

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-AB591)

Received: 03/07/2006

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Mary Lazich (608) 266-5400**

By/Representing: **Paul Beard**

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

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sentencing
Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lazich@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

GPS tracking of and residency requirements for certain sex offenders; sex offender registry website

Instructions:

See Attached--identical to SSA1 but chief clerk is not taking it

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>
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				_____		03/07/2006	

FE Sent For:

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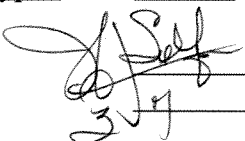
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SENATE SUBSTITUTE AMENDMENT 1
TO 2005 ASSEMBLY BILL 591

February 28, 2006 - Offered by Senator LAZICH.

REGM VT

1 AN ACT *to renumber and amend* 971.17 (4) (e), 980.08 (5) and 980.105; *to*
2 *amend* 51.42 (3) (aw) 1. d., 301.03 (19), 301.46 (5) (c) (intro.), 980.08 (6m) and
3 980.105 (title); and *to create* 16.705 (1n), 16.71 (5m), 301.03 (20), 301.46 (5)
4 (bm), 301.48, 946.465, 948.02 (6), 948.025 (4), 971.17 (4) (e) 1g. and 1r., 971.17
5 (4) (e) 3., 980.08 (5) (a), 980.08 (5) (e), 980.08 (5m), 980.08 (7) and 980.105 (2m)
6 of the statutes; **relating to:** global positioning system tracking and a residency
7 requirement for certain sex offenders, changes to the sex offender registry Web
8 site, and providing a penalty.

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

9 SECTION 1. 16.705 (1n) of the statutes is created to read:

10 16.705 (1n) Subsection (1) does not apply to a contract entered into by the
11 department of corrections for global positioning system tracking services under s.
12 301.48 (3).

1 **SECTION 2.** 16.71 (5m) of the statutes is created to read:

2 16.71 **(5m)** The department shall delegate authority to the department of
3 corrections to enter into contracts for global positioning system tracking services
4 under s. 301.48 (3).

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

6 51.42 **(3)** (aw) 1. d. Provide treatment and services that are specified in a
7 conditional release plan approved by a court for a person who is a county resident and
8 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
9 release plan approved by a court under s. 980.06 (2) (c), 1997 stats., or s. 980.08 (5)
10 (b). If the county department provides treatment and services under this
11 subdivision, the department of health and family services shall, from the
12 appropriation under s. 20.435 (2) (bj), pay the county department for the costs of the
13 treatment and services.

14 **SECTION 4.** 301.03 (19) of the statutes is amended to read:

15 301.03 **(19)** ~~Work~~ Subject to sub. (20), work to minimize, to the greatest extent
16 possible, the residential population density of sex offenders, as defined in s. 302.116
17 (1) (b), who are on probation, parole, or extended supervision or placed on supervised
18 release under s. 980.06 (2) (c), 1997 stats., or s. 980.08 (5).

19 **SECTION 5.** 301.03 (20) of the statutes is created to read:

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

23 1. The county in which the person resided on the date of the sex offense. If the
24 county is a county that contains a 1st class city, the person shall be placed in the city,
25 village, or town in which the person resided on the date of the sex offense.

1 2. The county in which the person was convicted of the sex offense.

2 3. A sex offender treatment facility that existed before January 1, 2006.

3 (b) Paragraph (a) does not preclude the department from authorizing a person
4 to reside in a location other than one listed in par. (a) 1. to 3. if the department
5 initially placed the person in one of those listed locations.

6 **SECTION 6.** 301.46 (5) (bm) of the statutes is created to read:

7 301.46 (5) (bm) The department shall provide on the Internet site required
8 under sub. (5n) the following information concerning persons registered under s.
9 301.45:

10 1. If the person is a sexually violent person, as defined in s. 980.01 (7), a notice,
11 written in red letters, of that status.

12 2. A current color photograph of the person, if available, and a physical
13 description including sex, race, height, weight, eye color, and hair color.

