

State of Wisconsin



1997 Assembly Bill 660

Date of enactment: **June 12, 1998**
Date of publication*: **June 25, 1998**

1997 WISCONSIN ACT 275

AN ACT *to amend* 301.08 (1) (b) 1., 972.13 (6), 980.06 (2) (c) and 980.08 (5); *to repeal and recreate* 939.615 (3) (b); and *to create* 20.410 (1) (gh), 301.03 (3b), 302.11 (4m), 304.02 (4m), 304.06 (2m), 939.615, 971.17 (1j) and 973.125 of the statutes; **relating to:** lifetime supervision for persons who commit certain sex offenses, restrictions on the placement of persons released on parole for certain serious sex offenses and of sexually violent persons who are granted supervised release, granting rule-making authority and providing a penalty.

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

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

		1997-98	1998-99
20.410	Corrections, department of		
(1)	ADULT CORRECTIONAL SERVICES		
(gh)	Supervision of persons on lifetime supervision	PR A -0-	-0-

SECTION 2. 20.410 (1) (gh) of the statutes is created to read:

20.410 (1) (gh) *Supervision of persons on lifetime supervision.* The amounts in the schedule for the supervision of persons placed on lifetime supervision under s. 939.615. All moneys received under s. 939.615 (5) (b) shall be credited to this appropriation account.

SECTION 3. 301.03 (3b) of the statutes is created to read:

301.03 (3b) Establish regulations for persons placed on lifetime supervision under s. 939.615, supervise and provide services to persons placed on lifetime supervision under s. 939.615 and promulgate rules for the ad-

ministration of matters relating to lifetime supervision under s. 939.615.

SECTION 4. 301.08 (1) (b) 1. of the statutes is amended to read:

301.08 (1) (b) 1. Contract with public, private or voluntary agencies for the purchase of goods, care and services for persons committed or sentenced to a state correctional or penal institution, placed on probation or lifetime supervision to the department by a court of record, or released from a state correctional or penal institution. Services shall include, but are not limited to, diagnostic services, evaluation, treatment, counseling, referral and information, day care, inpatient hospitaliza-

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

tion, transportation, recreation, special education, vocational training, work adjustment, sheltered employment, special living arrangements and legal and protective services.

SECTION 4h. 302.11 (4m) of the statutes is created to read:

302.11 (4m) An inmate paroled under this section is subject to the restriction under s. 304.06 (2m), if applicable, relating to the counties to which inmates may be paroled.

SECTION 4k. 304.02 (4m) of the statutes is created to read:

304.02 (4m) A prisoner paroled under this section is subject to the restriction under s. 304.06 (2m), if applicable, relating to the counties to which prisoners may be paroled.

SECTION 4L. 304.06 (2m) of the statutes is created to read:

304.06 (2m) (a) In this subsection, “serious sex offense” means a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07 or a solicitation, conspiracy or attempt to commit a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07.

(b) Except as provided in par. (c), no prisoner who is serving a sentence for a serious sex offense may be paroled to any county where there is a correctional institution that has a specialized sex offender treatment program.

(c) A prisoner serving a sentence for a serious sex offense may be paroled to a county where there is a correctional institution that has a specialized sex offender treatment program if that county is also the prisoner’s county of residence.

(d) The parole commission or the department shall determine a prisoner’s county of residence for the purposes of this subsection by doing all of the following:

1. The parole commission or the department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as prima facie evidence of intent to remain.

2. The parole commission or the department shall apply the criteria for consideration of residence and physical presence under subd. 1. to the facts that existed on the date that the prisoner committed the serious sex offense that resulted in the sentence the prisoner is serving.

SECTION 5. 939.615 of the statutes is created to read:

939.615 Lifetime supervision of serious sex offenders. (1) **DEFINITIONS.** In this section:

(a) “Department” means the department of corrections.

(b) “Serious sex offense” means any of the following:

1. A violation, or the solicitation, conspiracy or attempt to commit a violation, of s. 940.22 (2), 940.225 (1),

(2) or (3), 948.02 (1) or (2), 948.025 (1), 948.05 (1), 948.055 (1), 948.06, 948.07, 948.08, 948.11 (2) (a), 948.12 or 948.13.

2. A violation, or the solicitation, conspiracy or attempt to commit a violation, under ch. 940, 943, 944 or 948 other than a violation specified in subd. 1., if the court determines that one of the purposes for the conduct constituting the violation was for the actor’s sexual arousal or gratification.

(2) **WHEN LIFETIME SUPERVISION MAY BE ORDERED.** (a) Except as provided in par. (b), if a person is convicted of a serious sex offense or found not guilty of a serious sex offense by reason of mental disease or defect, the court may, in addition to sentencing the person, placing the person on probation or, if applicable, committing the person under s. 971.17, place the person on lifetime supervision by the department if notice concerning lifetime supervision was given to the person under s. 973.125 and if the court determines that lifetime supervision of the person is necessary to protect the public.

