



1997 ASSEMBLY BILL 431

June 24, 1997 - Introduced by Representatives HUBER, HOVEN, GOETSCH, ZIEGELBAUER, POWERS, RYBA, M. LEHMAN, VANDER LOOP, HANSON, OLSEN, BAUMGART, MUSSER, DUFF, GRONEMUS, SYKORA, KELSO, PLOUFF, STASKUNAS, R. YOUNG and BOCK, cosponsored by Senators PANZER, ADELMAN, DARLING and ROESSLER. Referred to 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.

Analysis by the Legislative Reference Bureau

This bill makes the following changes relating to the sex offender registration requirements and the prohibition on child sex offenders working with children:

Sex offender registration requirements

Currently, a person must 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 for certain sex offenses, including sexual assault of a child or repeated sexual assault of a child. Sexual assault of a child is defined as sexual intercourse or sexual contact with a child who is younger than 16 years old, and repeated sexual assault of a child is 3 or more sexual assaults of the same child within a specific period

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of time. While sexual assault generally involves sexual intercourse or sexual contact without the consent of the victim, consent is not an issue in cases involving sexual assault of a child.

Under current law, the department of corrections (DOC) must maintain a registry of sex offenders that contains specified information about persons who are required to register as a sex offender. Generally, the information in the sex offender registry is confidential. However, DOC or other state agencies that have custody or control of a sex offender may release information from the registry to certain persons, including local law enforcement agencies, certain community organizations and the general public. In addition to releasing information from the sex offender registry, DOC and other state agencies are required in certain cases to notify law enforcement agencies and victims about the release of sex offenders from custody into the community.

This bill provides that a person who has been convicted or found not guilty by reason of mental disease or defect for sexual assault of a child or repeated sexual assault of a child is not required to register as a sex offender if a judge determines that the person was not more than 4 years older or not more than 4 years younger than the child at the time of the sexual intercourse or sexual contact. However, the bill also provides that, even if a judge determines that a person is not required to register as a sex offender, the judge may still order the person to register as a sex offender if the judge determines that it would be in the interest of public protection to have the person register as a sex offender.

If a person is not required to register as a sex offender under the bill and he or she is not ordered by a judge to register as a sex offender, information about the person will not be included in the sex offender registry. Thus, the sex offender registry will not provide local law enforcement agencies, community organizations and the general public with information concerning the person. The bill does not change any provisions under current law that require DOC or other state agencies to notify law enforcement agencies and victims about the release of the person from custody into the community.

Child sex offenders working with children

Under current law, a person who has been convicted of a serious child sex offense is prohibited from engaging in an occupation or participating in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age. The serious child sex offenses covered under this law include sexual assault of a child who has not attained the age of 13 and repeated sexual assault of a child. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than 10 years or both.

This bill provides that a person who has been convicted of sexual assault of a child who has not attained the age of 13 or repeated sexual assault of a child may petition the court in which he or she was convicted for an exemption from the prohibition against working with children. The court may grant the person's petition if the court determines that all of the following apply: 1) at the time of the commission of the crime, the person was not more than 4 years older or not more than 4 years younger than the child; and 2) it is not necessary, in the interest of public

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protection, to require the person to comply with the prohibition against working with children.

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

3 51.20 (13) (ct) 2m. If the subject individual is before the court on a petition filed
4 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a
5 violation, or to have solicited, conspired or attempted to commit a violation, of s.
6 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
7 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor
8 and the subject individual was not the victim's parent, the court shall require the
9 individual to comply with the reporting requirements under s. 301.45 unless the
10 court determines, after a hearing on a motion made by the individual, that the
11 individual is not required to comply under s. 301.45 (1m), in which case subd. 3.
12 applies.

13 **SECTION 2.** 51.20 (13) (ct) 2. of the statutes, as created by 1995 Wisconsin Act
14 440, is renumbered 51.20 (13) (ct) 1m. and amended to read:

15 51.20 (13) (ct) 1m. Except as provided in ~~subd. 1.~~ subds. 2m. and 3., if the
16 subject individual is before the court on a petition filed under a court order under s.
17 938.30 (5) (c) 1. and is found to have committed any violation, or to have solicited,
18 conspired or attempted to commit any violation, of ch. 940, 944 or 948 or ss. 943.01
19 to 943.15, the court may require the subject individual to comply with the reporting
20 requirements under s. 301.45 if the court determines that the underlying conduct

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1 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
2 of public protection to have the subject individual report under s. 301.45.

