

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB60)

Received: **03/05/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing: **Don Dyke**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Correctional System - misc
Criminal Law - sex offenses**

Extra Copies: **rpn**

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.state.wi.us**

Carbon copy (CC:) to: **don.dyke@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Penalty for failing to register as a sex offender; sex offenders changing residence without complying with registration requirements

Instructions:

See Attached

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>
/?	mdsida 03/07/2003	kgilfoy 03/07/2003					S&L Crime
/1			rschluet 03/10/2003		sbasford 03/10/2003	sbasford 03/10/2003	

FE Sent For:

<END>

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1?	mdsida	1-3/7 Kmg					

3.10.3

FE Sent For:

<END>

Plc from Don Dyke

AB 60

Penalty = mis if underlying off is misd. + (it's a 1st off
felony or felony or
~~off~~ - ~~top~~ of 2nd off for misdemeanor

(4r) - same penalty structure
(merge w/ ~~off~~ above???)

Ok to do a sub (analysis)



kmj

D. Note

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY SUBSTITUTE AMENDMENT,

TO 2003 ASSEMBLY BILL 60

by Mon
5pm

Gen. Cat.

- 1 AN ACT *Gen. Cat.*; relating to: sex offender registration and residency requirements and
- 2 providing penalties.

Analysis by the Legislative Reference Bureau ✓

Under current law, persons convicted of certain felony sex offenses are required to register as sex offenders with the Department of Corrections (DOC). In addition, courts may order persons who commit certain other felonies or misdemeanors to register as sex offenders if their conduct was sexually motivated and it is in the interest of public protection to have them register. Any person required to register as a sex offender must provide DOC a variety of information, including his or her name, address, and place of employment, where he or she attends school, and certain descriptive information. In addition, the person must update that information annually or, if the person is required to register for the rest of his or her life, every 90 days (the periodic update requirement). With one exception, any person required to register must also ~~also~~ update that information no later than ten days after any of the information changes. The exception relates to a change of residence for a person on parole or extended supervision (ES). If a person on parole or ES is moving, he or she must provide DOC his or her new address before the move or, if the move is unplanned, within 24 hours thereafter (the address change notification requirement).

A person who is required to register but who knowingly fails to comply with one of the registration requirements described above is guilty of a misdemeanor and may be fined not more than \$10,000, sentenced to the county jail for up to nine months, or both, if the offense is the person's first. If the offense is a second or subsequent offense, the person is guilty of a Class H felony, for which he or she may be fined up to \$10,000, sentenced to a term of imprisonment (consisting of a term of confinement in state prison followed by a term of ~~extended supervision~~) of up to six years, or both.

Under this bill, if a sex offender who is required to register with DOC based on his or her commission of a felony fails to comply with one of the registration requirements described above, he or she is guilty of a Class H felony, regardless of the number of prior offenses.

Current law also prohibits any person on parole or ~~extended supervision~~ who is required to register as a sex offender from changing his or her residence unless he or she has complied with the periodic update requirement and the address change notification requirements. Any person who intentionally violates this prohibition is guilty of a misdemeanor and may be fined not more than \$10,000, sentenced to the county jail for up to nine months, or both. This bill makes the penalty for this offense the same as the penalty for failure to comply with a registration requirement (as revised by this bill). Specifically, a person on parole or ~~extended supervision~~ who violates the prohibition regarding moving is guilty of a Class H felony, unless the person is required to register with DOC based on his or her commission of a misdemeanor and the offense is the person's first. In that case, the person is guilty of a misdemeanor and may be fined not more than \$10,000, sentenced to the county jail for up to nine months, or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 301.45 (6) (a) 1. of the statutes is repealed and recreated to read:
 2 301.45 (6) (a) 1. Except as provided in subd. 2., the person is guilty of a Class
 3 H felony.

4 **SECTION 2.** 301.45 (6) (a) 2. of the statutes, as affected by 2001 Wisconsin Act
 5 109, is repealed and recreated to read:

1 301.45 (6) (a) 2. The person may be fined not more than \$10,000 or imprisoned
2 for not more than 9 months or both if all of the following apply:

3 a. The person was ordered under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am),
4 938.345 (3), 971.17 (1m) (b) 1m., or 973.048 (1m) to comply with the reporting
5 requirements under s. 301.45 based on a finding that he or she committed or
6 solicited, conspired, or attempted to commit a misdemeanor.

7 b. The person was not convicted of knowingly failing to comply with any
8 requirement to provide information under subs. (2) to (4) before committing the
9 present violation.

10 **SECTION 3.** 301.45 (6) (ag) of the statutes is renumbered 301.45 (6) (ag) (intro.)
11 and amended to read:

12 301.45 (6) (ag) (intro.) Whoever intentionally violates sub. (4r) ~~may be fined not~~
13 ~~more than \$10,000 or imprisoned for not more than 9 months or both.~~ is subject to
14 the following penalties:

15 History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109.

15 **SECTION 4.** 301.45 (6) (ag) 1. and 2. of the statutes are created to read:

16 301.45 (6) (ag) 1. Except as provided in subd. 2., the person is guilty of a Class
17 H felony.