(b) A court may not place a person on lifetime supervision under this section if the person was previously placed on lifetime supervision under this section for a prior conviction for a serious sex offense or a prior finding of not guilty of a serious sex offense by reason of mental disease or defect and that previous placement on lifetime supervision has not been terminated under sub. (6).

(c) If the prosecutor is seeking lifetime supervision for a person who is charged with committing a serious sex offense specified in sub. (1) (b) 2., the court shall direct that the trier of fact find a special verdict as to whether the conduct constituting the offense was for the actor’s sexual arousal or gratification.

(3) **WHEN LIFETIME SUPERVISION BEGINS.** Subject to sub. (4), the period of lifetime supervision on which a person is placed under this section shall begin at whichever of the following times is applicable:

(a) If the person is placed on probation for the serious sex offense, upon his or her discharge from probation.

(b) If the person is sentenced to prison for the serious sex offense, upon his or her discharge from parole.

(c) If the person is sentenced to prison for the serious sex offense and is being released from prison because he or she has reached the expiration date of his or her sentence, upon his or her release from prison.

(d) If the person has been committed to the department of health and family services under s. 971.17 for the serious sex offense, upon the termination of his or her commitment under s. 971.17 (5) or his or her discharge from the commitment under s. 971.17 (6), whichever is applicable.

(e) If par. (a), (b), (c) or (d) does not apply, upon the person being sentenced for the serious sex offense.

(4) ONLY ONE PERIOD OF LIFETIME SUPERVISION MAY BE IMPOSED. If a person is being sentenced for more than one conviction for a serious sex offense, the court may place the person on one period of lifetime supervision only. A period of lifetime supervision ordered for a person sentenced for more than one conviction begins at whichever of the times specified in sub. (3) is the latest.

(5) STATUS OF PERSON PLACED ON LIFETIME SUPERVISION; POWERS AND DUTIES OF DEPARTMENT. (a) A person placed on lifetime supervision under this section is subject to the control of the department under conditions set by the court and regulations established by the department that are necessary to protect the public and promote the rehabilitation of the person placed on lifetime supervision.

(am) The department may temporarily take a person on lifetime supervision into custody if the department has reasonable grounds to believe that the person has violated a condition or regulation of lifetime supervision. Custody under this paragraph may last only as long as is reasonably necessary to investigate whether the person violated a condition or regulation of lifetime supervision and, if warranted, to refer the person to the appropriate prosecuting agency for commencement of prosecution under sub. (7).

(b) The department shall charge a fee to a person placed on lifetime supervision to partially reimburse the department for the costs of providing supervision and services. The department shall set varying rates for persons placed on lifetime supervision based on ability to pay and with the goal of receiving at least \$1 per day, if appropriate, from each person placed on lifetime supervision. The department may decide not to charge a fee while a person placed on lifetime supervision is exempt as provided under par. (c). The department shall collect moneys for the fees charged under this paragraph and credit those moneys to the appropriation account under s. 20.410 (1) (gh).

(c) The department may decide not to charge a fee under par. (b) to any person placed on lifetime supervision while he or she meets any of the following conditions:

1. Is unemployed.
2. Is pursuing a full-time course of instruction approved by the department.
3. Is undergoing treatment approved by the department and is unable to work.
4. Has a statement from a physician certifying to the department that the person should be excused from working for medical reasons.

(6) PETITION FOR TERMINATION OF LIFETIME SUPERVISION. (a) Subject to par. (b), a person placed on lifetime supervision under this section may file a petition requesting that lifetime supervision be terminated. A person shall file a petition requesting termination of lifetime supervision with the court that ordered the lifetime supervision.

(b) 1. A person may not file a petition requesting termination of lifetime supervision if he or she has been convicted of a crime that was committed during the period of lifetime supervision.

2. A person may not file a petition requesting termination of lifetime supervision earlier than 15 years after the date on which the period of lifetime supervision began. If a person files a petition requesting termination of lifetime supervision at any time earlier than 15 years after the date on which the period of lifetime supervision began, the court shall deny the petition without a hearing.

(c) Upon receiving a petition requesting termination of lifetime supervision, the court shall send a copy of the petition to the district attorney responsible for prosecuting the serious sex offense that was the basis for the order of lifetime supervision. Upon receiving a copy of a petition sent to him or her under this paragraph, a district attorney shall conduct a criminal history record search to determine whether the person has been convicted of a criminal offense that was committed during the period of lifetime supervision. No later than 30 days after the date on which he or she receives the copy of the petition, the district attorney shall report the results of the criminal history record search to the court and may provide a written response to the petition.