14 3. The person's name and home address.

15 4. Whether the person has responded to the last contact letter from the
16 department.

17 5. The crime committed for which the person must register.

18 6. Any conditions of the person's supervised release, except for any condition
19 that may reveal the identity of the victim of the crime that the person committed for
20 which he or she must register.

21 7. The date, time, and place of any scheduled hearings for supervised release
22 or discharge under ch. 980.

23 8. The name and court of the judge who authorized supervised release or
24 discharge for the person.

25 9. The most recent date on which the information was updated.

1 **SECTION 7.** 301.46 (5) (c) (intro.) of the statutes, as affected by 2005 Wisconsin
2 Act 5, is amended to read:

3 301.46 **(5)** (c) (intro.) The department may not provide any of the following
4 under par. (a) or (bm):

5 **SECTION 8.** 301.48 of the statutes is created to read:

6 **301.48 Global positioning system tracking and residency requirement**
7 **for certain sex offenders. (1) DEFINITIONS.** In this section:

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

11 (b) “Global positioning system tracking” means tracking using a system that
12 actively monitors and identifies a person’s location and timely reports or records the
13 person’s presence near or at a crime scene or in an exclusion zone or the person’s
14 departure from an inclusion zone. “Global positioning system tracking” includes
15 comparable technology.

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

18 (d) “Lifetime tracking” means global positioning system tracking that is
19 required for a person for the remainder of the person’s life or until terminated under
20 sub. (6), if applicable, or sub. (7). “Lifetime tracking” does not include global
21 positioning system tracking under sub. (2) (c) or (d), regardless of how long it is
22 required.

23 (e) “Serious child sex offense” means a violation any of the following statutes
24 and includes the solicitation, conspiracy, or attempt to engage in conduct in violation
25 of any of the following statutes:

1 1. Section 948.02 (1) or 948.025 (1) (a).

2 2. Section 948.02 (2) or 948.025 (1) (b), if the court makes a finding under s.
3 948.02 (6) or 948.025 (4) (b).

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

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

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

8 **(2) WHO IS COVERED.** (a) Unless a court exempts the person under sub. (5), the
9 department shall maintain lifetime tracking of a person if any of the following occurs
10 with respect to the person on or after the effective date of this paragraph [revisor
11 inserts date]:

12 1. A court places the person on probation for committing a serious child sex
13 offense.

14 2. The department releases the person to extended supervision or parole while
15 the person is serving a sentence for committing a serious child sex offense.

16 3. The department releases the person from prison upon the completion of a
17 sentence imposed for a serious child sex offense.

18 4. A court that found the person not guilty of a serious child sex offense by
19 reason of mental disease or mental defect places the person on conditional release.

20 5. A court that found the person not guilty of a serious child sex offense by
21 reason of mental disease or mental defect discharges the person under s. 971.17 (6).

22 This subdivision does not apply if the person was on conditional release immediately
23 before being discharged.

1 (b) The department shall maintain lifetime tracking of a person if any of the
2 following occurs with respect to the person on or after the effective date of this
3 paragraph [revisor inserts date]:

4 1. A court places the person on supervised release under s. 980.08 (6m).

5 2. A court discharges the person under s. 980.09 or 980.10. This subdivision
6 does not apply if the person was on supervised release immediately before being
7 discharged.

8 3. The department of health and family services places the person on parole or
9 discharges the person under ch. 975. This subdivision does not apply unless the
10 person's commitment was based on his or her commission of a serious child sex
11 offense.

12 (c) The department shall have a person tracked using a global positioning
13 system tracking device if all of the following apply:

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

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

20 (d) If, on or after the effective date of this paragraph [revisor inserts date],
21 a person is being placed on probation, extended supervision, or parole for committing
22 a sex offense and par. (a), (b), or (c) does not apply, the department may have the
23 person tracked using a global positioning system tracking device as a condition of the
24 person's probation, extended supervision, or parole.

