

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB591)

Received: 10/26/2005

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Scott Suder (608) 267-0280

By/Representing:

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Correctional System - misc
Correctional System - com crctns
Criminal Law - sex offenses
Criminal Law - crimes agnst kids

Extra Copies: gmm

Submit via email: YES

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

Carbon copy (CC:) to: cathlene.hanaman@legis.state.wi.us
robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

GPS tracking for certain sex offenders

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 11/03/2005 | lkunkel 11/06/2005 | | _____ | | | |
| /1 | | | pgreensl 11/07/2005 | _____ | sbasford 11/07/2005 | sbasford 11/07/2005 | |

FE Sent For:

<END>

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

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us
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|--------------|----------------|-----------------|--------------|------------------|------------------|-----------------|-----------------|
| /? | mdsida | A/mk 11/4 | W/g P8 | 11 7 P8/15 | | | |

FE Sent For:

<END>

3/19 - immediately alerts ~~use~~

Define "active GPS monitoring" Use FL law

980 - lifetime means lifetime

except for

ED. ~~sop~~ applies to all 980 offenders currently
in system

incapacitation - 2 physicians
petition by D.O.C

20 yrs ✓

5 yr refile ✓

New sub

Dsida, Michael

From: Emerson, Anne
Sent: Wednesday, October 26, 2005 1:33 PM
To: Dsida, Michael
Subject: FW: Language

Importance: High

Here is the language I left a voice message with you about. We would like to include this language somehow in the 2nd sub. I think we have also come to the agreement to leave the early termination petition process in the bill, with the changes we discussed.

From: Western, Jennifer
Sent: Wednesday, October 26, 2005 1:12 PM
To: Emerson, Anne
Subject: Language
Importance: High

Hi Anne, here is the language Don discussed with Suder.

"The Department of Corrections shall return an offender* to their jurisdiction of origin or county of residence or treatment facility."

*I know Don and Scott discussed the fact that this provision should only be applicable to sex offenders who are subject to the tracking under the bill. The drafter will have to figure out how to word the "offender" part. Let me know if you need more clarification or info.

Jennifer, 6-7694
Rep. Friske's Office

*P/c to Rep. Friske -
Fear of DOC / other manipulating exclusion zone to
avoid placement in county of residence*

Dsida, Michael

From: Western, Jennifer
Sent: Thursday, November 03, 2005 10:10 AM
To: Dsida, Michael
Subject: Placement

Importance: J - High

go w/ this
Mike, I have been thinking about this. Friske only wants this to apply to Corrections and DHFS initially PLACING an offender back into the community.

#1. If you were to link it to the offense, it would apply to 980s, NGIs, serious child sex offenders, and ~~child sex offenders~~ that Corrections or DHFS place back into the community upon release.

#2. If you were to link it to the fact that the person is GPS tracked, it would naturally apply to 980s, NGIs, and serious child sex offenders. It would also apply to child sex offenders to the extent that Corrections or DHFS is placing that person back into the community upon release. (Therefore, it would not apply in the case that Corrections decides to track someone 6 mo or 1 yr later.)

Seems like #1 makes more sense. Can we work with this? Please call me if you need to and we'll work this out.

Thanks,
Jen

Dsida, Michael

From: Western, Jennifer
Sent: Wednesday, November 02, 2005 5:09 PM
To: Dsida, Michael
Subject: RE: Residency requirement for GPS cases

Mike, given the answer to #2, then include sex offenders affected by this bill that are placed by DHFS. Don didn't have a problem with the idea of saying "The agency with jurisdiction shall place..."

I will not be in tomorrow (Thursday). But I may call in tomorrow to see where we're at.

Thanks, Jennifer

From: Dsida, Michael
Sent: Wednesday, November 02, 2005 4:29 PM
To: Western, Jennifer
Subject: RE: Residency requirement for GPS cases

See below under question 2.

From: Western, Jennifer
Sent: Tuesday, November 01, 2005 5:12 PM
To: Dsida, Michael
Subject: RE: Residency requirement for GPS cases

Mike,

That's okay. I don't mind the questions. Friske wants to do accomplish something simple... I understand getting there is complicated. The answer to your questions are:

1. Also, how do you want to handle probation? If a person who now lives in county C has committed an offense in county A while living in county B, does he or she have to move back to county A or B? In addition, it's hard to see how DOC is "placing" a person who is put on probation -- especially if a person is out on bail during his or her trial.

