended concurrence in the bill, as amended, on a vote of Ayes, 15; Noes, 1.

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