

2003 ASSEMBLY BILL 269

April 15, 2003 – Introduced by Representatives KRUG, RICHARDS, SHERMAN, KREUSER, HUBLER, TURNER, SCHOOFF, COGGS, TRAVIS, BLACK, ALBERS, BALOW, BERCEAU, BOYLE, COLON, CULLEN, GRONEMUS, HEBL, LASSA, J. LEHMAN, MILLER, MORRIS, PLALE, PLOUFF, POCAN, POPE-ROBERTS, SCHNEIDER, SHILLING, SINICKI, STASKUNAS, STEINBRINK, VAN AKKEREN, VRUWINK, WASSERMAN, A. WILLIAMS, YOUNG and ZEPNICK, cosponsored by Senators ERPENBACH, M. MEYER, MOORE, DECKER, HANSEN, CHVALA, BRESKE, CARPENTER, RISSER and WIRCH, by request of Attorney General Peggy A. Lautenschlager. Referred to Committee on Labor.

1 **AN ACT to amend** 103.10 (title), 103.10 (2) (a), 103.10 (5) (a), 103.10 (5) (b), 103.10
2 (6) (b), 103.10 (7) (b) (intro.), 103.10 (8) (a) (intro.), 103.10 (8) (a) 1., 103.10 (8)
3 (a) 2., 103.10 (8) (b), 103.10 (8) (c), 103.10 (9) (a), 103.10 (9) (b), 103.10 (9) (c) 4.,
4 103.10 (9) (d), 103.10 (10), 103.10 (12) (d), 103.10 (14) (b), 108.04 (1) (b) 3.
5 (intro.), 111.91 (2) (f), 230.35 (2m), 230.45 (1) (k), 253.10 (3) (d) 1. and 950.08
6 (title); **to repeal and recreate** 893.96 (title); and **to create** 103.10 (1) (ap),
7 103.10 (1) (i), 103.10 (4m), 103.10 (6) (c), 103.10 (7) (am), 950.04 (1v) (bg), 950.08
8 (2g) (h) and 950.08 (2v) of the statutes; **relating to:** leave from employment for
9 an employee who is a crime victim to attend certain proceedings relating to the
10 crime and to receive counseling for the psychological effects of the crime.

Analysis by the Legislative Reference Bureau

Under the current family and medical leave law, an employer, including the state, employing at least 50 individuals on a permanent basis in this state must permit an employee who has been employed by the employer for more than 52 consecutive weeks and who has worked for the employer for at least 1,000 hours during the preceding 52-week period to take six weeks of family leave in a 12-month

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period and two weeks of medical leave in a 12-month period. Family leave may be taken for the birth or adoptive placement of a new child or to care for a child, spouse, or parent who has a serious health condition. Medical leave may be taken when the employee has a serious health condition that makes the employee unable to perform the employee's employment duties. An employee is not entitled to receive wages or salary while taking family leave or medical leave, but may substitute, for portions of family or medical leave, other types of paid or unpaid leave provided by the employer.

An employee who intends to take family or medical leave for the birth or adoptive placement of a child or for planned medical treatment must give the employer advance notice of the birth or adoptive placement or planned medical treatment. In addition, for planned medical treatment, the employee must make a reasonable effort to schedule the medical treatment so that it does not unduly disrupt the operations of the employer. If an employee requests family leave to care for a child, spouse, or parent who has a serious health condition or requests medical leave for a serious health condition of the employee, the employer may require the employee to provide certification by a health care provider of that serious health condition.

On return from family or medical leave, the employer must place the employee in the position that the employee held immediately before the leave began or, if that position is not available, in an equivalent position. An employee who is on family or medical leave does not have the right to accrue any seniority or employment benefit while on leave, except that the employer must maintain group health insurance coverage for the employee under the same conditions that applied before the leave began. An employer that interferes with, restrains, or denies the exercise of any right under the family and medical leave law may be ordered to take action to remedy the violation, including providing the requested leave, reinstating the employee, providing up to two years of back pay, and paying reasonable actual attorney fees. In addition, the employee may bring an action in circuit court to recover damages caused by the violation.

This bill requires an employer, including the state, that employs at least 50 individuals on a permanent basis in this state to permit an employee who is the victim, as defined in the bill, of a crime to take leave from employment for any of the following purposes, unless the leave would unduly disrupt the employer's operations (crime victim's leave):

1. To attend an adult sentencing hearing or a juvenile consent decree or dispositional hearing.
2. To attend a hearing on a petition for modification of an inmate's bifurcated sentence or for release of an inmate to extended supervision or a parole interview or hearing.
3. To attend a hearing to determine whether a person is exempt from the requirement that the person register as a sex offender or a hearing to determine whether a child sex offender may work with children.