Keep the language below, meaning the person must be placed in the county in which the person resided on the date of the offense or county in which the person was convicted of the offense, or a treatment facility. Also, Friske only wants to this to pertain when Corrections or DHFS are dictating placement for an offender. If an offender is on probation and Corrections or DHFS are not directing their placement in the community, then this will not apply.

2. Initially, we talked about not having this limitation apply to people placed on supervised release under ch. 980, but in our last phone conversation, we started talking about ch. 980 cases. Do you want those cases to have similar placement requirements or not?

Here's the deal. Friske was told the placement of Chap 980 offenders is currently specified/restricted by current law. That is why he did not include the Chap 980 offenders in his initial amendment language - because he thought it was already in current law. Is this the case or not? What directive does DHFS use when placing Chap 980 offenders? If DHFS is free to place Chap 980 offenders where they like, then yes, Friske would like to include them in this amendment. If current law already similarly restricts the placement of Chap 980 offenders, then no, there is no need to include them here. Same thing goes for DHFS's placement of people found not guilty by reason of insanity....

The procedure for placing a person on conditional release (NGI cases) is essentially the same as the one for supervised release (ch. 980 cases) -- at least on paper. After the court finds that the criteria for release have been met, the court notifies DHFS. DHFS and the county in which the person resided at the time of the offense then prepare a plan, subject to court approval, that identifies the treatment and services that the person will receive in the community. But if the county in which the person resided declines to prepare a plan, DHFS may arrange for another county to prepare the plan if that county agrees and if the person will be living in that county.

The main difference between the two procedures is that, in ch. 980 cases, the court may order a county to prepare a plan if no county is willing to do so. The person would then reside in that county.

Thus, in general, the statutes contemplate that the person will be placed in his or her former county of residence, but it is certainly possible for them to be placed elsewhere.

Thanks,
Jennifer

From: Dsida, Michael
Sent: Tuesday, November 01, 2005 4:23 PM
To: Western, Jennifer
Cc: Sappenfield, Anne
Subject: RE: Residency requirement for GPS cases

If you wanted to combine pars. (a) and (c), here's how you could do it:

The agency with jurisdiction (you need a defined term like this (and a definition) to make it clear; otherwise, DOC would argue that it is getting entangled in placements for which DHFS is responsible and vice versa) shall place a person who is subject to global positioning system tracking under (2) (a) 1. or 2. or (c) in one of the following places:

1. The county in which the person resided on the date of the offense that makes sub. (2) (a) 1. or 2. apply to the person or that, with respect to a person tracked under sub. (2) (c), permits the department to require tracking.
2. The county in which the person was convicted of the offense that makes sub. (2) (a) 1. or 2. apply to the person or that, with respect to a person tracked under sub. (2) (c), permits the department to require tracking.
3. A sex offender treatment facility.

Also, how do you want to handle probation? If a person who now lives in county C has committed an offense in county A while living in county B, does he or she have to move back to county A or B? In addition, it's hard to see how DOC is "placing" a person who is put on probation -- especially if a person is out on bail during his or her trial.

Initially, we talked about not having this limitation apply to people placed on supervised release under ch. 980, but in our last phone conversation, we started talking about ch. 980 cases. Do you want those cases to have similar placement requirements or not?

I don't mean to make this seem complicated. It just is.

From: Western, Jennifer

Sent: Tuesday, November 01, 2005 3:34 PM
To: Dsida, Michael
Subject: RE: Residency requirement for GPS cases

Mike,

Don said he is okay with it applying to DHFS too.

Tell me something... would it be possible for the language be shortened this way:

"The Department of Corrections and the Department of Health and Family Services shall place an offender under (2) (a) 1. or 2. (serious child sex offender) or (2) (c) (child sex offender) in one of the following places:

1. The county in which the person resided on the date of the offense that makes sub. (2) (a) 1. or 2. apply to the person.
2. The county in which the person was convicted of the offense that makes sub. (2) (a) 1. or 2. apply to the person.
3. A sex offender treatment facility.

