



2005 SENATE BILL 289

August 19, 2005 – Introduced by Senators ROESSLER, HARSDORF, A. LASEE, LAZICH, DARLING, LASSA and COGGS, cosponsored by Representatives GUNDRUM, KAUFERT, BIES, TOWNSEND, OWENS, AINSWORTH, ALBERS, GRONEMUS, KLEEFISCH, LEMAHIEU, MUSSER, PETROWSKI, SHERIDAN, STASKUNAS and WASSERMAN. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT to repeal** 940.225 (2) (a); **to renumber** 939.615 (2) (c) and 948.02 (1); **to**
2 **amend** 939.615 (2) (a), 939.615 (2) (b), 939.615 (6) (c), 939.62 (2m) (b) 2., 940.03,
3 940.225 (1) (c), 971.17 (1j) (b), 973.125 (1) and 973.125 (2) (intro.); and **to create**
4 939.615 (1m), 939.615 (2m) (title), 939.615 (6) (b) 3., 946.492, 948.02 (1) (b),
5 971.17 (1j) (am) and 973.044 of the statutes; **relating to:** penalties for sexual
6 assault offenses involving force or violence, treating first- or second-degree
7 sexual assault as a two-strikes offense, court-ordered treatment for
8 imprisoned sex offenders, and mandatory lifetime supervision for certain sex
9 offenders and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to laws relating to sex offenses.

Penalties for sexual assault offenses involving force or violence

Under current law, if a person uses or threatens to use force or violence to have sexual contact or sexual intercourse with another person without the other person's consent, the person is guilty of second-degree sexual assault (a Class C felony) and may be fined up to \$100,000 or sentenced to a term of imprisonment of up to 40 years (which, if the sentence is for more than one year, consists of a term of confinement

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followed by a term of extended supervision) or both. Under this bill, that offense is reclassified as first-degree sexual assault (a Class B felony). A person convicted of first-degree sexual assault may be sentenced to a term of imprisonment of up to 60 years. (No fines are imposed for Class A or B felonies.)

Current law also prohibits having sexual contact or sexual intercourse with a child. If the victim is less than 13 years old, the offender is guilty of first-degree sexual assault of a child (a Class B felony). If the victim is 13, 14, or 15 years old, the offender is guilty of second-degree sexual assault of a child (a Class C felony). Under this bill, if a person has sexual contact or sexual intercourse with a child who is 13, 14, or 15 years old by using or threatening to use force or violence, the person is guilty of first-degree sexual assault of a child.

Treating first- or second-degree sexual assault as a “two-strikes” offense

Current law requires certain repeat offenders to be sentenced to life imprisonment without the possibility of release to parole or extended supervision. The “three-strikes” version of the statute subjects a person to mandatory life imprisonment if he or she commits a serious felony after having been convicted on two or more separate occasions of a serious felony. (Current law defines “serious felony” to include homicide, aggravated battery, kidnapping, arson, aggravated burglary, carjacking, armed robbery, first- and second-degree sexual assault, first- and second-degree sexual assault of a child, aggravated child abuse, sexual exploitation of a child, and child enticement.) The “two-strikes” version of the statute subjects a person to mandatory life imprisonment if he or she commits a serious child sex offense after having been convicted of a separate serious child sex offense. (“Serious child sex offenses” means sexual assault of a child, repeated sexual assault of a child, sexual exploitation of a child, causing a child to view or listen to sexual activity, incest with a child, child enticement, soliciting a child for prostitution, sexual assault of a student by a school staff member, child abduction, or kidnapping a child.)

This bill makes first-degree sexual assault and second-degree sexual assault two-strikes offenses.