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4. To receive counseling to assist the employee in recovering from the psychological effects of the crime, except that an employee may take no more than 12 hours of crime victim's leave for this purpose in a 12-month period.

An employee is not entitled to receive wages or salary while taking crime victim's leave, but may substitute, for portions of crime victim's leave, other types of paid or unpaid leave provided by the employer. An employee who intends to take crime victim's leave must give the employer advance notice of the hearing or counseling that the employee is taking crime victims leave to attend, and the employer may require the employee to provide certification, by the law enforcement agency that is responsible for investigating the crime, that the employee is a victim of a crime. In addition, for counseling, the employee must make a reasonable effort to schedule the counseling so that it does not unduly disrupt the operations of the employer and, for a hearing, the employer may require the employee to provide a copy of the notice of the hearing.

On return from crime victim's leave, the employer must place the employee in the position that the employee held immediately before the leave began or, if that position is not available, in an equivalent position. An employee who is on crime victim's leave does not have the right to accrue any seniority or employment benefit while on leave, except that the employer must maintain group health insurance coverage for the employee under the same conditions that applied before the leave began. An employer that interferes with, restrains, or denies the exercise of any right relating to crime victim's leave created under the bill may be ordered to take action to remedy the violation, including providing the requested leave, reinstating the employee, providing up to two years of back pay, and paying reasonable actual attorney fees. In addition, the employee may bring an action in circuit court to recover damages caused by the violation.

Finally, for purposes of crime victim's leave, the bill defines "victim" as a person against whom a crime or delinquent act has been committed or, if that person is a child, the parent, guardian, or legal custodian of the person or, if that person is physically or emotionally unable to exercise the rights of a crime victim, a family member or designee of the person or, if that person is deceased, a family member of the person or a person who resided with the person or, if that person is incompetent, the guardian of the person.

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.** 103.10 (title) of the statutes is amended to read:

2 **103.10 (title) Family or, medical, and crime victim's leave.**

3 **SECTION 2.** 103.10 (1) (ap) of the statutes is created to read:

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1 103.10 (1) (ap) “Crime” has the meaning given in s. 950.02 (1m).

2 **SECTION 3.** 103.10 (1) (i) of the statutes is created to read:

3 103.10 (1) (i) “Victim” has the meaning given in s. 950.02 (4).

4 **SECTION 4.** 103.10 (2) (a) of the statutes is amended to read:

5 103.10 (2) (a) Nothing in this section prohibits an employer from providing
6 employees with rights to family leave or medical leave ~~which, or crime victim’s leave~~
7 that are more generous to the employee than the rights provided under this section.

8 **SECTION 5.** 103.10 (4m) of the statutes is created to read:

9 103.10 (4m) CRIME VICTIM’S LEAVE. (a) Subject to pars. (b) and (c), an employee
10 who is the victim of a crime may take crime victim’s leave for any of the following
11 purposes:

12 1. To attend a hearing on a consent decree that the employee has the right to
13 attend under s. 938.32 (1) (b) 1., a dispositional hearing that the employee has the
14 right to attend under s. 938.335 (3m) (a), or a sentencing hearing that the employee
15 has the right to attend under s. 972.14 (3) (a).

16 2. To attend a hearing on a petition for modification of an inmate’s bifurcated
17 sentence that the employee has the right to attend under s. 302.113 (9g), a hearing
18 on a petition for release of an inmate to extended supervision that the employee has
19 the right to attend under s. 302.114 (5) (c) or (9) (bm), or a parole interview or hearing
20 that the employee has the right to attend under s. 304.06 (1) (eg).

21 3. To attend a hearing to determine whether a person is exempt from the sex
22 offender registration requirement under s. 301.45 that the employee has the right
23 to attend under s. 301.45 (1m) (bv) or a hearing to determine whether a child sex
24 offender may work with children that the employee has the right to attend under s.
25 948.13 (2m) (d).

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1 4. To receive counseling to assist the employee in recovering from the
2 psychological effects of the crime.

3 (b) No employee may take more than 12 hours of crime victim's leave for the
4 purpose of receiving counseling during a 12-month period.

5 (c) An employer that receives a request for leave under par. (a) shall grant the
6 leave unless the leave would unduly disrupt the employer's operations.

