

1999 SENATE BILL 65

March 2, 1999 – Introduced by Senators DARLING, FITZGERALD, WELCH, BRESKE, ROESSLER and A. LASEE, cosponsored by Representatives SUDER, MONTGOMERY, SYKORA, GUNDERSON, LADWIG, HANDRICK, VRAKAS, ALBERS, OWENS, MUSSER, WASSERMAN and TURNER. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT to amend** 51.37 (9), 51.37 (10) (c), 302.045 (3), 302.114 (5) (d), 304.02 (2),
 2 971.17 (3) (e), 973.01 (5), 975.18, 980.06 (2) (d) and 980.08 (6); and **to create**
 3 302.11 (5m), 304.02 (4g), 304.06 (1s), 973.09 (1c) and 975.10 (1m) of the statutes;
 4 **relating to:** prohibiting or restricting use of or access to the internet by persons
 5 who have committed certain crimes and who are on parole, probation or other
 6 type of supervised or conditional release.

Analysis by the Legislative Reference Bureau

Under this bill, if a person is placed on parole, probation or other type of supervised or conditional release after committing a child sex crime, the court or agency releasing the person must decide whether to restrict or prohibit the person's use of or access to the internet as a condition of release. (The child sex crimes covered by the bill are first and second degree sexual assault of a child, repeated sexual assault of a child, sexual exploitation of a child, causing a child to view or listen to sexual activity, child enticement, soliciting a child for prostitution, exposing a child to harmful material or to harmful narrations or descriptions and possession of child pornography.) The following sections of this analysis describe in more detail both current law concerning these types of release and the changes made in current law by this bill.

SENATE BILL 65***Persons placed on probation or released from state prison on parole or extended supervision***

Currently, a person convicted of a felony (a crime that carries a maximum sentence of imprisonment of one or more years in state prison) may be sentenced to imprisonment in state prison or may be placed on probation. If a person convicted of a felony committed before December 31, 1999, is sentenced to imprisonment in state prison, he or she is eligible for parole and will usually have three possible ways of being released on parole: 1) discretionary parole granted by the parole commission (for which a person is usually eligible after serving 25% of the sentence or six months, whichever is greater); 2) mandatory release on parole (usually granted automatically after the person serves two-thirds of the sentence); or 3) special action parole release by the secretary of corrections (a program designed to relieve prison crowding). A person released on parole is subject to conditions of parole established by the parole commission and by the department of corrections (DOC).

If a person convicted of a felony committed on or after December 31, 1999, is sentenced to imprisonment in state prison, he or she is not eligible for parole but will be eligible for release to the community under extended supervision on a date set by the court at the time of sentencing. A person released on extended supervision is subject to conditions of extended supervision established by the sentencing court and by DOC.

Finally, if a person convicted of a felony is not sentenced to prison but is instead placed on probation, the person is subject to conditions of probation established by the sentencing court and by DOC.

Under this bill, when the parole commission paroles a person from a prison sentence imposed for a child sex crime, the parole commission must decide whether to restrict or prohibit the person's use of or access to the internet as a condition of parole. Likewise, if a court sentences a person to prison for a child sex crime committed on or after December 31, 1999, the court must decide whether to restrict or prohibit the person's use of or access to the internet as a condition of extended supervision. Finally, if a court places a person on probation for a child sex crime, the court must decide whether to restrict or prohibit the person's use of or access to the internet as a condition of probation. If the parole commission or a court decides not to impose such a condition of parole, extended supervision or probation, DOC may impose the condition.

Persons released from institutional care after being found not guilty by reason of mental disease or defect

Currently, if a person is found not guilty of a felony by reason of mental disease or defect, he or she is committed to the custody of the department of health and family services (DHFS). When committing a person found not guilty by reason of mental disease or defect, a court must specify whether the person is to be placed in institutional care or on conditional release. If a person is placed in institutional care, he or she may petition for conditional release if at least six months have passed since the initial commitment order was entered. A person on conditional release is subject to the custody and control of DHFS and must abide by conditions set by the court and by the rules of DHFS. Current law also provides that, under certain circumstances,

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the director of a treatment facility at which a person is placed in institutional care may allow the person to be discharged under supervision, to be conditionally transferred to the custody of a legal guardian or other person or to take a temporary home visit or temporary leave from the institution.

Under this bill, if a person who has been found not guilty of a child sex crime by reason of mental disease or defect is placed on conditional release by a court, the court must decide whether to restrict or prohibit the person's use of or access to the internet as a condition of release and, if the court decides not to impose such a condition of release, DHFS may impose the condition. In addition, if such a person is conditionally transferred, discharged under supervision or given a temporary home visit or leave, DHFS must decide whether to restrict or prohibit the person's use of or access to the internet as a condition of release.