1 **(3) FUNCTIONS AND OPERATION OF TRACKING PROGRAM.** (a) The department shall
2 implement a continuous global positioning tracking system to electronically monitor
3 the whereabouts of persons who are subject to this section. The system shall do all
4 of the following:

5 1. Use field monitoring equipment that supports cellular communications with
6 as large a coverage area as possible and shall automatically provide instantaneous
7 or nearly instantaneous information regarding the whereabouts of a person who is
8 being monitored, including information regarding the person's presence in an
9 exclusion zone established under par. (c) or absence from an inclusion zone
10 established under par. (c).

11 2. Use land line communications equipment to transmit information regarding
12 the location of persons who are subject to this section when they are in areas in which
13 no commercial cellular service is available.

14 3. Immediately alert the department and the local law enforcement agency
15 having jurisdiction over the exclusion or inclusion zone if the person stays in any
16 exclusion zone for any longer period than the time needed to travel through the zone
17 to get to another destination or if the person leaves any inclusion zone.

18 (b) The department shall contract with a vendor using a competitive process
19 under s. 16.75 to provide global positioning system tracking services for purposes of
20 this section.

21 (c) For each person who is subject to global positioning system tracking under
22 this section, the department shall create individualized exclusion and inclusion
23 zones for the person, if necessary to protect public safety. In creating exclusion zones,
24 the department shall focus on areas where children congregate, with perimeters of
25 100 to 250 feet, and on areas where the person has been prohibited from going as a

1 condition of probation, extended supervision, parole, conditional release, or
2 supervised release. In creating inclusion zones for a person on supervised release,
3 the department shall consider s. 980.08 (7).

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

8 1. The department of corrections has been alerted under par. (a) 3. that the
9 person being tracked has improperly stayed in an exclusion zone or improperly left
10 an inclusion zone.

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

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

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

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

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

21 (c) The department of health and family services shall pay for the cost of
22 tracking a person to whom sub. (2) (a) 4. or 5. or (b) applies while the person is on
23 conditional release or supervised release to the extent that the cost is not covered by
24 payments made by the person under par. (b).

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

- 3 1. The person's financial resources.
- 4 2. The present and future earning ability of the person.
- 5 3. The needs and earning ability of the person's dependents.
- 6 4. Any other costs that the person is required to pay in conjunction with his or
7 her supervision by the department or the department of health and family services.
- 8 5. Any other factors that the department considers appropriate.

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

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

- 12 1. The serious child sex offense described in sub. (2) (a) did not involve sexual
13 intercourse, as defined in s. 948.01 (6), by the use or threat of force or violence and
14 did not involve sexual intercourse with a victim under the age of 12 years.
- 15 2. At the time of the serious child sex offense, the person had not attained the
16 age of 19 years, was not more than 4 years older than the child, and was not more
17 than 4 years younger than the child.
- 18 3. It is not necessary, in the interest of public protection, to subject the person
19 to global positioning system tracking.

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

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

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

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

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

19 2. If a person is examined by a physician or a psychologist under subd. 1., the
20 physician or psychologist shall file a report of his or her examination with the court,
21 and the court shall provide copies of the report to the person and, if he or she requests
22 a copy, to the district attorney. The contents of the report shall be confidential until
23 the physician or psychologist has testified at the hearing held under par. (d). The
24 report shall contain an opinion regarding whether it would be in the interest of public

1 protection to have the person subject to global positioning system tracking and the
2 basis for that opinion.

3 3. A person who is examined by a physician or psychologist under subd. 1. is
4 responsible for paying the cost of the services provided by the physician or
5 psychologist, except that if the person is indigent the cost of the services provided by
6 the physician or psychologist shall be paid by the county. If the person claims or
7 appears to be indigent, the court shall refer the person to the authority for indigency
8 determinations under s. 977.07 (1), except that the person shall be considered
9 indigent without another determination under s. 977.07 (1) if the person is
10 represented by the state public defender or by a private attorney appointed under
11 s. 977.08.