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

4 51.20 (13) (ct) 3. If the court determines under subd. 2m. that the subject
5 individual is not required to comply with the reporting requirements under s. 301.45,
6 the court may order the subject individual to comply with the reporting requirements
7 if the court determines that it would be in the interest of public protection to have
8 the subject individual report under s. 301.45.

9 **SECTION 4.** 301.45 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Act
10 440, is amended to read:

11 301.45 (1) WHO IS COVERED. (intro.) ~~A~~ Except as provided in sub. (1m), a person
12 shall comply with the reporting requirements under this section if he or she meets
13 any of the following criteria:

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

16 301.45 (1) (e) Is ordered by a court under sub. (1m) (c) or s. 51.20 (13) (ct) 1m.
17 or 3., 938.34 (15m) (am) or (c), 971.17 (1m) (b) 2. 1m. or 3. or 973.048 (1m) or (3) to
18 comply with the reporting requirements under this section.

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

20 301.45 (1m) EXCEPTION TO REGISTRATION REQUIREMENT. (a) A person is not
21 required to comply with the reporting requirements under this section if a court
22 determines that all of the following apply:

23 1. The person meets the criteria under sub. (1) (a) to (dh) based on any violation,
24 or on the solicitation, conspiracy or attempt to commit any violation, of s. 948.02 (1)

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1 or (2) or 948.025 or of a law of another state that is comparable to s. 948.02 (1) or (2)
2 or 948.025.

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

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

16 (be) A person who files a motion under par. (b) shall send a copy of the motion
17 to the district attorney for the county in which the motion is filed. The district
18 attorney shall make a reasonable attempt to contact the victim of the crime that is
19 the subject of the person's motion to inform the victim of his or her right to make or
20 provide a statement under par. (bv).

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

24 (bv) Before deciding a motion filed under par. (b), the court shall allow the
25 victim of the crime that is the subject of the motion to make a statement in court at

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1 the hearing under par. (bm) or to submit a written statement to the court. A
2 statement under this paragraph must be relevant to the determinations that a court
3 must make under pars. (b) and (c).

4 (c) Notwithstanding par. (a), if a court determines after a hearing under par.
5 (bm) that the person is not required to comply with the reporting requirements under
6 this section, the court may order the person to comply with the reporting
7 requirements if the court determines that it would be in the interest of public
8 protection to have the person report under this section.

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

11 301.45 (7) (c) (intro.) A person about whom information is maintained in the
12 registry under sub. (2) may request expungement of all pertinent information in the
13 registry ~~on~~ if any of the grounds that his or her following applies:

14 1m. The person's conviction, delinquency adjudication, finding of need of
15 protection or services or commitment has been reversed, set aside or vacated.

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

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

22 301.45 (7) (d) 2. A certified copy of the court order reversing, setting aside or
23 vacating the conviction, delinquency adjudication, finding of need of protection or
24 services or commitment or a certified copy of the court's determination under sub.
25 (1m) (b).

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

2 301.45 **(7)** (c) 2m. A court has determined under sub. (1m) (b) that the person
3 is not required to comply with the reporting requirements under this section and the
4 court has not ordered the person to comply with the reporting requirements under
5 sub. (1m) (c).

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

7 301.46 **(2m)** (at) Paragraphs (a) and (am) do not apply to a person to whom s.
8 301.45 (1m) applies unless the person is required to comply with the reporting
9 requirements under s. 301.45 by a court acting under s. 51.20 (13) (ct) 3., 301.45 (1m)
10 (c), 938.34 (15m) (c), 971.17 (1m) (b) 3. or 973.048 (3).

11 **SECTION 11.** 938.34 (15m) (a) of the statutes, as created by 1995 Wisconsin Act
12 440, is renumbered 938.34 (15m) (bm) and amended to read:

13 938.34 **(15m)** (bm) If the ~~child~~ juvenile is adjudicated delinquent on the basis
14 of a violation, or the solicitation, conspiracy or attempt to commit a violation, of s.
15 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
16 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor
17 and the ~~child~~ juvenile was not the victim's parent, the court shall require the ~~person~~
18 juvenile to comply with the reporting requirements under s. 301.45 unless the court
19 determines, after a hearing on a motion made by the juvenile, that the juvenile is not
20 required to comply under s. 301.45 (1m), in which case par. (c) applies.