7 (d) An employer that receives a request for leave under par. (a) shall keep the
8 request and all records relating to the request confidential.

9 **SECTION 6.** 103.10 (5) (a) of the statutes is amended to read:

10 103.10 (5) (a) This section does not entitle an employee to receive wages or
11 salary while taking family leave ~~or~~, medical leave, or crime victim's leave.

12 **SECTION 7.** 103.10 (5) (b) of the statutes is amended to read:

13 103.10 (5) (b) An employee may substitute, for portions of family leave ~~or~~,
14 medical leave, or crime victim's leave, paid or unpaid leave of any other type provided
15 by the employer.

16 **SECTION 8.** 103.10 (6) (b) of the statutes is amended to read:

17 103.10 (6) (b) If an employee intends to take family leave because of the
18 planned medical treatment or supervision of a child, spouse, or parent ~~or~~, intends to
19 take medical leave because of the planned medical treatment or supervision of the
20 employee, or intends to take crime victim's leave for the purpose of receiving
21 counseling, the employee shall do all of the following:

22 1. Make a reasonable effort to schedule the medical treatment or supervision
23 or counseling so that it does not unduly disrupt the employer's operations, subject
24 to the approval of the health care provider of the child, spouse, parent, or employee.

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1 2. Give the employer advance notice of the medical treatment or supervision
2 or counseling in a reasonable and practicable manner.

3 **SECTION 9.** 103.10 (6) (c) of the statutes is created to read:

4 103.10 **(6)** (c) If an employee intends to take crime victim's leave for the purpose
5 of attending a proceeding described in sub. (4m) (a) 1. to 3., the employee shall give
6 the employer advance notice of the proceeding in a reasonable and practicable
7 manner.

8 **SECTION 10.** 103.10 (7) (am) of the statutes is created to read:

9 103.10 **(7)** (am) If an employee requests crime victim's leave for the purpose of
10 receiving counseling, the employer may require the employee to provide certification
11 under s. 950.08 (2v) that the employee is a victim of a crime. If an employee requests
12 crime victim's leave for the purpose of attending a court proceeding described in sub.
13 (4m) (a) 1. to 3., the employer may require, in addition to that certification, a copy
14 of the notice of the proceeding.

15 **SECTION 11.** 103.10 (7) (b) (intro.) of the statutes is amended to read:

16 103.10 **(7)** (b) (intro.) No employer may require certification under par. (a)
17 stating more than the following:

18 **SECTION 12.** 103.10 (8) (a) (intro.) of the statutes is amended to read:

19 103.10 **(8)** (a) (intro.) Subject to par. (c), when an employee returns from family
20 leave or, medical leave, or crime victim's leave, his or her employer shall immediately
21 place the employee in an employment position as follows:

22 **SECTION 13.** 103.10 (8) (a) 1. of the statutes is amended to read:

23 103.10 **(8)** (a) 1. If the employment position which the employee held
24 immediately before the family leave or, medical leave, or crime victim's leave began
25 is vacant when the employee returns, in that position.

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1 **SECTION 14.** 103.10 (8) (a) 2. of the statutes is amended to read:

2 103.10 **(8)** (a) 2. If the employment position which the employee held
3 immediately before the family leave ~~or~~, medical leave, or crime victim's leave began
4 is not vacant when the employee returns, in an equivalent employment position
5 having equivalent compensation, benefits, working shift, hours of employment, and
6 other terms and conditions of employment.

7 **SECTION 15.** 103.10 (8) (b) of the statutes is amended to read:

8 103.10 **(8)** (b) No employer may, because an employee received family leave ~~or~~,
9 medical leave, or crime victim's leave, reduce or deny an employment benefit which
10 accrued to the employee before his or her leave began or, consistent with sub. (9),
11 accrued after his or her leave began.

12 **SECTION 16.** 103.10 (8) (c) of the statutes is amended to read:

13 103.10 **(8)** (c) Notwithstanding par. (a), if an employee on ~~a~~ family, medical or
14 family, or crime victim's leave wishes to return to work before the end of the leave as
15 scheduled, the employer shall place the employee in an employment position of the
16 type described in par. (a) 1. or 2. within a reasonable time not exceeding the duration
17 of the leave as scheduled.

18 **SECTION 17.** 103.10 (9) (a) of the statutes is amended to read:

19 103.10 **(9)** (a) Except as provided in par. (b), nothing in this section entitles a
20 returning employee to a right, employment benefit, or employment position to which
21 the employee would not have been entitled had he or she not taken family leave ~~or~~,
22 medical leave, or crime victim's leave or to the accrual of any seniority or employment
23 benefit during a period of family leave ~~or~~, medical leave, or crime victim's leave.