18 2. The person may be fined not more than \$10,000 or imprisoned for not more
19 than 9 months or both if all of the following apply:

20 a. The person was ordered under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am),
21 938.345 (3), 971.17 (1m) (b) 1m., or 973.048 (1m) to comply with the reporting
22 requirements under s. 301.45 based on a finding that he or she committed or
23 solicited, conspired, or attempted to commit a misdemeanor.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs00217/dn

MGD: f/....
King

Rep. Gundrum:

Current s. 301.45 (4r) prohibits a registrant on parole or extended supervision from moving without notifying DOC of his or her new address. At the same time, current s. 301.45 (4) (b) requires a registrant on parole or extended supervision who knows that he or she is moving to notify DOC of his or her new address before moving. It is probably unconstitutional to prosecute a person under both of these provisions with respect to the same move. Nevertheless, it may make sense to have both of them in current law, since, for second or subsequent offenses, a district attorney could charge under s. 301.45 (4r) if he or she only wants a misdemeanor conviction, *see* s. 301.45 (6) (ag), but could charge under s. 301.45 (4) (b) if he or she wants a felony conviction, *See* s. 301.45 (6) (a). But given that this bill makes the penalties for the two offenses the same, you may want to consider consolidating s. 301.45 (4) (b) and (4r).

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0021/1dn
MGD:kmg:rs

March 10, 2003

Rep. Gundrum:

Current s. 301.45 (4r) prohibits a registrant on parole or extended supervision from moving without notifying DOC of his or her new address. At the same time, current s. 301.45 (4) (b) requires a registrant on parole or extended supervision who knows that he or she is moving to notify DOC of his or her new address before moving. It is probably unconstitutional to prosecute a person under both of these provisions with respect to the same move. Nevertheless, it may make sense to have both of them in current law, since, for second or subsequent offenses, a district attorney could charge under s. 301.45 (4r) if he or she only wants a misdemeanor conviction, *see* s. 301.45 (6) (ag), but could charge under s. 301.45 (4) (b) if he or she wants a felony conviction, *see* s. 301.45 (6) (a). But given that this bill makes the penalties for the two offenses the same, you may want to consider consolidating s. 301.45 (4) (b) and (4r).

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

Barman, Mike

From: Barman, Mike
Sent: Wednesday, March 12, 2003 2:16 PM
To: Rep.Gundrum
Subject: Corrected Copies (LRBs0021 & LRB s0027)



03s0021/1



03s0027/1

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 60**

March 12, 2003 – Offered by Representative GUNDRUM.

1 **AN ACT** *to renumber and amend* 301.45 (6) (ag); *to repeal and recreate*
2 301.45 (6) (a) 1. and 301.45 (6) (a) 2.; and *to create* 301.45 (6) (ag) 1. and 2. of
3 the statutes; **relating to:** sex offender registration and residency requirements
4 and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, persons convicted of certain felony sex offenses are required to register as sex offenders with the Department of Corrections (DOC). In addition, courts may order persons who commit certain other felonies or misdemeanors to register as sex offenders if their conduct was sexually motivated and it is in the interest of public protection to have them register. Any person required to register as a sex offender must provide DOC a variety of information, including his or her name, address, and place of employment, where he or she attends school, and certain descriptive information. In addition, the person must update that information annually or, if the person is required to register for the rest of his or her life, every 90 days (the periodic update requirement). With one exception, any person required to register must also update that information no later than ten days after any of the information changes. The exception relates to a change of residence for a person on parole or extended supervision (ES). If a person on parole or ES is moving, he or she must provide DOC his or her new address before the move or, if the move is

unplanned, within 24 hours thereafter (the address change notification requirement).

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Under this bill, if a sex offender who is required to register with DOC based on his or her commission of a felony fails to comply with one of the registration requirements described above, he or she is guilty of a Class H felony, regardless of the number of prior offenses.

Current law also prohibits any person on parole or ES who is required to register as a sex offender from changing his or her residence unless he or she has complied with the periodic update requirement and the address change notification requirements. Any person who intentionally violates this prohibition is guilty of a misdemeanor and may be fined not more than \$10,000 or sentenced to the county jail for up to nine months or both. This bill makes the penalty for this offense the same as the penalty for failure to comply with a registration requirement (as revised by this bill). Specifically, a person on parole or ES who violates the prohibition regarding moving is guilty of a Class H felony, unless the person is required to register with DOC based on his or her commission of a misdemeanor and the offense is the person's first. In that case, the person is guilty of a misdemeanor and may be fined not more than \$10,000 or sentenced to the county jail for up to nine months or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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2 301.45 (6) (a) 1. Except as provided in subd. 2., the person is guilty of a Class
3 H felony.

4 **SECTION 2.** 301.45 (6) (a) 2. of the statutes, as affected by 2001 Wisconsin Act
5 109, is repealed and recreated to read:

Removed

Removed

1 301.45 (6) (a) 2. The person may be fined not more than \$10,000 or imprisoned
2 for not more than 9 months or both if all of the following apply:

3 a. The person was ordered under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am),
4 938.345 (3), 971.17 (1m) (b) 1m., or 973.048 (1m) to comply with the reporting
5 requirements under s. 301.45 based on a finding that he or she committed or
6 solicited, conspired, or attempted to commit a misdemeanor.

7 b. The person was not convicted of knowingly failing to comply with any
8 requirement to provide information under subs. (2) to (4) before committing the
9 present violation.

10 **SECTION 3.** 301.45 (6) (ag) of the statutes is renumbered 301.45 (6) (ag) (intro.)
11 and amended to read:

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19 than 9 months or both if all of the following apply:

20 a. The person was ordered under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am),
21 938.345 (3), 971.17 (1m) (b) 1m., or 973.048 (1m) to comply with the reporting
22 requirements under s. 301.45 based on a finding that he or she committed or
23 solicited, conspired, or attempted to commit a misdemeanor.

24 b. The person was not convicted of another offense under sub. (4r) before
25 committing the present violation.