(d) After reviewing the report of the district attorney submitted under par. (c) concerning the results of a criminal history record search, the court shall do whichever of the following is applicable:

1. If the report of the district attorney indicates that the person filing the petition has been convicted of a criminal offense that was committed during the period of lifetime supervision, the court shall deny the person's petition without a hearing.

2. If the report of the district attorney indicates that the person filing the petition has not been convicted of a criminal offense that was committed during the period of lifetime supervision, the court shall order the person to be examined under par. (e), shall notify the department that it may submit a report under par. (em) and shall schedule a hearing on the petition to be conducted as provided under par. (f).

(e) A person filing a petition requesting termination of lifetime supervision who is entitled to a hearing under par. (d) 2. shall be examined by a person who is either a physician or a psychologist licensed under ch. 455 and who is approved by the court. The physician or psychologist who conducts an examination under this paragraph shall prepare a report of his or her examination that includes his or her opinion of whether the person petitioning for termination of lifetime supervision is a danger to public. The physician or psychologist shall file the report of his or her examination with the court within 60 days after completing the examination, and the court shall provide copies of the report to the person filing the petition and the district attorney who received a copy of the per-

son's petition under par. (c). The contents of the report shall be confidential until the physician or psychologist testifies at a hearing under par. (f). The person petitioning for termination of lifetime supervision shall pay the cost of an examination required under this paragraph.

(em) After it receives notification from the court under par. (d) 2., the department may prepare and submit to the court a report concerning a person who has filed a petition requesting termination of lifetime supervision. If the department prepares and submits a report under this paragraph, the report shall include information concerning the person's conduct while on lifetime supervision and an opinion as to whether lifetime supervision of the person is still necessary to protect the public. When a report prepared under this paragraph has been received by the court, the court shall, before the hearing under par. (f), disclose the contents of the report to the attorney for the person who filed the petition and to the district attorney. When the person who filed the petition is not represented by an attorney, the contents shall be disclosed to the person.

(f) A hearing on a petition requesting termination of lifetime supervision may not be conducted until the person filing the petition has been examined and a report of the examination has been filed as provided under par. (e). At the hearing, the court shall take evidence it considers relevant to determining whether lifetime supervision should be continued because the person who filed the petition is a danger to the public. The person who filed the petition and the district attorney who received the petition under par. (c) may offer evidence relevant to the issue of the person's dangerousness and the continued need for lifetime supervision.

(g) The court may grant a petition requesting termination of lifetime supervision if it determines after a hearing under par. (f) that lifetime supervision is no longer necessary to protect the public.

(h) If a petition requesting termination of lifetime supervision is denied after a hearing under par. (f), the person may not file a subsequent petition requesting termination of lifetime supervision until at least 3 years have elapsed since the most recent petition was denied.

(7) PENALTY FOR VIOLATION OF A CONDITION OF LIFETIME SUPERVISION. (a) No person placed on lifetime supervision under this section may knowingly violate a condition or regulation of lifetime supervision established by the court or by the department.

(b) 1. Except as provided in subd. 2., whoever violates par. (a) is guilty of a Class A misdemeanor.

2. Whoever violates par. (a) is guilty of a Class E felony if the same conduct that violates par. (a) also constitutes a crime that is a felony.

(c) If a person is convicted of violating par. (a) for the same conduct that resulted in the person being convicted of another crime, the sentence imposed for the violation

of par. (a) shall be consecutive to any sentence imposed for the other crime.

SECTION 5m. 939.615 (3) (b) of the statutes, as created by 1997 Wisconsin Act (this act), is repealed and recreated to read:

939.615 (3) (b) If the person is sentenced to prison for the serious sex offense, upon his or her discharge from parole or extended supervision.

SECTION 6. 971.17 (1j) of the statutes is created to read:

971.17 (1j) SEXUAL ASSAULT; LIFETIME SUPERVISION.

(a) In this subsection, "serious sex offense" has the meaning given in s. 939.615 (1) (b).

(b) If a person is found not guilty by reason of mental disease or defect of a serious sex offense, the court may, in addition to committing the person to the department of health and family services under sub. (1), place the person on lifetime supervision under s. 939.615 if notice concerning lifetime supervision was given to the person under s. 973.125 and if the court determines that lifetime supervision of the person is necessary to protect the public.

SECTION 7. 972.13 (6) of the statutes is amended to read:

972.13 (6) The following forms may be used for judgments:

STATE OF WISCONSIN

.... County

In.... Court

The State of Wisconsin

vs.

....(Name of defendant)

UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

IT IS ADJUDGED That the defendant has been convicted upon the defendant's plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty) (no contest) on the.... day of...., 19.., of the crime of.... in violation of s.....; and the court having asked the defendant whether the defendant has anything to state why sentence should not be pronounced, and no sufficient grounds to the contrary being shown or appearing to the court.

*IT IS ADJUDGED That the defendant is guilty as convicted.

*IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin state prisons (county jail of.... county) for an indeterminate term of not more than.....

