

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 591**

October 25, 2005 – Offered by Representatives SUDER and KLEEFISCH.

1 **AN ACT** *to create* 301.48, 946.465, 948.02 (6) and 948.025 (4) of the statutes;
2 **relating to:** global positioning system tracking for certain sex offenders and
3 providing a penalty.

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

4 **SECTION 1.** 301.48 of the statutes is created to read:

5 **301.48 Global positioning system tracking for certain sex offenders.**

6 **(1) DEFINITIONS.** In this section:

7 (a) “Exclusion zone” means a zone in which a person who is tracked using a
8 global positioning system tracking device is prohibited from entering except for
9 purposes of traveling through to get to another destination.

10 (b) “Global positioning system tracking” includes comparable technology.

11 (c) “Inclusion zone” means a zone in which a person who is tracked using a
12 global positioning system tracking device is prohibited from leaving.

1 (d) “Lifetime tracking” means global positioning system tracking that is
2 required for a person for the remainder of the person’s life or until terminated under
3 sub. (6). “Lifetime tracking” does not include global positioning system tracking
4 under sub. (2) (b) or (c), regardless of how long it is required.

5 (e) “Serious child sex offense” means any of the following:

6 1. A violation of s. 948.02 (1) or 948.025 (1) (a).

7 2. A violation of s. 948.02 (2) or 948.025 (1) (b), if the court makes a finding
8 under s. 948.02 (6) or 948.025 (4) (b).

9 (f) “Sex offense” means any of the following:

10 1. A sex offense, as defined in s. 301.45 (1d) (b).

11 2. A crime under federal law or the law of any state that is comparable to a crime
12 described in subd. 1.

13 **(2) WHO IS COVERED.** (a) The department shall arrange for lifetime tracking of
14 all of the following:

15 1. Any person who is placed on probation, extended supervision, or parole for
16 committing a serious child sex offense, unless a court exempts the person from
17 lifetime tracking under sub. (5).

18 2. Any person who is placed on conditional release after having been found not
19 guilty of a serious child sex offense by reason of mental disease or mental defect,
20 unless a court exempts the person from lifetime tracking under sub. (5).

21 3. Any person who is placed on supervised release under s. 980.08 (6m).

22 (b) The department shall have a person tracked using a global positioning
23 system tracking device if all of the following apply:

1 1. The person has been convicted under federal law or the law of any other state
2 of a crime that is comparable to a serious child sex offense or found not guilty of or
3 not responsible for such a crime by reason of mental disease or mental defect.

4 2. The person resides in this state, is employed or carrying on a vocation, as
5 defined in s. 301.45 (1d) (a), in this state, or is a student, as defined in s. 301.45 (1d)
6 (c), in this state.

7 (c) If a person is placed on probation, extended supervision, or parole for
8 committing a sex offense and par. (a) or (b) does not apply, the department may have
9 the person tracked using a global positioning system tracking device.

10 **(3) DUTIES OF THE DEPARTMENT.** (a) For each person who is subject to global
11 positioning system tracking under this subsection, the department shall do all of the
12 following:

13 1. Create individualized exclusion and inclusion zones for the person, if
14 necessary to protect public safety. In creating exclusion zones, the department shall
15 focus on areas where children congregate, with perimeters of 100 to 250 feet, and on
16 areas where the person has been prohibited from going as a condition of probation,
17 extended supervision, parole, conditional release, or supervised release.

18 2. Ensure that the person's global positioning system tracking device, or any
19 comparable technology used with respect to the person, immediately alerts the
20 department and the local law enforcement agency having jurisdiction over the
21 exclusion or inclusion zone if the person stays in any exclusion zone that is created
22 for him or her under subd. 1. for any longer period than the time needed to travel
23 through the zone to get to another destination or if the person leaves any inclusion
24 zone that is created for him or her under subd. 1.

1 (b) If a person who is on supervised release or conditional release is being
2 tracked, the department shall notify the department of health and family services,
3 upon request, of any tracking information for the person under any of the following
4 circumstances:

5 1. The department of corrections has been alerted under par. (a) 2. that the
6 person being tracked has improperly stayed in an exclusion zone or improperly left
7 an inclusion zone.

8 2. The person being tracked fails to make a payment to the department under
9 sub. (4) (b).

10 **(4) COSTS.** (a) The department shall determine all of the following for each
11 person tracked:

12 1. The cost of global positioning system tracking for the person.

13 2. How much of the cost under subd. 1. the person is able to pay based on the
14 factors listed in par. (d).

15 (b) If required by the department, a person who is subject to global positioning
16 system tracking shall pay for the cost of tracking up to the amount calculated for the
17 person under par. (a) 2.