Court-ordered treatment for imprisoned sex offenders

Under this bill, when sentencing a person to prison for a serious sex offense, a court may order the person, while imprisoned, to cooperate with a sex offender treatment evaluation and to participate in any recommended sex offender treatment. (A “serious sex offense” is defined as sexual exploitation by therapist; first-, second-, or third-degree sexual assault; first- or second-degree sexual assault of a child; repeated sexual assault of a child; sexual exploitation of a child; causing a child to view or listen to sexual activity; incest with a child; child enticement; using a computer to facilitate a child sex crime; soliciting a child for prostitution; exposing a child to harmful material; possession of child pornography; or unlawfully working with children after having been convicted of a sex offense.) A person who intentionally violates such an order is guilty of a Class E felony. Ordinarily, when a court sentences a person for a Class E felony, the court may impose a fine of up to \$50,000 or a term of imprisonment of up to 15 years or both, but the court is not required to impose a prison sentence. The court may place the

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person on probation. Under this bill, however, the court is required to impose a sentence that includes a term of confinement of at least ten years. In addition, any sentence that the court imposes on a person for violating an evaluation or treatment order must be consecutive to any sentence for a crime for which the person was in custody when he or she violated the order.

Mandatory lifetime supervision for certain sex offenders

Under current law, if a person is convicted of a serious sex offense or found not guilty of a serious sex offense by reason of mental disease or defect, the court may, in addition to requiring the person to be confined or placing the person on probation, place the person on "lifetime supervision" by the Department of Corrections (DOC) if the person is given notice of that possibility and if the court determines that lifetime supervision is necessary to protect the public. If a person is placed on lifetime supervision, the person is subject to the control of DOC, under conditions set by the court and DOC, at the end of his or her sentence or commitment. In general, a person who knowingly violates a condition of lifetime supervision is guilty of a Class A misdemeanor, for which the person may be fined not more than \$10,000 or sentenced to a term of imprisonment of not more than nine months or both. The violation, however, is a Class I felony if the conduct that constitutes the violation is itself a felony under any other statute. If the person is convicted of the Class I felony version of his or her offense, he or she may be fined up to \$10,000 or sentenced to a term of imprisonment of up to three and a half years or both.

Current law allows a person who is subject to lifetime supervision to petition the court to terminate that supervision after 15 years, unless the person has been convicted of committing a crime while on lifetime supervision. (In that case, the person remains on lifetime supervision until his or her death.) After having the person examined by a court-appointed physician or psychologist and conducting a hearing on the issue, the court may grant the petition if it determines that lifetime supervision is no longer necessary to protect the public.

Under this bill, if a person is convicted of a serious sex offense that is a Class B felony, the court must order lifetime supervision for the person. A person who is subject to lifetime supervision under the bill may not petition the court to terminate the supervision. It remains in effect for the person until his or her death.

Other information

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

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

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

SENATE BILL 289**SECTION 1**

1 **SECTION 1.** 939.615 (1m) of the statutes is created to read:

2 939.615 **(1m)** WHEN LIFETIME SUPERVISION SHALL BE ORDERED. In addition to
3 sentencing the person, placing the person on probation or, if applicable, committing
4 the person under s. 971.17, the court shall place a person on lifetime supervision by
5 the department if all of the following apply:

6 (a) The person is convicted of a serious sex offense or found not guilty of a
7 serious sex offense by reason of mental disease or defect.

8 (b) The serious sex offense is a Class B felony.

9 (c) If the serious sex offense is not listed in sub. (1) (b) 1., the person was given
10 notice under s. 973.125 (2).

11 **SECTION 2.** 939.615 (2) (a) of the statutes is amended to read:

12 939.615 **(2)** (a) Except as provided in par. (b), if a person is convicted of a serious
13 sex offense or found not guilty of a serious sex offense by reason of mental disease
14 or defect and the serious sex offense is one to which sub. (1m) does not apply, the court
15 may, in addition to sentencing the person, placing the person on probation or, if
16 applicable, committing the person under s. 971.17, place the person on lifetime
17 supervision by the department if notice concerning lifetime supervision was given
18 to the person under s. 973.125 and if the court determines that lifetime supervision
19 of the person is necessary to protect the public.