24 **SECTION 18.** 103.10 (9) (b) of the statutes is amended to read:

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1 103.10 (9) (b) Subject to par. (c), during a period an employee takes family leave
2 or, medical leave, or crime victim's leave, his or her employer shall maintain group
3 health insurance coverage under the conditions that applied immediately before the
4 family leave or, medical leave, or crime victim's leave began. If the employee
5 continues making any contribution required for participation in the group health
6 insurance plan, the employer shall continue making group health insurance
7 premium contributions as if the employee had not taken the family leave or, medical
8 leave, or crime victim's leave.

9 **SECTION 19.** 103.10 (9) (c) 4. of the statutes is amended to read:

10 103.10 (9) (c) 4. If an employee ends his or her employment with an employer
11 during or within 30 days after a period of family leave or, medical leave, or crime
12 victim's leave, the employer may deduct from the amount returned to the employee
13 under subd. 3. any premium or similar expense paid by the employer for the
14 employee's group health insurance coverage while the employee was on family leave
15 or, medical leave, or crime victim's leave.

16 **SECTION 20.** 103.10 (9) (d) of the statutes is amended to read:

17 103.10 (9) (d) If an employee ends his or her employment with an employer
18 during or at the end of a period of family leave or, medical leave, or crime victim's
19 leave, the time period for conversion to individual coverage under s. 632.897 (6) shall
20 be calculated as beginning on the day that on which the employee began the period
21 of family leave or, medical leave, or crime victim's leave.

22 **SECTION 21.** 103.10 (10) of the statutes is amended to read:

23 103.10 (10) ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an
24 employer and an employee with a serious health condition from mutually agreeing
25 to alternative employment for the employee while the serious health condition lasts.

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1 No period of alternative employment, with the same employer, reduces the
2 employee's right to family leave ~~or~~, medical leave, or crime victim's leave.

3 **SECTION 22.** 103.10 (12) (d) of the statutes is amended to read:

4 103.10 **(12)** (d) The department shall issue its decision and order within 30 days
5 after the hearing. If the department finds that an employer violated sub. (11) (a) or
6 (b), it may order the employer to take action to remedy the violation, including
7 providing the requested family leave ~~or~~, medical leave, or crime victim's leave,
8 reinstating an employee, providing back pay accrued not more than 2 years before
9 the complaint was filed, and paying reasonable actual attorney fees to the
10 complainant.

11 **SECTION 23.** 103.10 (14) (b) of the statutes is amended to read:

12 103.10 **(14)** (b) Any person employing at least 25 individuals shall post, in one
13 or more conspicuous places where notices to employees are customarily posted, a
14 notice describing the person's policy with respect to leave for the reasons described
15 in subs. (3) (b) ~~and~~, (4) (a), and (4m).

16 **SECTION 24.** 108.04 (1) (b) 3. (intro.) of the statutes is amended to read:

17 108.04 **(1)** (b) 3. (intro.) While the employee is on family or medical leave under
18 the federal family and medical leave act Family and Medical Leave Act of 1993 (P.L.
19 ~~103-3~~, 29 USC 2601 to 2654, or s. 103.10 or crime victim's leave under s. 103.10,
20 until whichever of the following occurs first:

21 **SECTION 25.** 111.91 (2) (f) of the statutes is amended to read:

22 111.91 **(2)** (f) Family leave and medical leave rights below the minimum
23 afforded under the federal Family and Medical Leave Act of 1993, 29 USC 2601 to
24 2654, and s. 103.10 and crime victim's leave rights below the minimum afforded
25 under s. 103.10. Nothing in this paragraph prohibits the employer from bargaining

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1 on rights to family leave or medical leave which are more generous to the employee
2 than the rights provided under the federal Family and Medical Leave Act of 1993,
3 29 USC 2601 to 2654, and s. 103.10 and on rights to crime victim's leave which are
4 more generous to the employee than the rights provided under s. 103.10.

5 **SECTION 26.** 230.35 (2m) of the statutes is amended to read:

6 230.35 **(2m)** An employee shall be eligible for medical or family leave under s.
7 103.10 upon the expiration, extension, or renewal of any collective bargaining
8 agreement in effect on April 26, 1988, which covers the employee. An employee shall
9 be eligible for crime victim's leave under s. 103.10 upon the expiration, extension, or
10 renewal of any collective bargaining agreement in effect on the effective date of this
11 subsection [revisor inserts date], which covers the employee.