18 (c) The department of health and family services shall pay for the cost of
19 tracking a person to whom sub. (2) (a) 2. or 3. applies while the person is on
20 conditional release or supervised release to the extent that the cost is not covered by
21 payments made by the person under par. (b).

22 (d) In determining how much of the costs the person is able to pay, the
23 department may consider the following:

24 1. The person's financial resources.

25 2. The present and future earning ability of the person.

1 3. The needs and earning ability of the person's dependents.

2 4. Any other costs that the person is required to pay in conjunction with his or
3 her supervision by the department or the department of health and family services.

4 5. Any other factors that the department considers appropriate.

5 **(5) EXCEPTION TO LIFETIME TRACKING REQUIREMENT; UNDERAGE SEXUAL ACTIVITY.**

6 (a) A person described in sub. (2) (a) 1. or 2. is not subject to tracking under this
7 section if all of the following apply:

8 1. The serious child sex offense described in sub. (2) (a) 1. or 2. did not involve
9 sexual intercourse, as defined in s. 948.01 (6), by the use or threat of force or violence
10 and did not involve sexual intercourse with a victim under the age of 12 years.

11 2. At the time of the serious child sex offense, the person had not attained the
12 age of 19 years, was not more than 4 years older than the child, and was not more
13 than 4 years younger than the child.

14 3. It is not necessary, in the interest of public protection, to subject the person
15 to global positioning system tracking.

16 (b) If a person believes that he or she is not subject to global positioning system
17 tracking under par. (a), the person may move a court to make a determination of
18 whether the person satisfies those criteria. A motion made under this paragraph
19 shall be filed with the circuit court for the county in which the person was convicted
20 or found not guilty or not responsible by reason of mental disease or defect.

21 (c) A person who files a motion under par. (b) shall send a copy of the motion
22 to the district attorney for the county in which the motion is filed. The district
23 attorney shall make a reasonable attempt to contact the victim of the crime that is
24 the subject of the person's motion to inform the victim of his or her right to make or
25 provide a statement under par. (e).

1 (d) A court shall hold a hearing on a motion made by a person under par. (b).
2 The district attorney who receives a copy of a motion under par. (c) may appear at
3 the hearing.

4 (e) Before deciding a motion filed under par. (b), the court shall allow the victim
5 of the serious child sex offense described in sub. (2) (a) 1. or 2. to make a statement
6 in court at the hearing under par. (d) or to submit a written statement to the court.
7 A statement under this paragraph must be relevant to whether the person satisfies
8 the criteria specified in par. (a).

9 (f) 1. Before deciding a motion filed by a person under par. (b), a court may
10 request the person to be examined by a physician or a psychologist licensed under
11 ch. 445 and who is approved by the court. If the person refuses to undergo an
12 examination requested by the court under this subdivision, the court shall deny the
13 person's motion without prejudice.

14 2. If a person is examined by a physician or a psychologist under subd. 1., the
15 physician or psychologist shall file a report of his or her examination with the court,
16 and the court shall provide copies of the report to the person and, if he or she requests
17 a copy, to the district attorney. The contents of the report shall be confidential until
18 the physician or psychologist has testified at the hearing held under par. (d). The
19 report shall contain an opinion regarding whether it would be in the interest of public
20 protection to have the person subject to global positioning system tracking and the
21 basis for that opinion.

22 3. A person who is examined by a physician or psychologist under subd. 1. is
23 responsible for paying the cost of the services provided by the physician or
24 psychologist, except that if the person is indigent the cost of the services provided by
25 the physician or psychologist shall be paid by the county. If the person claims or

1 appears to be indigent, the court shall refer the person to the authority for indigency
2 determinations under s. 977.07 (1), except that the person shall be considered
3 indigent without another determination under s. 977.07 (1) if the person is
4 represented by the state public defender or by a private attorney appointed under
5 s. 977.08.

6 (g) At the hearing held under par. (d), the person who filed the motion under
7 par. (b) has the burden of proving by clear and convincing evidence that he or she
8 satisfies the criteria specified in par. (a). In deciding whether the person has satisfied
9 the criterion specified in par. (a) 3., the court may consider any of the following:

10 1. The ages, at the time of the violation, of the person and of the child with whom
11 the person had sexual contact or sexual intercourse.

12 2. The relationship between the person and the child with whom the person had
13 sexual contact or sexual intercourse.

14 3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to
15 the child with whom the person had sexual contact or sexual intercourse.

16 4. Whether the child with whom the person had sexual contact or sexual
17 intercourse suffered from a mental illness or mental deficiency that rendered the
18 child temporarily or permanently incapable of understanding or evaluating the
19 consequences of his or her actions.