20 **SECTION 3.** 939.615 (2) (b) of the statutes is amended to read:

21 939.615 **(2)** (b) A court may not place a person on lifetime supervision under
22 this section subsection if the person was previously placed on lifetime supervision
23 under this section for a prior conviction for a serious sex offense or a prior finding of
24 not guilty of a serious sex offense by reason of mental disease or defect and that
25 previous placement on lifetime supervision has not been terminated under sub. (6).

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1 **SECTION 4.** 939.615 (2) (c) of the statutes is renumbered 939.615 (2m).

2 **SECTION 5.** 939.615 (2m) (title) of the statutes is created to read:

3 939.615 (**2m**) (title) SPECIAL VERDICT REQUIRED IN CERTAIN CASES.

4 **SECTION 6.** 939.615 (6) (b) 3. of the statutes is created to read:

5 939.615 (**6**) (b) 3. A person may not file a petition requesting termination of
6 lifetime supervision if lifetime supervision is required under sub. (1m). If a person
7 files a petition requesting termination of lifetime supervision and the lifetime
8 supervision was imposed under sub. (1m), the court shall deny the petition without
9 a hearing.

10 **SECTION 7.** 939.615 (6) (c) of the statutes is amended to read:

11 939.615 (**6**) (c) Upon receiving a petition requesting termination of lifetime
12 supervision, the court, unless par. (b) 2. or 3. applies, shall send a copy of the petition
13 to the district attorney responsible for prosecuting the serious sex offense that was
14 the basis for the order of lifetime supervision. Upon receiving a copy of a petition sent
15 to him or her under this paragraph, a district attorney shall conduct a criminal
16 history record search to determine whether the person has been convicted of a
17 criminal offense that was committed during the period of lifetime supervision. No
18 later than 30 days after the date on which he or she receives the copy of the petition,
19 the district attorney shall report the results of the criminal history record search to
20 the court and may provide a written response to the petition.

21 **SECTION 8.** 939.62 (2m) (b) 2. of the statutes is amended to read:

22 939.62 (**2m**) (b) 2. The actor has been convicted of a serious child sex offense
23 or a violation of s. 940.225 (1) or (2) on at least one occasion at any time preceding
24 ~~the date of violation of the serious child sex offense~~ or the violation of s. 940.225 (1)

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1 or (2) for which he or she presently is being sentenced under ch. 973, which conviction
2 remains of record and unreversed.

3 **SECTION 9.** 940.03 of the statutes is amended to read:

4 **940.03 Felony murder.** Whoever causes the death of another human being
5 while committing or attempting to commit a crime specified in s. 940.225 (1) ~~or (2)~~
6 ~~(a)~~, 943.02, 943.10 (2), 943.23 (1g), or 943.32 (2) may be imprisoned for not more than
7 15 years in excess of the maximum term of imprisonment provided by law for that
8 crime or attempt.

9 **SECTION 10.** 940.225 (1) (c) of the statutes is amended to read:

10 940.225 (1) (c) ~~Is aided or abetted by one or more other persons and has~~ Has
11 sexual contact or sexual intercourse with another person without consent of that
12 person by use or threat of force or violence.

13 **SECTION 11.** 940.225 (2) (a) of the statutes is repealed.

14 **SECTION 12.** 946.492 of the statutes is created to read:

15 **946.492 Failure to participate in court-ordered sex offender**
16 **treatment.** Whoever intentionally violates a court order issued under s. 973.044 (1)
17 is guilty of a Class E felony. The court shall impose a bifurcated sentence under s.
18 973.01 for a violation of this section and shall impose it consecutive to any sentence
19 previously imposed or which may be imposed for any crime for which the person was
20 in custody when he or she committed the violation of this section. The term of
21 confinement in prison portion of the bifurcated sentence may not be less than 10
22 years, but otherwise the penalties for the crime apply, subject to any applicable
23 penalty enhancement. The court may not place a person on probation for a violation
24 of this section.

25 **SECTION 13.** 948.02 (1) of the statutes is renumbered 948.02 (1) (a).