21 **SECTION 12.** 938.34 (15m) (b) of the statutes, as created by 1995 Wisconsin Act
22 440, is renumbered 938.34 (15m) (am) and amended to read:

23 938.34 **(15m)** (am) Except as provided in ~~par. (a)~~ pars. (bm) and (c), if the ~~child~~
24 juvenile is adjudicated delinquent on the basis of any violation, or the solicitation,
25 conspiracy or attempt to commit any violation, under ch. 940, 944 or 948 or ss. 943.01

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1 to 943.15, the court may require the ~~child~~ juvenile to comply with the reporting
2 requirements under s. 301.45 if the court determines that the underlying conduct
3 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
4 of public protection to have the ~~child~~ juvenile report under s. 301.45.

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

6 938.34 **(15m)** (c) If the court determines under par. (bm) that the juvenile is not
7 required to comply with the reporting requirements under s. 301.45, the court may
8 order the juvenile to comply with the reporting requirements if the court determines
9 that it would be in the interest of public protection to have the juvenile report under
10 s. 301.45.

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

12 948.13 **(2)** Whoever has been convicted of a serious child sex offense and
13 subsequently engages in an occupation or participates in a volunteer position that
14 requires him or her to work or interact primarily and directly with children under
15 16 years of age is guilty of a Class C felony. This subsection does not apply to a person
16 who is exempt under a court order issued under sub. (2m).

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

18 948.13 **(2m)** (a) A person who has been convicted of a crime under s. 948.02 (1)
19 or 948.025 (1) may petition the court in which he or she was convicted to order that
20 the person be exempt from sub. (2) and permitted engage in an occupation or
21 participate in a volunteer position that requires the person to work or interact
22 primarily and directly with children under 16 years of age. The court may grant a
23 petition filed under this paragraph if the court finds that all of the following apply:

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1 1. At the time of the commission of the crime under s. 948.02 (1) or 948.025 (1)
2 the person was not more than 4 years older or not more than 4 years younger than
3 the child with whom the person had sexual contact or sexual intercourse.

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

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

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

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

18 **SECTION 16.** 971.17 (1m) (b) 1. of the statutes, as created by 1995 Wisconsin Act
19 440, is renumbered 971.17 (1m) (b) 2m. and amended to read:

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

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1 requirements under s. 301.45 unless the court determines, after a hearing on a
2 motion made by the defendant, that the defendant is not required to comply under
3 s. 301.45 (1m), in which case subd. 3. applies.

4 **SECTION 17.** 971.17 (1m) (b) 2. of the statutes, as created by 1995 Wisconsin Act
5 440, is renumbered 971.17 (1m) (b) 1m. and amended to read:

6 971.17 **(1m)** (b) 1m. Except as provided in ~~subd. 1.~~ subds. 2m. and 3., if the
7 defendant under sub. (1) is found not guilty by reason of mental disease or defect for
8 any violation, or for the solicitation, conspiracy or attempt to commit any violation,
9 of ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the defendant to
10 comply with the reporting requirements under s. 301.45 if the court determines that
11 the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that
12 it would be in the interest of public protection to have the defendant report under s.
13 301.45.

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

15 971.17 **(1m)** (b) 3. If the court determines under subd. 2m. that the defendant
16 is not required to comply with the reporting requirements under s. 301.45, the court
17 may order the defendant to comply with the reporting requirements if the court
18 determines that it would be in the interest of public protection to have the defendant
19 report under s. 301.45.

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

22 973.048 **(2m)** If a court imposes a sentence or places a person on probation for
23 a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s.
24 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,
25 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was

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1 a minor and the person was not the victim's parent, the court shall require the person
2 to comply with the reporting requirements under s. 301.45 unless the court
3 determines, after a hearing on a motion made by the person, that the person is not
4 required to comply under s. 301.45 (1m), in which case sub. (3) applies.

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

7 973.048 **(1m)** Except as provided in ~~sub. (1)~~ subs. (2m) and (3), if a court
8 imposes a sentence or places a person on probation for any violation, or for the
9 solicitation, conspiracy or attempt to commit any violation, under ch. 940, 944 or 948
10 or ss. 943.01 to 943.15, the court may require the person to comply with the reporting
11 requirements under s. 301.45 if the court determines that the underlying conduct
12 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest
13 of public protection to have the person report under s. 301.45.

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

15 973.048 **(3)** If the court determines under sub. (2m) that the person is not
16 required to comply with the reporting requirements under s. 301.45, the court may
17 order the person to comply with the reporting requirements if the court determines
18 that it would be in the interest of public protection to have the person report under
19 s. 301.45.

20 **(END)**