20 5. The probability that the person will commit other violations in the future.

21 6. The report of the examination conducted under par. (f).

22 7. Any other factor that the court determines may be relevant to the particular
23 case.

24 **(6) PETITION FOR TERMINATION OF LIFETIME TRACKING.** (a) Subject to par. (b), a
25 person who is subject to lifetime tracking may file a petition requesting that lifetime

1 tracking be terminated. A person shall file a petition requesting termination of
2 lifetime tracking with the circuit court for the county in which the person was
3 convicted or found not guilty or not responsible by reason of mental disease or defect
4 or, in the case of a person described in sub. (2) (b) 3., the circuit court for the county
5 in which the person was found to be a sexually violent person.

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

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

14 (c) Upon receiving a petition requesting termination of lifetime tracking, the
15 court shall send a copy of the petition to the district attorney responsible for
16 prosecuting the serious sex offense that was the basis for the order of lifetime
17 tracking or, in the case of a person described in sub. (2) (b) 3., the agency that filed
18 the petition under s. 980.02. Upon receiving the copy of the petition, the district
19 attorney or, if applicable, the department of justice shall conduct a criminal history
20 record search to determine whether the person has been convicted of a criminal
21 offense that was committed during the period of lifetime tracking. No later than 30
22 days after the date on which he or she receives the copy of the petition, the district
23 attorney or, if applicable, the department of justice shall report the results of the
24 criminal history record search to the court and may provide a written response to the
25 petition.

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

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

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

12 (e) A person filing a petition requesting termination of lifetime tracking who
13 is entitled to a hearing under par. (d) 2. shall be examined by a person who is either
14 a physician or a psychologist licensed under ch. 455 and who is approved by the court.
15 The physician or psychologist who conducts an examination under this paragraph
16 shall prepare a report of his or her examination that includes his or her opinion of
17 whether the person petitioning for termination of lifetime tracking is a danger to
18 public. The physician or psychologist shall file the report of his or her examination
19 with the court within 60 days after completing the examination, and the court shall
20 provide copies of the report to the person filing the petition and the district attorney
21 who received a copy of the person's petition under par. (c) or, if applicable, the
22 department of justice. The contents of the report shall be confidential until the
23 physician or psychologist testifies at a hearing under par. (g). The person petitioning
24 for termination of lifetime tracking shall pay the cost of an examination required
25 under this paragraph.

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

12 (g) A hearing on a petition requesting termination of lifetime tracking may not
13 be conducted until the person filing the petition has been examined and a report of
14 the examination has been filed as provided under par. (e). At the hearing, the court
15 shall take evidence it considers relevant to determining whether lifetime tracking
16 should be continued because the person who filed the petition is a danger to the
17 public. The person who filed the petition and the district attorney who received the
18 petition under par. (c) or, if applicable, the department of justice, may offer evidence
19 relevant to the issue of the person's dangerousness and the continued need for
20 lifetime tracking.

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

24 (i) If a petition requesting termination of lifetime tracking is denied after a
25 hearing under par. (g), the person may not file a subsequent petition requesting

1 termination of lifetime tracking until at least 3 years have elapsed since the most
2 recent petition was denied.

3 **SECTION 2.** 946.465 of the statutes is created to read:

4 **946.465 Tampering with a global positioning system tracking device.**

5 Whoever, without the authorization of the department of corrections, intentionally
6 tampers with a global positioning system tracking device or comparable technology
7 that is provided under s. 301.48 is guilty of a Class I felony.

8 **SECTION 3.** 948.02 (6) of the statutes is created to read:

9 **948.02 (6) FINDING REGARDING FORCE OR VIOLENCE.** If a person is convicted under
10 sub. (2), the court shall determine, based on a preponderance of the evidence
11 presented at trial and without a jury, if the offense involved the use or a threat of force
12 or violence. If the court makes such a determination, the court shall enter a finding
13 to that effect in the record.

14 **SECTION 4.** 948.025 (4) of the statutes is created to read:

15 **948.025 (4) (a)** If a person is convicted under sub. (1) (b), the court shall
16 determine, based on a preponderance of the evidence presented at trial and without
17 a jury, if any of the following applies:

18 1. The offense involved a violation of s. 948.02 (1).

19 2. The offense involved the use or a threat of force or violence.

20 (b) If the court determines that either par. (a) 1. or 2. applies, the court shall
21 enter a finding to that effect in the record.

22 **SECTION 5. Initial applicability.**

23 (1) This act first applies to persons whom the department of corrections
24 releases to parole or extended supervision on the effective date of this subsection.