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1 **SECTION 14.** 948.02 (1) (b) of the statutes is created to read:

2 948.02 (1) (b) Whoever, by use or threat of force or violence, has sexual contact
3 or sexual intercourse with a person who has not attained the age of 16 years is guilty
4 of a Class B felony.

5 **SECTION 15.** 971.17 (1j) (am) of the statutes is created to read:

6 971.17 (1j) (am) If a person is found not guilty by reason of mental disease or
7 defect of a serious sex offense, the court shall, in addition to committing the person
8 to the department of health and family services under sub. (1), place the person on
9 lifetime supervision under s. 939.615. This paragraph does not apply unless one of
10 the following applies:

11 1. The serious sex offense is listed in s. 939.615 (1) (b) 1.

12 2. Notice concerning lifetime supervision was given to the person under s.
13 973.125.

14 **SECTION 16.** 971.17 (1j) (b) of the statutes is amended to read:

15 971.17 (1j) (b) If a person is found not guilty by reason of mental disease or
16 defect of a serious sex offense and par. (am) does not apply, the court may, in addition
17 to committing the person to the department of health and family services under sub.
18 (1), place the person on lifetime supervision under s. 939.615 if notice concerning
19 lifetime supervision was given to the person under s. 973.125 and if the court
20 determines that lifetime supervision of the person is necessary to protect the public.

21 **SECTION 17.** 973.044 of the statutes is created to read:

22 **973.044 Sentencing; court-ordered sex offender treatment.** (1) When
23 a court sentences an individual to a term of imprisonment for a serious sex offense,
24 as defined in s. 939.615 (1) (b), the court may enter an order requiring the individual,
25 while he or she is confined, to cooperate with any evaluation provided by the

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1 department or its designee regarding the appropriateness of sex offender treatment
2 and to participate in any sex offender treatment provided by the department or its
3 designee.

4 (2) If a court issues an order under sub. (1), the court shall inform the individual
5 of the requirement and of the penalty under s. 946.492.

6 **SECTION 18.** 973.125 (1) of the statutes is amended to read:

7 973.125 (1) Whenever a prosecutor decides to seek lifetime supervision under
8 s. 939.615 (2) of a person charged with a serious sex offense specified in s. 939.615
9 (1) (b) 1., the prosecutor shall, at any time before or at arraignment and before
10 acceptance of any plea, state in the complaint, indictment, or information or
11 amendments to the complaint, indictment, or information that the prosecution will
12 seek to have the person placed on lifetime supervision under s. 939.615.

13 **SECTION 19.** 973.125 (2) (intro.) of the statutes is amended to read:

14 973.125 (2) (intro.) Whenever a prosecutor decides to seek lifetime supervision
15 under s. 939.615 (1m) or (2) of a person charged with a serious sex offense specified
16 in s. 939.615 (1) (b) 2., the prosecutor shall, at any time before or at arraignment and
17 before acceptance of any plea, do all of the following:

18 **SECTION 20. Initial applicability.**

19 (1) LIFETIME SUPERVISION FOR PERSONS COMMITTING CERTAIN SERIOUS SEX OFFENSES.
20 The treatment of section 939.615 (1m) of the statutes first applies to offenses
21 committed on the effective date of this subsection.

22 (2) TREATING FIRST- OR 2ND-DEGREE SEXUAL ASSAULT AS A “2-STRIKES” OFFENSE. The
23 treatment of section 939.62 (2m) (b) 2. of the statutes first applies to persons who
24 commit a serious child sex offense, as defined in section 939.62 (2m) (a) 1m. of the
25 statutes, or who violate section 940.225 (1) or (2) of the statutes on the effective date

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1 of this subsection but does not preclude the counting of prior serious child sex
2 offenses or prior violations of section 940.225 (1) or (2) of the statutes for the purpose
3 of determining whether the person is a persistent repeater under section 939.62 (2m)
4 (b) 2. of the statutes.

5 (3) COURT-ORDERED TREATMENT FOR IMPRISONED SEX OFFENDERS. The treatment
6 of section 973.044 of the statutes first applies to persons sentenced on the effective
7 date of this subsection.

8 (END)