



2009 ASSEMBLY BILL 759

February 19, 2010 - Introduced by Representatives KESSLER, FRISKE, ROYS, SHERMAN, GRIGSBY, A. WILLIAMS, BIES, VRUWINK, PARISI, DANOU, MURSAU, NYGREN, A. OTT, TOWNSEND, M. WILLIAMS, BALLWEG, PETROWSKI, SPANBAUER, WOOD, TOLES and NEWCOMER, cosponsored by Senator TAYLOR. Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to repeal* 301.48 (1) (a) and 301.48 (1) (c); *to renumber* 980.08 (9) (a);
2 *to renumber and amend* 301.48 (3) (c), 971.17 (3) (e) and 980.08 (9) (b); *to*
3 *amend* 301.48 (1) (b), 301.48 (3) (a) 1., 301.48 (3) (a) 3. and 301.48 (3) (d) 1.; and
4 *to create* 66.0408, 301.133, 301.48 (3m) (title), 301.48 (3m) (a) 1., 301.48 (3m)
5 (b), 301.48 (8), 302.116 (3), 304.06 (1r), 975.10 (1m) and 980.08 (9) (bm) of the
6 statutes; **relating to:** conditions of release to extended supervision, parole,
7 conditional release, and supervised release, and conditions of probation, for sex
8 offenders who committed certain crimes against children; prohibited areas for
9 sex offenders who committed certain crimes against children; prohibiting a
10 political subdivision from regulating the placement or residency of sex
11 offenders; and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Corrections (DOC) to maintain active lifetime global positioning system (GPS) tracking of sex offenders who have been committed as sexually violent persons and certain sex offenders who have committed specified sex offenses against a child. DOC must also, if necessary to protect public

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safety, create for these sex offenders areas that they are prohibited from entering or areas that they are prohibited from leaving. A person who violates such a prohibition is subject to a \$200 forfeiture.

Under this bill, if the crime that led to the GPS tracking requirement is a level 1 child sex offense or if the person is found to be a sexually violent person, DOC must generally prohibit the person, while he or she is on parole, probation, extended supervision, conditional release, or supervised release, from entering certain areas including any area where persons under 16 years of age congregate, including schools, day care centers, playgrounds, parks, and published school bus stops. If a person violates the prohibition, his or her release is revoked and he or she is guilty of a Class I felony. In addition, under this bill, if the crime that led to the GPS tracking requirement is a level 1 child sex offense and if the tracked person enters or leaves an area that DOC prohibited him or her from entering or from leaving to protect public safety, the person's release is also revoked.

This bill also prohibits a political subdivision (a city, village, town, or county) from enacting or enforcing an ordinance or resolution that specifically affects the placement or residency of, or areas that may not be entered or exited by, a registered sex offender.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 66.0408 of the statutes is created to read:

2 **66.0408 Local regulation of sex offenders. (1)** In this section:

3 (a) “Political subdivision” means a city, village, town, or county.

4 (b) “Sex offender” means a person who is a registered sex offender under s.
5 301.45.

6 **(2)** (a) A political subdivision may not enact an ordinance or adopt a resolution
7 that specifically affects the placement or residency of, or areas that may not be
8 entered or exited by, an individual based on that individual's status as a sex offender.

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1 (b) If a political subdivision has in effect on the effective date of this paragraph
2 [LRB inserts date], an ordinance or resolution that is inconsistent with par. (a),
3 the ordinance or resolution does not apply and may not be enforced.

4 **SECTION 2.** 301.133 of the statutes is created to read:

5 **301.133 Condition of probation for certain sex offenders.** As a condition
6 of probation, any person who is subject to a prohibition under s. 301.48 (3m) (a) 1.
7 may not violate a prohibition under s. 301.48 (3m) (a) or (c).

8 **SECTION 3.** 301.48 (1) (a) of the statutes is repealed.

9 **SECTION 4.** 301.48 (1) (b) of the statutes is amended to read:

10 301.48 (1) (b) “Global positioning system tracking” means tracking using a
11 system that actively monitors and identifies a person’s location and timely reports
12 or records the person’s presence near or at a crime scene ~~or in an exclusion zone or~~
13 ~~the person’s departure from an inclusion zone~~ and timely reports or records if the
14 person appears to be violating a prohibition under sub. (3m) (a) or (c). “Global
15 positioning system tracking” includes comparable technology.

16 **SECTION 5.** 301.48 (1) (c) of the statutes is repealed.

17 **SECTION 6.** 301.48 (3) (a) 1. of the statutes is amended to read:

18 301.48 (3) (a) 1. Use field monitoring equipment that supports cellular
19 communications with as large a coverage area as possible and shall automatically
20 provide instantaneous information regarding the whereabouts of a person who is
21 being monitored, including information regarding ~~the person’s presence in an~~
22 ~~exclusion zone established under par. (c) or absence from an inclusion zone~~
23 ~~established under par. (e)~~ any apparent violation of a prohibition under sub. (3m) (a)
24 or (c).

25 **SECTION 7.** 301.48 (3) (a) 3. of the statutes is amended to read:

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1 301.48 (3) (a) 3. Immediately alert the department and the local law
2 enforcement agency having jurisdiction over the exclusion or inclusion zone if the
3 person stays in any exclusion zone for any longer period than the time needed to
4 travel through the zone to get to another destination or if the person leaves any
5 inclusion zone appears to be in violation of any prohibition under sub. (3m) (a) or (c).