12 **SECTION 27.** 230.45 (1) (k) of the statutes is amended to read:

13 230.45 **(1)** (k) Receive and process complaints of violations relating to family
14 or, medical, or crime victim's leave under s. 103.10 (12).

15 **SECTION 28.** 253.10 (3) (d) 1. of the statutes is amended to read:

16 253.10 **(3)** (d) 1. Geographically indexed materials that are designed to inform
17 a woman about public and private agencies, including adoption agencies, and
18 services that are available to provide information on family planning, as defined in
19 s. 253.07 (1) (a), including natural family planning information, to provide
20 ultrasound imaging services, to assist her if she has received a diagnosis that her
21 unborn child has a disability or if her pregnancy is the result of sexual assault or
22 incest and to assist her through pregnancy, upon childbirth, and while the child is
23 dependent. The materials shall include a comprehensive list of the agencies
24 available, a description of the services that they offer, and a description of the
25 manner in which they may be contacted, including telephone numbers and

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1 addresses, or, at the option of the department, the materials shall include a toll-free,
2 24-hour telephone number that may be called to obtain an oral listing of available
3 agencies and services in the locality of the caller and a description of the services that
4 the agencies offer and the manner in which they may be contacted. The materials
5 shall provide information on the availability of governmentally funded programs
6 that serve pregnant women and children. Services identified for the woman shall
7 include medical assistance for pregnant women and children under s. 49.47 (4) (am),
8 the availability of family ~~or~~, medical, and crime victim's leave under s. 103.10, the
9 Wisconsin works program under ss. 49.141 to 49.161, child care services, child
10 support laws and programs, and the credit for expenses for household and dependent
11 care and services necessary for gainful employment under section 21 of the ~~internal~~
12 ~~revenue code~~ Internal Revenue Code. The materials shall state that it is unlawful
13 to perform an abortion for which consent has been coerced, that any physician who
14 performs or induces an abortion without obtaining the woman's voluntary and
15 informed consent is liable to her for damages in a civil action and is subject to a civil
16 penalty, that the father of a child is liable for assistance in the support of the child,
17 even in instances in which the father has offered to pay for an abortion, and that
18 adoptive parents may pay the costs of prenatal care, childbirth, and neonatal care.
19 The materials shall include information, for a woman whose pregnancy is the result
20 of sexual assault or incest, on legal protections available to the woman and her child
21 if she wishes to oppose establishment of paternity or to terminate the father's
22 parental rights. The materials shall state that fetal ultrasound imaging and
23 auscultation of fetal heart tone services are obtainable by pregnant women who wish
24 to use them and shall describe the services.

25 **SECTION 29.** 893.96 (title) of the statutes is repealed and recreated to read:

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1 **893.96** (title) **Family, medical, and crime victim’s leave; civil remedies.**

2 **SECTION 30.** 950.04 (1v) (bg) of the statutes is created to read:

3 950.04 (**1v**) (bg) To take leave from employment under s. 103.10 (4m) for any
4 of the following purposes:

5 1. To attend a hearing on a consent decree that the victim has the right to attend
6 under s. 938.32 (1) (b) 1., a dispositional hearing that the victim has the right to
7 attend under s. 938.335 (3m) (a), or a sentencing hearing that the victim has the right
8 to attend under s. 972.14 (3) (a).

9 2. To attend a hearing on a petition for modification of an inmate’s bifurcated
10 sentence that the victim has the right to attend under s. 302.113 (9g), a hearing on
11 a petition for release of an inmate to extended supervision that the victim has the
12 right to attend under s. 302.114 (5) (c) or (9) (bm), or a parole interview or hearing
13 that the victim has the right to attend under s. 304.06 (1) (eg).

14 3. To attend a hearing to determine whether a person is exempt from the sex
15 offender registration requirement under s. 301.45 that the victim has the right to
16 attend under s. 301.45 (1m) (bv) or a hearing to determine whether a child sex
17 offender may work with children that the victim has the right to attend under s.
18 948.13 (2m) (d).

19 4. To receive counseling to assist the victim in recovering from the psychological
20 effects of the crime.

21 **SECTION 31.** 950.08 (title) of the statutes is amended to read:

22 **950.08** (title) **Information, certification, and mediation services.**

23 **SECTION 32.** 950.08 (2g) (h) of the statutes is created to read:

24 950.08 (**2g**) (h) The right of the victim to receive certification under sub. (2v)
25 that he or she is a victim of a crime.