From: Dsida, Michael
Sent: Tuesday, November 01, 2005 1:50 PM
To: Emerson, Anne; Western, Jennifer
Cc: Sappenfield, Anne
Subject: RE: Residency requirement for GPS cases

Rep. Friske asked me to add the county of conviction or a specialized sex offender treatment facility as options as well. Jennifer had mentioned those options in her email, but I did not include them in the language below. I also should split par. (a) to separate people covered under sub. (2) (a) 1. or 2. from people covered under sub. (2) (c). Here's the net result:

(3) **Where a covered offender may reside.** (a) While subject to global positioning system tracking, a person described in sub. (2) (a) 1. or 2. shall reside in one of the following places:

1. The county in which the person resided on the date of the offense that makes sub. (2) (a) 1. or 2. apply to the person.
2. The county in which the person was convicted of the offense that makes sub. (2) (a) 1. or 2. apply to the person.
3. A sex offender treatment facility.

(b) While subject to global positioning system tracking, a person described in sub. (2) (a) 3. shall reside in the county in which he or she resided on the date of the sexually violent offense, as defined in s. 980.01 (6), that resulted in the sentence, placement, or commitment that was in effect when the petition that commenced the proceeding under which the person was placed on supervised release was filed under s. 980.02. This paragraph does not apply to a person who is on supervised release on the effective date of this paragraph . . . [revisor inserts date], unless the person's supervised release is revoked.

(c) If the department requires global positioning system tracking for a person under sub. (2) (c) based on the person's commission of a sex offense described in sub. (1) (f) 1., the person shall reside in one of the following places while subject to that tracking:

1. The county in which the person resided on the date of that sex offense.
2. The county in which the person was convicted of that sex offense.
3. A sex offender treatment facility.

As noted in the first email regarding this language, I will also amend ss. 971.17 and 980.08 so that the court cannot require placement in a different county.

Please let me know if you have any questions or comments regarding this language.

Mike Dsida
Legislative Reference Bureau

0272
↑
keep

Note

ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 591

~~scribble~~

MON

LPS: inserts
out of order
also
inserts
to inserts

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

Presen

and residency
requirement

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: and residency B
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 it 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.

INS
113A
+
INS 1/3B
(from
INSX)

INS
1/10

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

Handwritten notes: "Offender's" with a box around "CS", "TO" with "CS" above it, and "E" with "CS" above it. Arrows point from these notes to the word "case" in the previous paragraph and to the word "PETITION" in the current paragraph.

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

INS
11/2

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

5

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:

INS 11/9
from INS X

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.

immediately after the trial

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

INS 11/15
from INS X

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.

sections
301.03(20)
and

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.

INS 11/23

The treatment of 301.48 of the statutes

INS 12/1

The treatment of ^{section} 301.48 of the statutes
=

1 (2) This act first applies to persons whom the court places on probation or
2 conditional release, or supervised release on the effective date of this subsection.

3 (3) This act first applies to all persons who become discharged under chapter
4 980 of the statutes on the effective date of this subsection.

SECTION 6. Effective date.

5
6 (1) This act takes effect on the first day of the 6th month beginning after
7 publication.

(END)

INS
12/3

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FROM THE
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1 INSERT 1/3 B ✓

2 ~~SECTION 1.~~ 301.03 (19) of the statutes is amended to read:

3 301.03 (19) ~~Work~~ Subject to sub. (20), work to minimize, to the greatest extent
4 possible, the residential population density of sex offenders, as defined in s. 302.116
5 (1) (b), who are on probation, parole, or extended supervision or placed on supervised
6 release under s. 980.06 (2) (c), 1997 stats., or s. 980.08 (5).

History: 1989 a. 31, 107, 121, 188, 336; 1991 a. 39; 1993 a. 16, 377, 479; 1995 a. 27 ss. 6355, 6356m, 6356p, 9126 (19); 1995 a. 77, 141; 1997 a. 27, 35, 237, 275, 283, 284; 1999 a. 9, 32; 2001 a. 16, 109; 2003 a. 321.