6 **SECTION 8.** 301.48 (3) (c) of the statutes is renumbered 301.48 (3m) (a) 2. and
7 amended to read:

8 301.48 (3m) (a) 2. For each person who is subject to global positioning system
9 tracking under this section, the department shall create individualized exclusion
10 and inclusion zones for the person, if necessary to protect public safety. In creating
11 exclusion zones In addition to any prohibition under subd. 1., the department shall
12 prohibit any person subject to global positioning tracking under this section from
13 entering any specific area if necessary to protect public safety. If the department
14 creates a prohibition under this subdivision, the department shall focus on areas
15 where children congregate, with perimeters of 100 to 250 feet, and on areas where
16 the person has been prohibited from going as a condition of probation, extended
17 supervision, parole, conditional release, supervised release, or lifetime supervision.
18 In creating inclusion zones

19 (c) The department shall prohibit any person who is subject to global
20 positioning system tracking under this section from leaving any specific area if
21 necessary to protect public safety. When creating a prohibition under this paragraph
22 for a person who is on supervised release, the department shall consider s. 980.08 (9)
23 (a).

24 **SECTION 9.** 301.48 (3) (d) 1. of the statutes is amended to read:

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1 301.48 (3) (d) 1. The department of corrections has been alerted under par. (a)
2 3. that the person being tracked has ~~improperly stayed in an exclusion zone or~~
3 ~~improperly left an inclusion zone~~ violated a prohibition under sub. (3m) (a) or (c).

4 **SECTION 10.** 301.48 (3m) (title) of the statutes is created to read:

5 301.48 (3m) (title) PROHIBITED AREAS.

6 **SECTION 11.** 301.48 (3m) (a) 1. of the statutes is created to read:

7 301.48 (3m) (a) 1. If a person is subject to lifetime tracking under sub. (2) (b)
8 1. or 2. and is on supervised release or if a person is subject to lifetime tracking under
9 sub. (2) (a) or (b) 3. and is on parole, probation, conditional release, or extended
10 supervision for committing a level 1 child sex offense, the department shall prohibit
11 that person from entering specific areas where persons under 16 years of age
12 congregate, including but not limited to, schools, day care centers, playgrounds,
13 parks, and published school bus stops.

14 **SECTION 12.** 301.48 (3m) (b) of the statutes is created to read:

15 301.48 (3m) (b) A person does not violate the prohibition against entering an
16 area under par. (a) 1. or 2. if any of the following apply:

17 1. The person's voting location is within the area and the entry is during the
18 hours that are designated for voting.

19 2. The person is dropping off or picking up his or her relative at a child care
20 facility or school.

21 3. The person has entered the area for the purpose of travelling through the
22 area to get to another destination.

23 4. The department of corrections or the department of health services,
24 whichever is supervising the person, has given prior approval for the person to enter
25 the area.

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1 **SECTION 13.** 301.48 (8) of the statutes is created to read:

2 301.48 (8) PENALTY. Whoever violates a prohibition under sub. (3m) (a) 1. is
3 guilty of a Class I felony.

4 **SECTION 14.** 302.116 (3) of the statutes is created to read:

5 302.116 (3) As a condition of parole, any person who is subject to a prohibition
6 under s. 301.48 (3m) (a) 1. may not violate a prohibition under s. 301.48 (3m) (a) or
7 (c).

8 **SECTION 15.** 304.06 (1r) of the statutes is created to read:

9 304.06 (1r) As a condition of extended supervision, any person who is subject
10 to a prohibition under s. 301.48 (3m) (a) 1. may not violate a prohibition under s.
11 301.48 (3m) (a) or (c).

12 **SECTION 16.** 971.17 (3) (e) of the statutes is renumbered 971.17 (3) (e) 1. and
13 amended to read:

14 971.17 (3) (e) 1. An order for conditional release places the person in the
15 custody and control of the department of health services. A conditionally released
16 person is subject to the conditions set by the court and to the rules of the department
17 of health services. As a condition of conditional release, any person who is subject
18 to a prohibition under s. 301.48 (3m) (a) 1. may not violate a prohibition under s.
19 301.48 (3m) (a) or (c).

20 2. Before a person is conditionally released by the court under this subsection,
21 the court shall so notify the municipal police department and county sheriff for the
22 area where the person will be residing. The notification requirement under this
23 paragraph subdivision does not apply if a municipal department or county sheriff
24 submits to the court a written statement waiving the right to be notified.

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1 3. If the department of health services alleges that a released person has
2 violated any condition or rule, or that the safety of the person or others requires that
3 conditional release be revoked, he or she may be taken into custody under the rules
4 of the department. The department of health services shall submit a statement
5 showing probable cause of the detention and a petition to revoke the order for
6 conditional release to the committing court and the regional office of the state public
7 defender responsible for handling cases in the county where the committing court is
8 located within 72 hours after the detention, excluding Saturdays, Sundays, and legal
9 holidays. The court shall hear the petition within 30 days, unless the hearing or time
10 deadline is waived by the detained person. Pending the revocation hearing, the
11 department of health services may detain the person in a jail or in a hospital, center
12 or facility specified by s. 51.15 (2). The state has the burden of proving by clear and
13 convincing evidence that any rule or condition of release has been violated, or that
14 the safety of the person or others requires that conditional release be revoked. If the
15 court determines after hearing that any rule or condition of release has been violated,
16 or that the safety of the person or others requires that conditional release be revoked,
17 it may revoke the order for conditional release and order that the released person be
18 placed in an appropriate institution under s. 51.37 (3) until the expiration of the
19 commitment or until again conditionally released under this section.

20 **SECTION 17.** 975.10 (1m) of the statutes is created to read:

21 975.10 (1m) As a condition of parole, any parolee under sub. (1) who is subject
22 to a prohibition under s. 301.48 (3m) (a) 1. may not violate a prohibition under s.
23 301.48 (3m) (a) or (c).

24 **SECTION 18.** 980.08 (9) (a) of the statutes is renumbered 980.08 (9) (a) 1.