Persons released from institutional care after being found to be a sexually violent person

Current law provides a procedure for the involuntary civil commitment of sexually violent persons. A sexually violent person is a person who has committed certain sexually violent offenses and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence. A person who has been found to be a sexually violent person is committed to DHFS for control, care and treatment. The person may be committed to institutional care in an appropriate facility or the court may order the person to be placed on supervised release. In addition, a person initially committed to institutional care may later be granted supervised release by a court if it is no longer substantially probable that the person will engage in acts of sexual violence if he or she is not confined in institutional care. A sexually violent person who is placed on supervised release is subject to conditions of release set by the court and to the rules of release established by DHFS.

This bill provides that if a court places a sexually violent person on supervised release the court must decide whether to restrict or prohibit the person's use of or access to the internet as a condition of supervised release. If the court decides not to impose such a condition of supervised release, DHFS may impose the condition.

Persons paroled from a commitment under the sex crimes law

Under prior law, persons who were convicted of certain sex crimes could, upon conviction, be committed to DHFS for specialized treatment in an appropriate institution. Although no person could be committed under this prior law after July 1, 1980, there are persons committed before that date who remain in the custody of DHFS. A person committed to DHFS for specialized care may be paroled if it appears to DHFS that the person is capable of making an acceptable adjustment in society. This bill provides that, if DHFS paroles a person convicted of a sex crime and committed for specialized treatment, DHFS must decide whether to restrict or prohibit the person's use of or access to the internet as a condition of parole.

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For further information see the *state* 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.** 51.37 (9) of the statutes is amended to read:

2 51.37 (9) If in the judgment of the director of Mendota mental health institute,
3 Winnebago mental health institute or the Milwaukee county mental health complex,
4 any person who is committed under s. 971.14 or 971.17 is not in such condition as
5 warrants his or her return to the court but is in a condition to receive a conditional
6 transfer or discharge under supervision, the director shall report to the department
7 of health and family services, the committing court and the district attorney of the
8 county in which the court is located his or her reasons for the judgment. If the court
9 does not file objection to the conditional transfer or discharge within 60 days of the
10 date of the report, the director may, with the approval of the department of health
11 and family services, conditionally transfer any person to a legal guardian or other
12 person, subject to the rules of the department of health and family services. If the
13 person being conditionally transferred or discharged under supervision was
14 committed under s. 971.17 after being found not guilty by reason of mental disease
15 or defect for a violation of s. 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11
16 or 948.12, the department of health and family services shall decide whether to
17 restrict or prohibit the person's use of or access to the internet as a condition of the
18 transfer or discharge. Before a person is conditionally transferred or discharged
19 under supervision under this subsection, the department of health and family
20 services shall so notify the municipal police department and county sheriff for the
21 area where the person will be residing. The notification requirement does not apply

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1 if a municipal department or county sheriff submits to the department of health and
2 family services a written statement waiving the right to be notified. The department
3 of health and family services may contract with the department of corrections for the
4 supervision of persons who are transferred or discharged under this subsection.

5 **SECTION 2.** 51.37 (10) (c) of the statutes is amended to read:

6 51.37 **(10)** (c) Any patient who is granted a home visit or leave under this
7 subsection shall be restricted to the confines of this state unless otherwise
8 specifically permitted. The patient may, in addition, be restricted to a particular
9 geographic area. If a patient granted a home visit or leave was committed under s.
10 971.17 or ch. 975 after being convicted of or found not guilty by reason of mental
11 disease or defect for a violation of s. 948.02, 948.025, 948.05, 948.055, 948.07, 948.08,
12 948.11 or 948.12, the department shall decide whether to restrict or prohibit the
13 patient's use of or access to the internet as a condition of the home visit or leave.
14 Other conditions appropriate to the person's treatment may also be imposed upon the
15 home visit or leave.

16 **SECTION 3.** 302.045 (3) of the statutes is amended to read:

17 302.045 **(3)** PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department
18 determines that an inmate has successfully completed the challenge incarceration
19 program, the parole commission shall parole the inmate under s. 304.06, regardless
20 of the time the inmate has served, unless the person is serving a sentence imposed
21 under s. 973.01. When the parole commission grants parole under this subsection,
22 it must require the parolee to participate in an intensive supervision program for
23 drug abusers as a condition of parole. If the inmate is serving a sentence for a
24 violation of s. 948.11 or 948.12 and the parole commission grants parole under this
25 subsection, the parole commission shall decide whether to restrict or prohibit the

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1 parolee's use of or access to the internet as a condition of parole. If the parole
2 commission decides not to impose such a condition, the department may restrict or
3 prohibit a parolee's use of or access to the internet as as condition of parole.