7 ~~SECTION 2.~~ 301.03 (20) of the statutes is created to read:

8 301.03 (20) (a) Except as provided in s. 304.06 (2m) (b), place, in one of the
9 following locations, each person who has been convicted of a sex offense, as defined
10 in s. 301.45 (1d) (b), upon his or her release to parole or extended supervision:

- 11 1. The county in which the person resided on the date of the sex offense. ✓
- 12 2. The county in which the person was convicted of the sex offense. ✓
- 13 3. A sex offender treatment facility. ✓

14 ^b (c) Paragraph (b) does not preclude the department from authorizing a person
15 to reside in a location other than one listed in par. (a) 1. to 3. if the department
16 initially placed the person in one of those listed locations. ✓

17 INSERT 11/9

18 ^{NOA} or found not guilty by reason of mental disease or defect

19 INSERT 11/15

20 ^{NOA} or found not guilty by reason of mental disease or defect

21 INSERT 11/23

22 ^{NOA} PLACEMENT AND TRACKING OF PERSONS RELEASED TO PAROLE OR EXTENDED
23 SUPERVISION.

24 INSERT 12/1

INSERT 12/1 ↓

1 ~~NOT~~ TRACKING OF PERSONS PLACED ON PROBATION.

2

3 THE FOLLOWING INSERTS GO INTO INSERT 11/21

4 INSERT 4/21 ✓

5 ~~NOT~~ the person was found not guilty of a sex offense, as defined in s. 301.45 (1d) (b),
6 by reason of mental disease or defect. ✓

7 SECTION ~~3.~~ 971.17 (4) (e) 3. of the statutes is created to read:

8 971.17 (4) (e) 3. If the county department for the person's county of residence
9 declines to prepare a plan for a person who was found not guilty of a sex offense, as
10 defined in s. 301.45 (1d) (b), by reason of mental disease or defect, the department
11 may arrange for any of the following counties to prepare a plan if the county agrees
12 to do so:

13 a. The county in which the person was found not guilty by reason of mental
14 disease or defect, if the person will be living in that county. ✓

15 b. A county in which a treatment facility for sex offenders is located, if the
16 person will be living in that facility. ✓

17 INSERT 6/2

18 ~~NOT~~ and have the county department for that county prepare a plan ✓

19 INSERT 6/4

20 ~~NOT~~ in which the person was convicted or a county in which a treatment facility for
21 sex offenders is located ✓

22 INSERT 6/12 X

23 SECTION ~~4.~~ 980.08 (5) (a) of the statutes is created to read:

24 980.08 (5) (a) In this subsection, "county in which the person was convicted"
25 means the county in which the person was convicted of, adjudicated delinquent for,

1 or found not guilty by reason of mental disease or defect for the sexually violent
2 offense that resulted in the sentence, placement, or commitment that was in effect
3 when the petition was filed under s. 980.02.

4 **SECTION 5.** 980.08 (5) (e) of the statutes is created to read:

5 980.08 (5) (e) The department may arrange for the county department for the
6 county in which the person was convicted to prepare a plan and the court may order
7 such a county department to prepare a plan only if the person will be living in that
8 county. The department may arrange for the county department for a county in
9 which a treatment facility for sex offenders is located to prepare a plan and the court
10 may order such a county department to prepare a plan only if the person will be living
11 in that treatment facility.

12 **INSERT 7/19**

13 (3) **PLACEMENT AND TRACKING OF PERSONS FOUND NOT GUILTY BY REASON OF MENTAL**
14 **DISEASE OR DEFECT.** The treatment of sections 301.48 and 971.17 (4) (e) 3. of the
15 statutes and the renumbering and amendment of section 971.17 (4) (e) of the statutes,
16 first applies to persons whom the court places on conditional release on the effective
17 date of this subsection.

18 **INSERT 7/20**

19 **TRACKING OF SEXUALLY VIOLENT PERSONS.**

20 **INSERT 7/21**

21 (5) **PLACEMENT OF SEXUALLY VIOLENT PERSONS.** The treatment of section 980.08
22 (5) (a) and (e) of the statutes and the renumbering and amendment of section 980.08
23 (5) of the statutes first applies to persons whom the court places on supervised
24 release on the effective date of this subsection.

