

2001 DRAFTING REQUEST

Bill

Received: 07/31/2001

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Scott Suder (608) 267-0280

By/Representing: Anne Thompson

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Criminal Law - procedure
Criminal Law - sexual assault**

Extra Copies: **MGD**

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Flight by sex offenders to avoid prosecution, sentencing, or incarceration

Instructions:

Redraft 99-1204 (99 SB 29)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rryan 08/28/2001	rschluet 09/17/2001	jfrantzc 09/18/2001	_____	lrb_docadmin 09/18/2001	lrb_docadmin 09/28/2001	

FE Sent For:

<END>

→ Not Needed

2001 DRAFTING REQUEST

Bill

Received: **07/31/2001**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Suder (608) 267-0280**

By/Representing: **Anne Thompson**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Criminal Law - procedure
Criminal Law - sexual assault**

Extra Copies: **MGD**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Flight by sex offenders to avoid prosecution, sentencing, or incarceration

Instructions:

Redraft 99-1204 (99 SB 29)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rryan 08/28/2001	rschluet 09/17/2001	jfrantze 09/18/2001	_____	lrb_docadmin 09/18/2001		

FE Sent For:

<END>

2001 DRAFTING REQUEST

Bill

Received: 07/31/2001

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Scott Suder (608) 267-0280

By/Representing: Anne Thompson

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous
Criminal Law - procedure
Criminal Law - sexual assault

Extra Copies: MGD

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Flight by sex offenders to avoid prosecution, sentencing, or incarceration

Instructions:

Redraft 99-1204 (99 SB 29)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan		<i>J</i> 09/18	<i>J</i> 9/18			

FE Sent For:

<END>

355111
LRB-120411
AP: [unclear]
RLR: [unclear]

In 8/28/01

1999 SENATE BILL 29

D-Note

February 3, 1999 - Introduced by Senators DARLING, LAZICH, FITZGERALD, WELCH, SCHULTZ and ROESSLER, cosponsored by Representatives SUDER, JENSEN, STONE, WALKER, SYKORA, PORTER, GROTHMAN, LADWIG, PLALE, TOWNSEND, KEDZIE, P. LASEE, KAUFERT, MUSSER, KLUSMAN, KELSO, VRAKAS and TURNER. Referred to Committee on Judiciary and Consumer Affairs.

reger
PWF

- 1 AN ACT to create 939.626 and 946.51 of the statutes; relating to: fleeing to this
- 2 state to avoid prosecution for a serious sex offense in another jurisdiction,
- 3 committing a serious sex offense in this state after fleeing prosecution in
- 4 another jurisdiction and providing penalties.

Analysis by the Legislative Reference Bureau

apply

Current law provides various penalties for serious sex offenses as well as various penalty enhancers for committing a serious sex offense after having been convicted previously of such an offense. This bill creates a new penalty and a new penalty enhancer that applies to persons who flee to this state from other jurisdictions to avoid prosecution for serious sex offenses. Specifically, the bill does the following:

- 1. Prohibits a person from entering or remaining in this state with the intent to avoid prosecution, sentencing, or incarceration in another jurisdiction for a crime in that jurisdiction that is comparable to a serious sex offense in this state. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than 9 months or both. The bill provides that a person may be prosecuted for this new offense only if the jurisdiction from which he or she fled refuses to have the person returned to the jurisdiction for prosecution, sentencing, or incarceration.
- 2. Provides that the maximum term of imprisonment for a serious sex offense committed in this state may be increased by not more than 2 years if the person committed the offense in this state after fleeing prosecution, sentencing, or

confined

confinement

SENATE BILL 29

incest with a child,

incarceration in another jurisdiction for a crime in that jurisdiction that is comparable to a serious sex offense in this state.

The serious sex offenses covered by the bill include sexual exploitation by a therapist, ~~serious~~ sexual assault (~~nonconsensual sexual intercourse or sexual contact~~), incest, 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 harmful descriptions or narrations, and false imprisonment, kidnapping or abduction of a child.

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

1 SECTION 1. 939.626 of the statutes is created to read:

2 939.626 Increased penalty; committing a serious sex offense after

3 fleeing prosecution elsewhere. (1) In this section, "serious sex offense" means

4 a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s.

5 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,

6 948.06, 948.07, 948.08, 948.11, or 948.30 or, if the victim was a minor and the person

7 was not the victim's parent, of s. 940.30 or 940.31.

8 (2) The maximum term of imprisonment for a serious sex offense may be
9 increased by not more than 2 years if all of the following apply:

10 (a) Before committing the serious sex offense for which he or she is being
11 sentenced, the person entered this state with the intent to avoid being prosecuted in
12 another jurisdiction for an alleged violation of a law of the other jurisdiction that is
13 comparable to a serious sex offense or with the intent to avoid being sentenced or
14 incarcerated in another jurisdiction for a conviction of an offense in the other
15 jurisdiction that is comparable to a serious sex offense.

16 (b) At the time the person committed the serious sex offense for which he or she
17 is being sentenced, the person had not returned to the jurisdiction from which he or

SENATE BILL 29

1 she fled under par. (a) to face prosecution, sentencing or incarceration in that
2 jurisdiction.

3 **SECTION 2.** 946.51 of the statutes is created to read:

4 **946.51 Avoiding prosecution for serious sex offense in another**
5 **jurisdiction.** (1) In this section, "serious sex offense" means a violation, or the
6 solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1),
7 (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08,
8 948.11 or 948.30 or, if the victim was a minor and the person was not the victim's
9 parent, of s. 940.30 or 940.31.

10 (2) Subject to sub. (3), whoever does any of the following is guilty of a Class A
11 misdemeanor:

12 (a) Enters or remains in this state with the intent to avoid being prosecuted in
13 another jurisdiction for an alleged violation of a law of the other jurisdiction that is
14 comparable to a serious sex offense.