*IT IS ADJUDGED That the defendant is placed in the intensive sanctions program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes and the following conditions:....

*IT IS ADJUDGED That the defendant is hereby committed to detention in (the defendant's place of residence or place designated by judge) for a term of not more than....

*IT IS ADJUDGED That the defendant is placed on lifetime supervision by the department of corrections under section 939.615 of the Wisconsin Statutes.

*IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the costs of this action).

*IT IS ADJUDGED That the defendant pay restitution to....

*IT IS ADJUDGED That the defendant is restricted in his or her use of computers as follows:....

*The.... at.... is designated as the Reception Center to which the defendant shall be delivered by the sheriff.

*IT IS ORDERED That the clerk deliver a duplicate original of this judgment to the sheriff who shall forthwith execute the same and deliver it to the warden.

Dated this.... day of...., 19...

BY THE COURT....

Date of Offense....,

District Attorney....,

Defense Attorney....

*Strike inapplicable paragraphs.

STATE OF WISCONSIN

.... County

In.... Court

The State of Wisconsin

vs.

....(Name of defendant)

On the.... day of...., 19..., the district attorney appeared for the state and the defendant appeared in person and by.... the defendant's attorney.

UPON ALL THE FILES, RECORDS AND PROCEEDINGS

IT IS ADJUDGED That the defendant has been found not guilty by the verdict of the jury (by the court) and is therefore ordered discharged forthwith.

Dated this.... day of...., 19...

BY THE COURT....

SECTION 8. 973.125 of the statutes is created to read:

973.125 Notice of lifetime supervision for serious sex offenders. (1) Whenever a prosecutor decides to seek lifetime supervision under s. 939.615 of a person charged with a serious sex offense specified in s. 939.615 (1) (b) 1., the prosecutor shall, at any time before or at arraignment and before acceptance of any plea, state in the complaint, indictment or information or amendments to the complaint, indictment or information that the prosecution will seek to have the person placed on lifetime supervision under s. 939.615.

(2) Whenever a prosecutor decides to seek lifetime supervision under s. 939.615 of a person charged with a serious sex offense specified in s. 939.615 (1) (b) 2., the prosecutor shall, at any time before or at arraignment and before acceptance of any plea, do all of the following:

(a) State in the complaint, indictment or information or amendments to the complaint, indictment or information that the prosecution will seek to have the person placed on lifetime supervision under s. 939.615.

(b) Allege in the complaint that the violation with which the person is charged is a serious sex offense under s. 939.615 (1) (b) because one of the purposes for the conduct constituting the violation was for the person's sexual arousal or gratification.

(3) Before accepting a plea, the court may, upon motion of the district attorney, grant a reasonable time to investigate whether lifetime supervision may be necessary for a defendant or whether one of the purposes for the conduct constituting a violation with which a defendant is charged was for the defendant's sexual arousal or gratification.

SECTION 8e. 980.06 (2) (c) of the statutes is amended to read:

980.06 (2) (c) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county department in the any county where the there is a facility in which the person was persons are detained or evaluated under s. 980.04 or in which persons committed for to institutional care is located under this chapter are placed, unless that county is also the person's county of residence.

SECTION 8f. 980.08 (5) of the statutes is amended to read:

980.08 (5) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department and the county department under s. 51.42 in the county of residence of the person, as determined under s. 980.105, shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county de-

partment in the any county where the there is a facility in which the person was persons committed for to institutional care is located under this chapter are placed unless that county is also the person's county of residence.

SECTION 8m. Nonstatutory provisions.

(1r) RECONCILIATION PROVISION.

(a) If 1997 Assembly Bill 351 is enacted into law and it creates sections 302.113 and 973.01 of the statutes as shown by Senate Substitute Amendment 1 to 1997 Assembly Bill 351, then the repeal and recreation by this act of section 939.615 (3) (b) of the statutes and SECTION 9g (1p) of this act take effect on December 31, 1999.

(b) If the condition specified in paragraph (a) does not occur, then the repeal and recreation of section 939.615 (3) (b) of the statutes by this act and SECTION 9g (1p) of this act are void.

SECTION 9. Initial applicability.

(1t) LIFETIME SUPERVISION OF CERTAIN SEX OFFENDERS. The creation of section 939.615 of the statutes and the treatment of sections 971.17 (1j) and 973.125 of the statutes first apply to offenses committed on the effective date of this subsection.

(1u) RESTRICTIONS ON PLACEMENT OF PAROLEES. The treatment of sections 302.11 (4m), 304.02 (4m) and 304.06 (2m) of the statutes first applies to parole releases granted on the effective date of this subsection.

SECTION 9g. Effective dates. This act takes effect on the day after publication, except as follows:

(1p) The repeal and recreation of section 939.615 (3) (b) of the statutes takes effect on December 31, 1999.