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

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

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

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

22 4. Whether the child with whom the person had sexual contact or sexual
23 intercourse suffered from a mental illness or mental deficiency that rendered the
24 child temporarily or permanently incapable of understanding or evaluating the
25 consequences of his or her actions.

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

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

3 7. Any other factor that the court determines may be relevant to the particular
4 case.

5 **(6) OFFENDER'S PETITION TO TERMINATE LIFETIME TRACKING.** (a) Subject to par. (b),
6 a person who is subject to lifetime tracking may file a petition requesting that
7 lifetime tracking be terminated. A person shall file a petition requesting termination
8 of lifetime tracking with the circuit court for the county in which the person was
9 convicted or found not guilty or not responsible by reason of mental disease or defect.

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

13 2. A person may not file a petition requesting termination of lifetime tracking
14 earlier than 20 years after the date on which the period of lifetime tracking began.
15 If a person files a petition requesting termination of lifetime tracking at any time
16 earlier than 20 years after the date on which the period of lifetime tracking began,
17 the court shall deny the petition without a hearing.

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

20 (c) Upon receiving a petition requesting termination of lifetime tracking, the
21 court shall send a copy of the petition to the district attorney responsible for
22 prosecuting the serious sex offense that was the basis for the order of lifetime
23 tracking. Upon receiving the copy of the petition, the district attorney shall conduct
24 a criminal history record search to determine whether the person has been convicted
25 of a criminal offense that was committed during the period of lifetime tracking. No

1 later than 30 days after the date on which he or she receives the copy of the petition,
2 the district attorney shall report the results of the criminal history record search to
3 the court and may provide a written response to the petition.

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

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

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

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

1 testifies at a hearing under par. (g). The person petitioning for termination of
2 lifetime tracking shall pay the cost of an examination required under this paragraph.

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

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

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

1 (i) If a petition requesting termination of lifetime tracking is denied after a
2 hearing under par. (g), the person may not file a subsequent petition requesting
3 termination of lifetime tracking until at least 5 years have elapsed since the most
4 recent petition was denied.

5 **(7) DEPARTMENT'S PETITION TO TERMINATE LIFETIME TRACKING.** (a) The department
6 may file a petition requesting that a person's lifetime tracking be terminated if the
7 person is permanently physically incapacitated. The petition shall include affidavits
8 from 2 physicians that explain the nature of the person's permanent physical
9 incapacitation.

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

15 2. The department shall send a copy of a petition filed under subd. 1. to the
16 district attorney responsible for prosecuting the serious sex offense that was the
17 basis for the order of lifetime tracking or, in the case of a person described in sub. (2)
18 (b), the agency that filed the petition under s. 980.02.

19 (c) Upon its own motion or upon the motion of the party to whom the petition
20 was sent under par. (b) 2., the court may order that the person to whom the petition
21 relates be examined by a physician who is approved by the court. The physician who
22 conducts an examination under this paragraph shall prepare a report of his or her
23 examination that includes his or her opinion of whether the person is permanently
24 physically incapacitated. The physician shall file the report of his or her examination
25 with the court within 60 days after completing the examination, and the court shall

1 provide copies of the report to the department and the party to whom the petition was
2 sent under par. (b) 2. The contents of the report shall be confidential until the
3 physician testifies at a hearing under par. (d). The department shall pay the cost of
4 an examination required under this paragraph.

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

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

16 **SECTION 9.** 946.465 of the statutes is created to read:

17 **946.465 Tampering with a global positioning system tracking device.**

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

21 **SECTION 10.** 948.02 (6) of the statutes is created to read:

22 **948.02 (6) FINDING REGARDING FORCE OR VIOLENCE.** If a person is convicted or
23 found not guilty by reason of mental disease or defect under sub. (2), the court shall
24 determine, immediately after the trial, based on a preponderance of the evidence
25 presented at trial, and without a jury, if the offense involved the use or a threat of

1 force or violence. If the court makes such a determination, the court shall enter a
2 finding to that effect in the record.

