

2007 ASSEMBLY BILL 421

June 21, 2007 – Introduced by Representatives TAUCHEN, KLEEFISCH, LEMAHIEU, ALBERS and OWENS, cosponsored by Senator LAZICH. Referred to Committee on Criminal Justice.

1 **AN ACT** *to renumber* 343.50 (3); *to amend* 343.19 (1), 343.50 (4) and 971.17 (1m)
2 (title); and *to create* 51.20 (13) (cw), 165.8285 (1m), 301.49, 343.14 (2) (dm),
3 343.17 (3) (a) 15., 343.50 (3) (b), 938.34 (15o), 938.345 (3m), 971.17 (1m) (c) and
4 973.0485 of the statutes; **relating to:** special operator licenses and
5 identification cards for persons registered as sex offenders and providing a
6 penalty.

Analysis by the Legislative Reference Bureau

Under current law, persons who have committed certain sex offenses are required to register as sex offenders with the Department of Corrections (registrants). Under this bill, a registrant who is ordered by the court or who has committed a serious sex offense, must, when applying for a driver's license or a state-issued identification card, identify himself or herself to the Department of Transportation in order to be issued a license or card that indicates that he or she is a sex offender. Under the bill, a serious sex offense is one of the following offenses: first-degree sexual assault, first-degree sexual assault of a child, and, with some exceptions, repeated sexual assault of a child. A person who intentionally violates this requirement is guilty of a Class G felony and may be fined up to \$25,000, sentenced to a term of imprisonment of up to ten years (which, as with other felonies, includes a term of confinement and a term of extended supervision if the sentence is for more than one year), or both.

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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* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 51.20 (13) (cw) of the statutes is created to read:

2 51.20 **(13)** (cw) 1. Except as provided in subd. 2., if, under par. (ct) 1m. or 2m.,
3 the court requires the subject individual to comply with the reporting requirements
4 under s. 301.45, the court may order the subject individual to comply with the
5 requirements under s. 301.49 (4) if the court determines that it would be in the
6 interest of public protection to have the subject individual comply with the
7 requirements under s. 301.49 (4).

8 2. If, under par. (ct) 2m. the court requires the subject individual to comply with
9 the reporting requirements under s. 301.45 and the subject individual is found to
10 have committed, or to have solicited, conspired, or attempted to commit, a serious sex
11 offense, as defined under s. 301.49 (1) (c), the court shall order the subject individual
12 to comply with the requirements under s. 301.49 (4).

13 3. In determining under subd. 1. whether it would be in the interest of public
14 protection to have the subject individual comply with the requirements under s.
15 301.49 (4), the court may consider any of the following:

16 a. The ages, at the time of the violation, of the subject individual and the victim
17 of the violation.

18 b. The relationship between the subject individual and the victim of the
19 violation.

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1 c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to
2 the victim.

3 d. Whether the victim suffered from a mental illness or mental deficiency that
4 rendered him or her temporarily or permanently incapable of understanding or
5 evaluating the consequences of his or her actions.

6 e. The probability that the subject individual will commit other violations in
7 the future.

8 f. Any other factor that the court determines may be relevant to the particular
9 case.

10 4. If the court orders a subject individual to comply with the requirements
11 under s. 301.49 (4), the court shall order the subject individual to continue to comply
12 for a period of not less than 15 years and may order the subject individual to comply
13 until his or her death.

14 5. If the court orders a subject individual to comply with the requirements
15 under s. 301.49 (4), the clerk of the court in which the order is entered shall promptly
16 forward a copy of the order to the department of corrections. If the finding under s.
17 938.30 (5) (c) (intro.) or 971.14 on which the order is based is reversed, set aside, or
18 vacated, the clerk of the court shall promptly forward to the department of
19 corrections a certificate stating that the finding has been reversed, set aside, or
20 vacated.

21 **SECTION 2.** 165.8285 (1m) of the statutes is created to read:

22 165.8285 **(1m)** For the purpose of determining if a person is violating s. 301.49
23 (4), the department of justice shall, through the transaction information for
24 management of enforcement system, provide local law enforcement agencies with

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1 access to the information provided by the department of corrections under s. 301.49
2 (3).