4 **SECTION 4.** 302.11 (5m) of the statutes is created to read:

5 302.11 **(5m)** (a) In this subsection, "child sex crime" means a violation of s.
6 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11 or 948.12.

7 (b) When an inmate serving a sentence for a child sex crime is released on
8 parole under sub. (1) or (1g) (b), the department shall decide whether to restrict or
9 prohibit the parolee's use of or access to the internet as a condition of parole.

10 **SECTION 5.** 302.114 (5) (d) of the statutes is amended to read:

11 302.114 **(5)** (d) If the court grants the inmate's petition for release to extended
12 supervision, the court may impose conditions on the term of extended supervision.
13 If the inmate is serving a sentence for a violation of s. 948.02, 948.025, 948.05,
14 948.055, 948.07 or 948.08, the court shall decide whether to restrict or prohibit the
15 inmate's use of or access to the internet as a condition of extended supervision. If the
16 court decides not to impose such a condition, the department may restrict or prohibit
17 the inmate's use of or access to the internet as as condition of extended supervision
18 as provided under sub. (8).

19 **SECTION 6.** 304.02 (2) of the statutes is amended to read:

20 304.02 **(2)** The department shall promulgate rules for the special action release
21 program, including eligibility criteria, procedures for the secretary to decide whether
22 to grant a prisoner a special action release to parole supervision, procedures for
23 notifying persons, offices or agencies under s. 304.06 (1) (c) and (g) of releases, and,
24 subject to sub. (4g), conditions of release. If applicable, the department shall also
25 comply with s. 304.063.

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1 **SECTION 7.** 304.02 (4g) of the statutes is created to read:

2 304.02 **(4g)** (a) In this subsection, “child sex crime” means a violation of s.
3 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11 or 948.12.

4 (b) When an inmate serving a sentence for a child sex crime is released on
5 parole under this section, the department shall decide whether to restrict or prohibit
6 the parolee’s use of or access to the internet as a condition of parole.

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

8 304.06 **(1s)** (a) In this subsection, “child sex crime” means a violation of s.
9 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11 or 948.12.

10 (b) When the parole commission grants parole under sub. (1) to a person serving
11 a sentence for a child sex crime, the parole commission shall decide whether to
12 restrict or prohibit the parolee’s use of or access to the internet as a condition of
13 parole. If the parole commission decides not to impose such a condition, the
14 department may restrict or prohibit a parolee’s use of or access to the internet as a
15 condition of parole.

16 **SECTION 9.** 971.17 (3) (e) of the statutes is amended to read:

17 971.17 **(3)** (e) An order for conditional release places the person in the custody
18 and control of the department of health and family services. A conditionally released
19 person is subject to the conditions set by the court and to the rules of the department
20 of health and family services. If the person being conditionally released was
21 committed under this section after being found not guilty by reason of mental disease
22 or defect for a violation of s. 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11
23 or 948.12, the court shall decide whether to restrict or prohibit the person’s use of or
24 access to the internet as a condition of conditional release. If the court decides not
25 to impose such a condition, the department of health and family services may restrict

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1 or prohibit a person's use of or access to the internet as a condition of conditional
2 release.

3 (f) Before a person is conditionally released by the court under this subsection,
4 the court shall so notify the municipal police department and county sheriff for the
5 area where the person will be residing. The notification requirement under this
6 paragraph does not apply if a municipal department or county sheriff submits to the
7 court a written statement waiving the right to be notified.

8 (g) If the department of health and family services alleges that a released
9 person has violated any condition or rule, or that the safety of the person or others
10 requires that conditional release be revoked, he or she may be taken into custody
11 under the rules of the department. The department of health and family services
12 shall submit a statement showing probable cause of the detention and a petition to
13 revoke the order for conditional release to the committing court and the regional
14 office of the state public defender responsible for handling cases in the county where
15 the committing court is located within 48 hours after the detention. The court shall
16 hear the petition within 30 days, unless the hearing or time deadline is waived by
17 the detained person. Pending the revocation hearing, the department of health and
18 family services may detain the person in a jail or in a hospital, center or facility
19 specified by s. 51.15 (2). The state has the burden of proving by clear and convincing
20 evidence that any rule or condition of release has been violated, or that the safety of
21 the person or others requires that conditional release be revoked. If the court
22 determines after hearing that any rule or condition of release has been violated, or
23 that the safety of the person or others requires that conditional release be revoked,
24 it may revoke the order for conditional release and order that the released person be

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1 placed in an appropriate institution under s. 51.37 (3) until the expiration of the
2 commitment or until again conditionally released under this section.