3 **SECTION 11.** 948.025 (4) of the statutes is created to read:

4 948.025 (4) (a) If a person is convicted or found not guilty by reason of mental
5 disease or defect under sub. (1) (b), the court shall determine, immediately after the
6 trial, based on a preponderance of the evidence presented at trial, and without a jury,
7 if any of the following applies:

- 8 1. The offense involved a violation of s. 948.02 (1).
- 9 2. The offense involved the use or a threat of force or violence.

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

12 **SECTION 12.** 971.17 (4) (e) of the statutes is renumbered 971.17 (4) (e) 1. and
13 amended to read:

14 971.17 (4) (e) 1. If the court finds that the person is appropriate for conditional
15 release, the court shall notify the department of health and family services. The
16 Subject to subd. 2. and 3., the department of health and family services and the
17 county department under s. 51.42 in the county of residence of the person shall
18 prepare a plan that identifies the treatment and services, if any, that the person will
19 receive in the community. The plan shall address the person's need, if any, for
20 supervision, medication, community support services, residential services,
21 vocational services, and alcohol or other drug abuse treatment. The department of
22 health and family services may contract with a county department, under s. 51.42
23 (3) (aw) 1. d., with another public agency or with a private agency to provide the
24 treatment and services identified in the plan. The plan shall specify who will be
25 responsible for providing the treatment and services identified in the plan. The plan

1 shall be presented to the court for its approval within 60 days after the court finding
2 that the person is appropriate for conditional release, unless the county department,
3 department of health and family services and person to be released request
4 additional time to develop the plan.

5 2. If the county department of the person's county of residence declines to
6 prepare a plan, the department of health and family services may arrange for
7 ~~another~~ any other county to prepare the plan if that county agrees to prepare the plan
8 and if the ~~individual person~~ will be living in that county. This subdivision does not
9 apply if the person was found not guilty of a sex offense, as defined in s. 301.45 (1d)
10 (b), by reason of mental disease or defect.

11 **SECTION 13.** 971.17 (4) (e) 1g. and 1r. of the statutes are created to read:

12 971.17 **(4)** (e) 1g. If the county of residence prepares a plan under subd. 1. and
13 the county of residence contains a 1st class city, the department shall place the
14 person who was found not guilty of a sex offense, as defined in s. 301.45 (1d) (b), by
15 reason of mental disease or defect, in the city, village, or town in which he or she
16 resided on the date of the sex offense.

17 1r. The person who was found not guilty of a sex offense, as defined in s. 301.45
18 (1d) (b), by reason of mental disease or defect, may not be placed in a facility that did
19 not exist before January 1, 2006, while he or she is on conditional release.

20 **SECTION 14.** 971.17 (4) (e) 3. of the statutes is created to read:

21 971.17 **(4)** (e) 3. If the county department for the person's county of residence
22 declines to prepare a plan for a person who was found not guilty of a sex offense, as
23 defined in s. 301.45 (1d) (b), by reason of mental disease or defect, the department
24 may arrange for any of the following counties to prepare a plan if the county agrees
25 to do so:

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

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

5 **SECTION 15.** 980.08 (5) of the statutes is renumbered 980.08 (5) (b) and
6 amended to read:

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

1 services identified in the plan. The plan shall specify who will be responsible for
2 providing the treatment and services identified in the plan. The plan shall be
3 presented to the court for its approval within 60 days after the court finding that the
4 person is appropriate for supervised release, unless the department, county
5 department and person to be released request additional time to develop the plan.

6 If

7 (c) The department shall make its best effort to arrange for placement of the
8 person in a residential facility or dwelling that is in the person's county of residence
9 and have the county department for that county prepare a plan. If the person is
10 placed in his or her county of residence and the county of residence is a county that
11 contains a 1st class city, the department shall arrange for placement of the person
12 in a residential facility or dwelling that is in the person's city, village, or town of
13 residence. If the county department of the person's county of residence declines to
14 prepare a plan, the department may arrange for another the county in which the
15 person was convicted or a county in which a treatment facility for sex offenders is
16 located to prepare the plan if that county agrees to prepare the plan and if the person
17 will be living in that county, do so.