The creation of section 971.17 (4)(e) 3. of the statutes

MOVE creation

and the creation of section 980.08 (5)(a) and (e) of the statutes

1 (2) SPECIAL FINDING IN CHILD SEXUAL ASSAULT CASES. The treatment of sections
2 948.02 (6) and 948.025 (4) of the statutes first applies to cases in which a person is
3 convicted or found not guilty by reason of mental disease or defect on the effective
4 date of this subsection.

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1 INSERT 1/3 ✓

2 SECTION ~~1.~~ 51.42 (3) (aw) 1. d. of the statutes is amended to read:

3 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a
4 conditional release plan approved by a court for a person who is a county resident and
5 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
6 release plan approved by a court under s. 980.06 (2) (c), 1997 stats., or s. 980.08 (5)

7 (a).^b If the county department provides treatment and services under this
8 subdivision, the department of health and family services shall, from the
9 appropriation under s. 20.435 (2) (bj), pay the county department for the costs of the
10 treatment and services.

History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (n), (q); 1981 c. 93 ss. 105 to 122, 186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44, 329 (5); 1983 a. 192, 239, 365, 375, 524; 1985 a. 29, 120, 176; 1987 a. 3, 27, 199, 339, 366; 1989 a. 31, 122; 1991 a. 39, 274, 315; 1993 a. 16, 437, 445; 1995 a. 27 ss. 3260 to 3262, 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27, 164, 237, 268; 1999 a. 9; 2001 a. 10, 16, 38; 2003 a. 320.

11 INSERT 1/10

12 ^{NO9} "Global positioning system tracking" means tracking using a system that
13 actively monitors and identifies a person's location and timely reports or records the
14 person's presence near or at a crime scene ✓ or in an exclusion zone ✓ or the person's
15 departure from an inclusion zone. ✓

16 INSERT 3/9

17 (3) WHERE A COVERED OFFENDER MAY RESIDE. (a) While subject to global
18 positioning system tracking, a person described in sub. (2) (a) 1. or 2. shall reside in
19 the county in which he or she resided on the date of the offense that makes sub. (2)

20 (a) 1. or 2. apply to the person.

21 (b) While subject to global positioning system tracking, a person described in
22 sub. (2) (a) 3. shall reside in the county in which he or she resided on the date of the
23 sexually violent offense, as defined in s. 980.01 (6), that resulted in the sentence,

1 placement, or commitment that was in effect when the petition that commenced the
 2 proceeding under which the person was placed on supervised release was filed under
 3 s. 980.02. This paragraph does not apply to a person who is on supervised release
 4 on the effective date of this paragraph . . . [revisor inserts date], unless the person's
 5 supervised release is revoked.

6 (c) While subject to global positioning system tracking, a person described in
 7 sub. (2) (c) shall reside in the county in which he or she resided on the date of the
 8 offense that allows the department to apply sub. (2) (c) to the person, unless the
 9 person resided in another state on the date of the offense.

10 **INSERT 8/13**

11 3. A person described in sub. (2) (b) 3. may not file a petition requesting
 12 termination of lifetime tracking.

13 **INSERT 11/2**

14 (8) DEPARTMENT'S PETITION TO TERMINATE LIFETIME TRACKING. (a) The department
 15 may file a petition requesting that a person's lifetime tracking be terminated if the
 16 person is permanently physically incapacitated. The petition shall include affidavits
 17 from two physicians that explain the nature of the person's permanent physical
 18 incapacitation.

19 (b) 1. The department shall file a petition under par. (a) with the circuit court
 20 for the county in which the person was convicted or found not guilty or not
 21 responsible by reason of mental disease or defect or, in the case of a person described
 22 in sub. (2) (b) 3., the circuit court for the county in which the person was found to be
 23 a sexually violent person.

24 2. The department shall send a copy of a petition filed under subd. 1. to the
 25 district attorney responsible for prosecuting the serious sex offense that was the

1 basis for the order of lifetime tracking or, in the case of a person described in sub. (2)
2 ^{ra}(b) 3., the agency that filed the petition under s. 980.02.