3 **SECTION 3.** 301.49 of the statutes is created to read:

4 **301.49 Operator’s licenses or state identification cards for certain sex**
5 **offenders. (1) DEFINITIONS.** In this section:

6 (a) “Identification card” means a card issued under s. 343.50.

7 (b) “Operator’s license” means a license issued under ch. 343.

8 (c) “Serious sex offense” means a violation of, or the solicitation, conspiracy, or
9 attempt to commit a violation of, s. 940.225 (1) or 948.02 (1) or s. 948.025 (1) if the
10 offense was a Class A or B felony.

11 (d) “Sex offense” has the meaning under s. 301.45 (1d) (b).

12 **(2) WHO IS COVERED.** A person who is subject to the sex offender registration
13 requirement under s. 301.45 is subject to sub. (4) if any of the following applies:

14 (a) The offense that resulted in the person being subject to s. 301.45 is a serious
15 sex offense.

16 (b) The court has ordered the person under s. 51.20 (13) (cw) 1., 938.34 (15o)
17 (a), 938.345 (3m) (a), 971.17 (1m) (c) 1., or 973.0485 (1) to comply with the
18 requirements under sub. (4).

19 (c) The person is on supervised release under s. 980.08 (6m).

20 **(2m) RELEASE FROM REQUIREMENTS.** (a) A person described under sub. (2) (a)
21 or (c) is subject to sub. (4) until his or her death.

22 (b) A person described under sub. (2) (b) is subject to sub. (4) for the period of
23 time ordered by the court under s. 51.20 (13) (cw) 4., 938.34 (15o) (d), 938.345 (3m)
24 (d), 971.17 (1m) (c) 4., or 973.0485 (4).

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1 **(3) INFORMATION ACCESS.** The department of corrections shall provide to the
2 department of justice information sufficient to identify the persons who are covered
3 under sub. (2) for the purpose of s. 165.8285 (1m).

4 **(4) OPERATOR'S LICENSE OR IDENTIFICATION CARD REQUIREMENTS.** (a) A person
5 covered under sub. (2) who applies for an operator's license or an identification card
6 shall identify himself or herself in the application as a person to whom a special
7 operator's license or identification card shall be issued under s. 343.17 (3) (a) 15. or
8 343.50 (3) (b).

9 (b) Prior to being covered under sub. (2), if a person has an operator's license
10 or an identification card or if the person was incarcerated and the operator's license
11 or identification card is valid when the person is released from any period of
12 incarceration, the person shall, immediately after becoming covered under sub. (2)
13 or after being released from any period of incarceration, apply to the department of
14 transportation for a duplicate license or identification card, identifying himself or
15 herself in the application as a person to whom a special operator's license or
16 identification card shall be issued under s. 343.17 (3) (a) 15. or 343.50 (3) (b).

17 **(5) PENALTY.** Whoever intentionally violates sub. (4) (a) or (b) is guilty of a Class
18 G felony.

19 **(6) NOTIFICATION.** (a) The department shall notify a person covered under sub.
20 (2) (c) of his or her need to comply with sub. (4) and, if the person was not ordered by
21 the court under s. 51.20 (13) (cw) 2., 938.34 (15o) (b), 938.345 (3m) (b), 971.17 (1m)
22 (c) 2., or 973.0485 (2), a person covered under sub. (2) (a) of his or her need to comply
23 with sub. (4).

24 (b) After notifying a person under par. (a) of the need to comply with this
25 section, the department shall require the person who is being notified to read and

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1 sign a form stating that he or she has been informed of the requirements of this
2 section.

3 (c) It is not a defense to liability under sub. (5) that the person subject to sub.
4 (4) was not required to read and sign a form under par. (b), was not provided with a
5 form to read and sign under par. (b), or failed or refused to read or sign a form under
6 par. (b). It is not a defense to liability under sub. (5) that the person subject to sub.
7 (4) did not receive notice under this subsection from the department.

8 **SECTION 4.** 343.14 (2) (dm) of the statutes is created to read:

9 343.14 (2) (dm) A statement as to whether the applicant is a covered person
10 under s. 301.49 (2).