18 (d) If the department is unable to arrange for another a county to prepare a plan
19 under par. (c), the court shall designate a county department to prepare the plan,
20 order the county department for one of the counties described in par. (c) to prepare
21 the plan, and place the person on supervised release in that county, except that the
22 court may not so designate the county department in any county where there is a
23 facility in which persons committed to institutional care under this chapter are
24 placed unless that county is also the person's county of residence.

25 **SECTION 16.** 980.08 (5) (a) of the statutes is created to read:

1 980.08 (5) (a) In this subsection, “county in which the person was convicted”
2 means the county in which the person was convicted of, adjudicated delinquent for,
3 or found not guilty by reason of mental disease or defect for the sexually violent
4 offense that resulted in the sentence, placement, or commitment that was in effect
5 when the petition was filed under s. 980.02.

6 **SECTION 17.** 980.08 (5) (e) of the statutes is created to read:

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

14 **SECTION 18.** 980.08 (5m) of the statutes is created to read:

15 980.08 (5m) The department may not arrange placement under this section in
16 a facility that did not exist before January 1, 2006.

17 **SECTION 19.** 980.08 (6m) of the statutes is amended to read:

18 980.08 (6m) An order for supervised release places the person in the custody
19 and control of the department. The department shall arrange for control, care and
20 treatment of the person in the least restrictive manner consistent with the
21 requirements of the person and in accordance with the plan for supervised release
22 approved by the court under sub. (5) (b). A person on supervised release is subject
23 to the conditions set by the court and to the rules of the department. Before a person
24 is placed on supervised release by the court under this section, the court shall so
25 notify the municipal police department and county sheriff for the municipality and

1 county in which the person will be residing. The notification requirement under this
2 subsection does not apply if a municipal police department or county sheriff submits
3 to the court a written statement waiving the right to be notified. If the department
4 alleges that a released person has violated any condition or rule, or that the safety
5 of others requires that supervised release be revoked, he or she may be taken into
6 custody under the rules of the department. The department shall submit a
7 statement showing probable cause of the detention and a petition to revoke the order
8 for supervised release to the committing court and the regional office of the state
9 public defender responsible for handling cases in the county where the committing
10 court is located within 72 hours after the detention, excluding Saturdays, Sundays
11 and legal holidays. The court shall hear the petition within 30 days, unless the
12 hearing or time deadline is waived by the detained person. Pending the revocation
13 hearing, the department may detain the person in a jail or in a hospital, center or
14 facility specified by s. 51.15 (2). The state has the burden of proving by clear and
15 convincing evidence that any rule or condition of release has been violated, or that
16 the safety of others requires that supervised release be revoked. If the court
17 determines after hearing that any rule or condition of release has been violated, or
18 that the safety of others requires that supervised release be revoked, it may revoke
19 the order for supervised release and order that the released person be placed in an
20 appropriate institution until the person is discharged from the commitment under
21 s. 980.09 or until again placed on supervised release under this section.

22 **SECTION 20.** 980.08 (7) of the statutes is created to read:

23 980.08 (7) As a condition of supervised release granted under this chapter, for
24 the first year of supervised release, the court shall restrict the person on supervised
25 release to the person's home except for outings that are under the direct supervision

1 of a department of corrections escort and that are for employment purposes, for
2 religious purposes, or for caring for the person's basic living needs.

3 **SECTION 21.** 980.105 (title) of the statutes is amended to read:

4 **980.105 (title) Determination of county and city, village, or town of**
5 **residence.**

6 **SECTION 22.** 980.105 of the statutes is renumbered 980.105 (1m), and 980.105
7 (1m) (b), as renumbered, is amended to read:

8 980.105 **(1m)** (b) The department shall apply the criteria for consideration of
9 residence and physical presence under ~~sub. (1) par. (a)~~ to the facts that existed on the
10 date that the person committed the sexually violent offense that resulted in the
11 sentence, placement, or commitment that was in effect when the petition was filed
12 under s. 980.02.