3 (c) Upon its own motion or upon the motion of the party to whom the petition
4 was sent under par. (b) 2., the court may order that the person to whom the petition
5 relates be examined by a physician who is approved by the court. The physician who
6 conducts an examination under this paragraph shall prepare a report of his or her
7 examination that includes his or her opinion of whether the person is permanently
8 physically incapacitated. The physician shall file the report of his or her examination
9 with the court within 60 days after completing the examination, and the court shall
10 provide copies of the report to the department and the party to whom the petition was
11 sent under par. (b) 2.. The contents of the report shall be confidential until the
12 physician testifies at a hearing under par. (d). The department shall pay the cost of
13 an examination required under this paragraph.

14 (d) The court shall conduct a hearing on a petition filed under par. (b) 1., but
15 if the court has ordered a physical examination under par. (c), the hearing may not
16 occur until after the examination is complete and a report of the examination has
17 been filed as provided under par. (c). At the hearing, the court shall take evidence
18 it considers relevant to determining whether the person to whom the petition relates
19 is permanently physically incapacitated so that he or she is not a danger to the
20 public. The department and the party to whom the petition was sent under par. (b)
21 2. may offer relevant evidence regarding that issue.

22 (e) The court may grant a petition filed under par. (b) 1. if it determines after
23 a hearing under par. (d) that the person to whom the petition relates is permanently
24 physically incapacitated so that he or she is not a danger to the public.

25 **INSERT 11/21**

Subject to Subd. 2. and 3., the

1 SECTION ~~2~~ 971.17 (4) (e) of the statutes is renumbered 971.17 (4) (e) 1. and
2 amended to read:

3 971.17 (4) (e) 1. If the court finds that the person is appropriate for conditional
4 release, the court shall notify the department of health and family services. ~~The~~
5 department of health and family services and the county department under s. 51.42
6 in the county of residence of the person shall prepare a plan that identifies the
7 treatment and services, if any, that the person will receive in the community. The
8 plan shall address the person's need, if any, for supervision, medication, community
9 support services, residential services, vocational services, and alcohol or other drug
10 abuse treatment. The department of health and family services may contract with
11 a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with
12 a private agency to provide the treatment and services identified in the plan. The
13 plan shall specify who will be responsible for providing the treatment and services
14 identified in the plan. The plan shall be presented to the court for its approval within
15 60 days after the court finding that the person is appropriate for conditional release,
16 unless the county department, department of health and family services and person
17 to be released request additional time to develop the plan.

18 2. If the county department of the person's county of residence declines to
19 prepare a plan, the department of health and family services may arrange for
20 another ^{any other} county to prepare the plan if that county agrees to prepare the plan and if
21 the individual ^{person} will be living in that county. This subdivision does not apply if s.
22 301.48 (3) (a) or (c) applies.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109; 2003 a. 50.

23 SECTION ~~3~~ 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and amended
24 to read:

INS 4/21
from
INS
X

(b)

1 980.08 (5) (a) If the court finds that the person is appropriate for supervised
2 release, the court shall notify the department. ~~The department shall make its best~~
3 ~~effort to arrange for placement of the person in a residential facility or dwelling that~~
4 ~~is in the person's county of residence, as determined by the department under s.~~
5 ~~980.105.~~ The department and the county department under s. 51.42 in the county
6 ~~of residence of the person~~ ^{selected under par. (c) or (d) ✓} shall prepare a plan that identifies the treatment and
7 services, if any, that the person will receive in the community. The plan shall address
8 the person's need, if any, for supervision, counseling, medication, community support
9 services, residential services, vocational services, and alcohol or other drug abuse
10 treatment. In developing a plan for where the person may reside while on supervised
11 release, the department shall consider the proximity of any potential placement to
12 the residence of other persons on supervised release and to the residence of persons
13 who are in the custody of the department of corrections and regarding whom a sex
14 offender notification bulletin has been issued to law enforcement agencies under s.
15 301.46 (2m) (a) or (am). If the person is a serious child sex offender, the plan shall
16 address the person's need for pharmacological treatment using an antiandrogen or
17 the chemical equivalent of an antiandrogen. The department may contract with a
18 county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with
19 a private agency to provide the treatment and services identified in the plan. The
20 plan shall specify who will be responsible for providing the treatment and services
21 identified in the plan. The plan shall be presented to the court for its approval within
22 60 days after the court finding that the person is appropriate for supervised release,
23 unless the department, county department and person to be released request
24 additional time to develop the plan. If

~~INS 6/5A
from INS X~~

INS
6/2
from
INS X

do so

INS 6/4 from X

(d)

(b) The department shall make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence, but if the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan, and place the person on supervised release in that county, except that the court may not so designate the county department in any county where there is a facility in which persons committed to institutional care under this chapter are placed unless that county is also the person's county of residence. This paragraph does not apply if s. 301.48 (3) (b) applies.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9 ss. 3223L, 3232p to 3238d; 1999 a. 32; 2001 a. 16; 2003 a. 187.

