



2005 ASSEMBLY BILL 652

September 9, 2005 - Introduced by Representatives MCCORMICK, ALBERS, MUSSER, TOWNSEND, OTT, GUNDERSON, FRISKE, KRAWCZYK, LEMAHIEU, BIES, OWENS, HINES and PETTIS, cosponsored by Senators A. LASEE and ROESSLER. Referred to Committee on Criminal Justice and Homeland Security.

1 **AN ACT** *to amend* 51.20 (13) (ct) 2m., 301.45 (1d) (b), 938.34 (15m) (bm), 939.615
2 (1) (b) 1. and 973.048 (2m); and *to create* 941.39 of the statutes; **relating to:**
3 engaging in sexual activity while infected with AIDS, HIV, or a sexually
4 transmitted disease and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits a person from intentionally having sexual intercourse if the person knows that he or she has HIV, AIDS, or a sexually transmitted disease and the person with whom he or she is having sexual intercourse does not know at the time he or she consented to the sexual intercourse that the person has HIV, AIDS, or a sexually transmitted disease. A person who violates this prohibition is guilty of a felony and may be fined up to \$25,000 or sentenced to a term of imprisonment of up to 12 years and 6 months (which, if the sentence is for more than one year, includes a term of extended supervision) or both.

Under current law, with certain exceptions, a person must register as a sex offender if he or she has been convicted of certain sex offenses, found not guilty of certain sex offenses by reason of mental disease or defect, or adjudicated delinquent on the basis of certain sex offenses. The sex offender registry is maintained by the Department of Corrections (DOC) and contains specific information about a person required to register, such as information concerning the person's offense, the person's address, and the person's place of employment. A person registered as a sex offender must also periodically provide updated information to DOC if the information originally provided to the registry changes.

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This bill requires a person to register as a sex offender if he or she is convicted of the prohibition this bill creates.

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.** 51.20 (13) (ct) 2m. of the statutes is amended to read:

2 51.20 **(13)** (ct) 2m. If the subject individual is before the court on a petition filed
3 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a
4 violation, or to have solicited, conspired, or attempted to commit a violation, of s.
5 940.22 (2), 940.225 (1), (2), or (3), 941.39 (2), 944.06, 948.02 (1) or (2), 948.025, 948.05,
6 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11 (2) (a) or (am), 948.12,
7 948.13, or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the subject
8 individual was not the victim's parent, the court shall require the individual to
9 comply with the reporting requirements under s. 301.45 unless the court determines,
10 after a hearing on a motion made by the individual, that the individual is not
11 required to comply under s. 301.45 (1m).

12 **SECTION 2.** 301.45 (1d) (b) of the statutes is amended to read:

13 301.45 **(1d)** (b) "Sex offense" means a violation, or the solicitation, conspiracy,
14 or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 941.39 (2),
15 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08,
16 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31 if
17 the victim was a minor and the person who committed the violation was not the
18 victim's parent.

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1 **SECTION 3.** 938.34 (15m) (bm) of the statutes is amended to read:

2 938.34 **(15m)** (bm) If the juvenile is adjudicated delinquent on the basis of a
3 violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22
4 (2), 940.225 (1), (2), or (3), 941.39 (2), 944.06, 948.02 (1) or (2), 948.025, 948.05,
5 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11 (2) (a) or (am), 948.12,
6 948.13, or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the juvenile
7 was not the victim's parent, the court shall require the juvenile to comply with the
8 reporting requirements under s. 301.45 unless the court determines, after a hearing
9 on a motion made by the juvenile, that the juvenile is not required to comply under
10 s. 301.45 (1m).

11 **SECTION 4.** 939.615 (1) (b) 1. of the statutes is amended to read:

12 939.615 **(1)** (b) 1. A violation, or the solicitation, conspiracy, or attempt to
13 commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 941.39 (2), 948.02 (1) or
14 (2), 948.025 (1), 948.05 (1) or (1m), 948.055 (1), 948.06, 948.07, 948.075, 948.08,
15 948.11 (2) (a), 948.12, or 948.13.

16 **SECTION 5.** 941.39 of the statutes is created to read:

17 **941.39 Engaging in sexual activity while infected with acquired**
18 **immunodeficiency syndrome, HIV, or a sexually transmitted disease. (1)**

19 In this section:

20 (a) "HIV" means any strain of human immunodeficiency virus, which causes
21 acquired immunodeficiency syndrome.

22 (b) "Sexual intercourse" has the meaning given under s. 939.22 (36) as well as
23 cunnilingus, fellatio, or anal intercourse between persons. The emission of semen
24 is not required.

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1 (c) “Sexually transmitted disease” means syphilis, gonorrhea, hepatitis B,
2 hepatitis C, or chlamydia.

3 (2) Any person who intentionally engages in sexual intercourse under all of the
4 following circumstances is guilty of a Class F felony:

5 (a) The person has a sexually transmitted disease or acquired
6 immunodeficiency syndrome or has had a positive test for the presence of HIV,
7 antigen or nonantigenic products of HIV, or an antibody to HIV.

8 (b) The person knows that he or she has a sexually transmitted disease or
9 acquired immunodeficiency syndrome or that he or she has had a positive test for the
10 presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV.

11 (c) The sexual intercourse results in the transmission to the other person of the
12 sexually transmitted disease or acquired immunodeficiency syndrome or the other
13 person subsequently has a positive test for the presence of HIV, antigen or
14 nonantigenic products of HIV, or an antibody to HIV.

15 (3) Subsection (2) does not apply if the person engages in sexual intercourse
16 with another person and if the other person consents to the sexual intercourse and
17 knows, before consenting to the sexual intercourse, that the person has a sexually
18 transmitted disease or acquired immunodeficiency syndrome or has had a positive
19 test for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody
20 to HIV.

21 **SECTION 6.** 973.048 (2m) of the statutes is 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), 941.39 (2), 944.06, 948.02 (1) or (2), 948.025, 948.05,
25 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11 (2) (a) or (am), 948.12,

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1 948.13, or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the person
2 was not the victim's parent, the court shall require the person to comply with the
3 reporting requirements under s. 301.45 unless the court determines, after a hearing
4 on a motion made by the person, that the person is not required to comply under s.
5 301.45 (1m).

6 **SECTION 7. Initial applicability.**

7 (1) This act first applies to sex acts committed on the effective date of this
8 subsection.

9 (END)