13 **SECTION 23.** 980.105 (2m) of the statutes is created to read:

14 980.105 **(2m)** The department shall determine a person's city, village, or town
15 of residence for the purposes of s. 980.08 (5) by doing all of the following:

16 (a) The department shall consider residence as the voluntary concurrence of
17 physical presence with intent to remain in a place of fixed habitation and shall
18 consider physical presence as prima facie evidence of intent to remain.

19 (b) The department shall apply the criteria for consideration of residence and
20 physical presence under par. (a) to the facts that existed on the date that the person
21 committed the sexually violent offense that resulted in the sentence, placement, or
22 commitment that was in effect when the petition was filed under s. 980.02.

23 **SECTION 24. Initial applicability.**

24 (1) PLACEMENT OF PERSONS RELEASED TO PAROLE OR EXTENDED SUPERVISION. The
25 treatment of section 301.03 (20) of the statutes first applies to persons whom the

1 department of corrections releases to parole or extended supervision on the effective
2 date of this subsection.

3 (2) PLACEMENT OF PERSONS FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR
4 DEFECT. The renumbering and amendment of section 971.17 (4) (e) of the statutes and
5 the creation of section 971.17 (4) (e) 1g. and 3. of the statutes first apply to persons
6 whom the court places on conditional release on the effective date of this subsection.

7 (3) PLACEMENT OF SEXUALLY VIOLENT PERSONS. The treatment of section 980.08
8 (7) of the statutes, the renumbering and amendment of section 980.08 (5) of the
9 statutes, and the creation of section 980.08 (5) (a) and (e) of the statutes first apply
10 to persons whom the court places on supervised release on the effective date of this
11 subsection.

12 (4) SPECIAL FINDING IN CHILD SEXUAL ASSAULT CASES. The treatment of sections
13 948.02 (6) and 948.025 (4) of the statutes first applies to cases in which a person is
14 convicted or found not guilty by reason of mental disease or defect on the effective
15 date of this subsection.

16 **SECTION 25. Effective date.**

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

19 (END)

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Page 4 ↑ line 23() after "violation" insert "of" ()

(end)

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SC637/1

1 **SECTION 7.** 301.46 (5) (c) (intro.) of the statutes, as affected by 2005 Wisconsin
2 Act 5, is amended to read:

3 301.46 (5) (c) (intro.) The department may not provide any of the following
4 under par. (a) or (bm):

5 **SECTION 8.** 301.48 of the statutes is created to read:

6 **301.48 Global positioning system tracking and residency requirement**
7 **for certain sex offenders. (1) DEFINITIONS.** In this section:

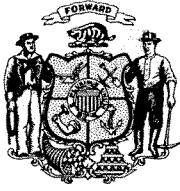
8 (a) “Exclusion zone” means a zone in which a person who is tracked using a
9 global positioning system tracking device is prohibited from entering except for
10 purposes of traveling through it to get to another destination.

11 (b) “Global positioning system tracking” means tracking using a system that
12 actively monitors and identifies a person’s location and timely reports or records the
13 person’s presence near or at a crime scene or in an exclusion zone or the person’s
14 departure from an inclusion zone. “Global positioning system tracking” includes
15 comparable technology.

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

18 (d) “Lifetime tracking” means global positioning system tracking that is
19 required for a person for the remainder of the person’s life or until terminated under
20 sub. (6), if applicable, or sub. (7). “Lifetime tracking” does not include global
21 positioning system tracking under sub. (2) (c) or (d), regardless of how long it is
22 required.

23 (e) “Serious child sex offense” means a violation any of the following statutes
24 and includes the solicitation, conspiracy, or attempt to engage in conduct in violation
25 of any of the following statutes:



State of Wisconsin
2005-2006 LEGISLATURE

CORRECTIONS IN:

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

Prepared by the Legislative Reference Bureau
(March 29, 2006)

1. Page 4, line 23: after "violation" insert "of".

(END)