15 (b) Enters or remains in this state with the intent to avoid being sentenced or
16 incarcerated in another jurisdiction for a conviction of an offense in the other
17 jurisdiction that is comparable to a serious sex offense.

18 (3) No person may be charged with and prosecuted for a violation of sub. (2)
19 unless the prosecutor has requested the jurisdiction from which the person fled to
20 extradite the person under s. 976.03 and the jurisdiction has refused to do so.

21 **SECTION 3. Initial applicability.**

22 (1) This act first applies to offenses committed in this state on the effective date
23 of this subsection.

24 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3551/1dn

RLR.....

CS

Date

Representative Suder:

This bill may violate the privileges and immunities clause of the 14th Amendment to the United States Constitution, which prohibits a state from making or enforcing any law that abridges the privileges and immunities of citizens of the United States. One of the privileges of a United States citizen is the right to travel freely to all of the states. Certainly this right to travel may be restricted if a person is arrested for or charged with a crime, but it is possible that the provision of this bill, criminalizing the act of fleeing to Wisconsin with the intent to avoid prosecution, impermissibly violates the privileges and immunities clause, because it chills the right of a person who has not been arrested or charged with a crime to travel to Wisconsin.

Perhaps the element of the crime requiring that a person have intent to avoid prosecution is sufficient to uphold the restriction on the right to travel freely between the states. However, courts may find that the purpose of the bill, presumably to protect public safety, is insufficient to restrict the right to travel, because both the state of origin and the receiving state already have sufficient means for protecting public safety. The uniform law on extradition allows Wisconsin to arrest and extradite any person who has been charged with committing a crime in another state upon the request of the other states. Furthermore, the intent to avoid prosecution may be only a secondary motivation for a person to come to Wisconsin. This bill would penalize a person who has not been charged with a crime in another state from coming to Wisconsin for employment, if part of the person's motivation for coming to Wisconsin is to avoid prosecution for a sex offense.

This bill is a redraft of 1999 Senate Bill 29, which in turn was a redraft of 1997 Senate *Bill 515. 1997 Senate Bill 515 was based on a California statute (section 289.5)) I have not found any case law that addresses the constitutionality of the California law.

To address the possible violation of the privileges and immunities clause, this bill could instead be drafted to limit the application of the bill to persons who have been arrested for or charged with a serious sex offense in another jurisdiction. However, if your intent is to cover flight during a criminal investigation, or even before law enforcement is aware that a crime has been committed, then I suspect that you will find this solution too narrowing.

As a practical matter, the prohibition against coming to Wisconsin or staying in Wisconsin with the intent to avoid prosecution may not be a useful tool to prosecutors,

because a person can be prosecuted under this prohibition only if the state where the person is charged declines to have the person extradited. If the other state does not find it worthwhile ^{check space} to extradite the person for a sex offense, the reason might be that the other state does not have ² sufficient case against the person. This might make it difficult for Wisconsin to prove that the person came to Wisconsin to avoid prosecution.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3551/1dn
RLR:rs:jf

September 18, 2001

Representative Suder:

This bill may violate the privileges and immunities clause of the 14th Amendment to the United States Constitution, which prohibits a state from making or enforcing any law that abridges the privileges and immunities of citizens of the United States. One of the privileges of a United States citizen is the right to travel freely to all of the states. Certainly this right to travel may be restricted if a person is arrested for or charged with a crime, but it is possible that the provision of this bill, criminalizing the act of fleeing to Wisconsin with the intent to avoid prosecution, impermissibly violates the privileges and immunities clause, because it chills the right of a person who has not been arrested or charged with a crime to travel to Wisconsin.

Perhaps the element of the crime requiring that a person have intent to avoid prosecution is sufficient to uphold the restriction on the right to travel freely between the states. However, courts may find that the purpose of the bill, presumably to protect public safety, is insufficient to restrict the right to travel, because both the state of origin and the receiving state already have sufficient means for protecting public safety. The uniform law on extradition allows Wisconsin to arrest and extradite any person who has been charged with committing a crime in another state upon the request of the other state. Furthermore, the intent to avoid prosecution may be only a secondary motivation for a person to come to Wisconsin. This bill would penalize a person who has not been charged with a crime in another state from coming to Wisconsin for employment, if part of the person's motivation for coming to Wisconsin is to avoid prosecution for a sex offense.

This bill is a redraft of 1999 Senate Bill 29, which in turn was a redraft of 1997 Senate Bill 515. 1997 Senate Bill 515 was based on a California statute (section 289.5). I have not found any case law that addresses the constitutionality of the California law.

To address the possible violation of the privileges and immunities clause, this bill could instead be drafted to limit the application of the bill to persons who have been arrested for or charged with a serious sex offense in another jurisdiction. However, if your intent is to cover flight during a criminal investigation, or even before law enforcement is aware that a crime has been committed, then I suspect that you will find this solution too narrowing.

As a practical matter, the prohibition against coming to Wisconsin or staying in Wisconsin with the intent to avoid prosecution may not be a useful tool to prosecutors,

because a person can be prosecuted under this prohibition only if the state where the person is charged declines to have the person extradited. If the other state does not find it worthwhile to extradite the person for a sex offense, the reason might be that the other state does not have a sufficient case against the person. This might make it difficult for Wisconsin to prove that the person came to Wisconsin to avoid prosecution.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

September 18, 2001

MEMORANDUM

To: Representative Suder

From: Robin L. Ryan, Legislative Attorney

Re: LRB-3551/1 Flight by sex offenders to avoid prosecution, sentencing, or incarceration

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 261-6927 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.