SECTION 4. 980.08 (6m) of the statutes is amended to read:

980.08 (6m) An order for supervised release places the person in the custody and control of the department. The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court under sub. (5) (a). A person on supervised release is subject to the conditions set by the court and to the rules of the department. Before a person is placed on supervised release by the court under this section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this subsection does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. If the department

INS
6/12

12

b

1 alleges that a released person has violated any condition or rule, or that the safety
 2 of others requires that supervised release be revoked, he or she may be taken into
 3 custody under the rules of the department. The department shall submit a
 4 statement showing probable cause of the detention and a petition to revoke the order
 5 for supervised release to the committing court and the regional office of the state
 6 public defender responsible for handling cases in the county where the committing
 7 court is located within 72 hours after the detention, excluding Saturdays, Sundays
 8 and legal holidays. The court shall hear the petition within 30 days, unless the
 9 hearing or time deadline is waived by the detained person. Pending the revocation
 10 hearing, the department may detain the person in a jail or in a hospital, center or
 11 facility specified by s. 51.15 (2). The state has the burden of proving by clear and
 12 convincing evidence that any rule or condition of release has been violated, or that
 13 the safety of others requires that supervised release be revoked. If the court
 14 determines after hearing that any rule or condition of release has been violated, or
 15 that the safety of others requires that supervised release be revoked, it may revoke
 16 the order for supervised release and order that the released person be placed in an
 17 appropriate institution until the person is discharged from the commitment under
 18 s. 980.09 or until again placed on supervised release under this section.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9 ss. 3223L, 3232p to 3238d; 1999 a. 32; 2001 a. 16; 2003 a. 187.

INSERT 12/3

The treatment of section 301.48 of the statutes

4-0 (0) This act first applies to persons who are on supervised release on the
 effective date of this subsection.

*(NS
7/19
from X*

*INS 7/20
from X*

*INS 7/21
from X*

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0272/1dn

MGD:.....

mk

(date)

✓
Anne and Luke:

This substitute amendment incorporates language requested by Rep. Friske specifying that a person who commits a sex offense (as defined in the sex offender registry statute) must be placed, upon release to parole, extended supervision, conditional release, or supervised release, in the county in which he or she resided when the offense was committed, the county in which the case was prosecuted, or a county that has a treatment facility for sex offenders.

As was the case with Assembly Substitute Amendment 1, the GPS requirements contained in this substitute amendment may be unconstitutional. Arguably, they increase the penalty for offenders who have already been sentenced, in violation of the constitutional prohibition on ex post facto laws.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0272/1dn
MGD:lmk:pg

November 7, 2005

Anne and Luke:

This substitute amendment incorporates language requested by Rep. Friske specifying that a person who commits a sex offense (as defined in the sex offender registry statute) must be placed, upon release to parole, extended supervision, conditional release, or supervised release, in the county in which he or she resided when the offense was committed, the county in which the case was prosecuted, or a county that has a treatment facility for sex offenders.

As was the case with Assembly Substitute Amendment 1, the GPS requirements contained in this substitute amendment may be unconstitutional. Arguably, they increase the penalty for offenders who have already been sentenced, in violation of the constitutional prohibition on ex post facto laws.

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

TODAY

CCC to

ASA 2

to

AB 591

50272/1

MSD + CMH

17

Page 17, line 4: delete "to prepare" and

substitute "to prepare". ✓

(end)

CMH

(Editor - this is handwritten correctly in the file) fe

JLD



State of Wisconsin
2005-2006 LEGISLATURE

CORRECTIONS IN:

**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2005 ASSEMBLY BILL 591**

Prepared by the Legislative Reference Bureau
(February 14, 2006)

1. Page 17, line 4: delete "~~to prepare~~" and substitute "to prepare".

(END)