3 **SECTION 10.** 973.01 (5) of the statutes is amended to read:

4 973.01 (5) EXTENDED SUPERVISION CONDITIONS. Whenever the court imposes a
5 bifurcated sentence under sub. (1), the court may impose conditions upon the term
6 of extended supervision. If a person is being given a bifurcated sentence for a
7 violation of s. 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11 or 948.12, the
8 court shall decide whether to restrict or prohibit the person's use of or access to the
9 internet as a condition of extended supervision. If the court decides not to impose
10 such a condition, the department may restrict or prohibit person's use of or access to
11 the internet as as condition of extended supervision as provided under s. 302.113 (7).

12 **SECTION 11.** 973.09 (1c) of the statutes is created to read:

13 973.09 (1c) (a) In this subsection, "child sex crime" means a violation of s.
14 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11 or 948.12.

15 (b) If a person is convicted of a child sex crime and the court places the person
16 on probation for that crime, the court shall decide whether to restrict or prohibit the
17 person's use of or access to the internet as a condition of probation. If the court
18 decides not to impose such a condition, the department may restrict or prohibit a
19 person's use of or access to the internet as a condition of probation.

20 **SECTION 12.** 975.10 (1m) of the statutes is created to read:

21 975.10 (1m) When a person is paroled under this section, the department shall
22 decide whether to restrict or prohibit the person's use of or access to the internet as
23 a condition of parole.

24 **SECTION 13.** 975.18 of the statutes is amended to read:

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1 **975.18 Establishment of regulations.** The Subject to s. 975.10 (1m), the
2 department may promulgate rules concerning parole, revocation of parole,
3 supervision of parolees, and any other matters necessary for the administration of
4 this chapter.

5 **SECTION 14.** 980.06 (2) (d) of the statutes is amended to read:

6 980.06 **(2)** (d) An order for supervised release places the person in the custody
7 and control of the department. If a court places a person on supervised release, the
8 court shall decide whether to restrict or prohibit the person's use of or access to the
9 internet as a condition of supervised release. If the court decides not to impose such
10 a condition, the department may restrict or prohibit a person's use of or access to the
11 internet as a condition of supervised release. A person on supervised release is also
12 subject to the any other conditions set by the court and to the rules of the department.

13 (e) Before a person is placed on supervised release by the court under this
14 section, the court shall so notify the municipal police department and county sheriff
15 for the municipality and county in which the person will be residing. The notification
16 requirement under this paragraph does not apply if a municipal police department
17 or county sheriff submits to the court a written statement waiving the right to be
18 notified.

19 (f) If the department alleges that a released person has violated any condition
20 or rule, or that the safety of others requires that supervised release be revoked, he
21 or she may be taken into custody under the rules of the department. The department
22 shall submit a statement showing probable cause of the detention and a petition to
23 revoke the order for supervised release to the committing court and the regional
24 office of the state public defender responsible for handling cases in the county where
25 the committing court is located within 48 hours after the detention. The court shall

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1 hear the petition within 30 days, unless the hearing or time deadline is waived by
2 the detained person. Pending the revocation hearing, the department may detain
3 the person in a jail or in a hospital, center or facility specified by s. 51.15 (2). The state
4 has the burden of proving by clear and convincing evidence that any rule or condition
5 of release has been violated, or that the safety of others requires that supervised
6 release be revoked. If the court determines after hearing that any rule or condition
7 of release has been violated, or that the safety of others requires that supervised
8 release be revoked, it may revoke the order for supervised release and order that the
9 released person be placed in an appropriate institution until the person is discharged
10 from the commitment under s. 980.09 or until again placed on supervised release
11 under s. 980.08.

12 **SECTION 15.** 980.08 (6) of the statutes is amended to read:

13 980.08 (6) The provisions of s. 980.06 (2) (d), (e) and (f) apply to an order for
14 supervised release issued under this section.

15 **SECTION 16. Initial applicability.**

16 (1) **CONDITIONS OF PAROLE.** The treatment of sections 302.045 (3), 302.11 (5m),
17 304.02 (4g) and 304.06 (1s) of the statutes first applies to persons who are released
18 on parole on the effective date of this subsection.

19 (2) **BIFURCATED SENTENCES; CONDITIONS OF EXTENDED SUPERVISION.** The treatment
20 of section 973.01 (5) of the statutes first applies to persons who are given a bifurcated
21 sentence on December 31, 1999, or on the effective date of this subsection, whichever
22 is later.

23 (3) **CONDITIONS OF PROBATION.** The treatment of section 973.09 (1c) of the
24 statutes first applies to persons who are placed on probation on the effective date of
25 this subsection.