11 **SECTION 5.** 343.17 (3) (a) 15. of the statutes is created to read:

12 343.17 (3) (a) 15. If the person is a covered person under s. 301.49 (2), a
13 distinctive appearance specified by the department, with a block in the lower right
14 hand corner that is yellow in color and contains the words “SEX OFFENDER” in
15 prominent black capital lettering.

16 **SECTION 6.** 343.19 (1) of the statutes is amended to read:

17 343.19 (1) If a license issued under this chapter or an identification card issued
18 under s. 343.50 is lost or destroyed or the name or address named in the license or
19 identification card is changed, if the licensee becomes subject to s. 301.49 (4) (b) or
20 if the condition status specified in s. 343.17 (3) (a) 12. or 13., or 15. or 343.50 (3) (b)
21 no longer applies, the person to whom the license or identification card was issued
22 may obtain a duplicate thereof or substitute therefor upon furnishing proof
23 satisfactory to the department of name and date of birth and that the license or
24 identification card has been lost or destroyed or that application for a duplicate
25 license or identification card is being made for a change of address or name or

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1 requirement of s. 301.49 (4) (b), or because the condition status specified in s. 343.17
2 (3) (a) 12. or 13., or 15. or 343.50 (3) (b) no longer applies. If a licensee applies for
3 a duplicate license or identification card based on s. 301.49 (4) (b), the licensee or card
4 holder shall surrender the existing license or card and the duplicate license or card
5 shall have the appearance specified in s. 343.17 (3) (a) 15. or 343.50 (3) (b). If the
6 applicant is a male who is at least 18 years of age but less than 26 years of age, the
7 application shall include the information required under s. 343.14 (2) (em). If the
8 original license or identification card is found it shall immediately be transmitted to
9 the department. Duplicates of nonphoto licenses shall be issued as nonphoto
10 licenses.

11 **SECTION 7.** 343.50 (3) of the statutes is renumbered 343.50 (3) (a).

12 **SECTION 8.** 343.50 (3) (b) of the statutes is created to read:

13 343.50 (3) (b) In addition to the requirements of par. (a), an identification card
14 for a person who is a covered person under s. 301.49 (2) shall have a distinctive
15 appearance specified by the department, with a block in the lower right hand corner
16 that is yellow in color and contains the words “SEX OFFENDER” in prominent black
17 capital lettering.

18 **SECTION 9.** 343.50 (4) of the statutes, as affected by 2005 Wisconsin Act 126,
19 is amended to read:

20 343.50 (4) APPLICATION. The application for an identification card shall include
21 any information required under ss. 85.103 (2) and 343.14 (2) (a), (b), (bm), (br), (dm),
22 (em), and (er), and such further information as the department may reasonably
23 require to enable it to determine whether the applicant is entitled by law to an
24 identification card. The department shall, as part of the application process, take a
25 photograph of the applicant to comply with sub. (3). No application may be processed

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1 without the photograph being taken. Misrepresentations in violation of s. 343.14 (5)
2 are punishable as provided in s. 343.14 (9).

3 **SECTION 10.** 938.34 (15o) of the statutes is created to read:

4 **938.34 (15o) SEX OFFENDER OPERATOR'S LICENSES OR STATE IDENTIFICATION CARDS.**

5 (a) Except as provided in par. (b), if, under sub. (15m) (am) or (bm), the court orders
6 the juvenile to comply with the reporting requirements under s. 301.45, the court
7 may order the juvenile to comply with the requirements under s. 301.49 (4) if the
8 court determines that it would be in the interest of public protection to have the
9 juvenile comply with s. 301.49 (4).

10 (b) If, under sub. (15m) (bm), the court orders the juvenile to comply with the
11 reporting requirements under s. 301.45 and the juvenile is found to have committed,
12 or to have solicited, conspired, or attempted to commit, a serious sex offense, as
13 defined under s. 301.49 (1) (c), the court shall order the juvenile to comply with the
14 requirements under s. 301.49 (4).

15 (c) In determining under par. (a) whether it would be in the interest of public
16 protection to have the juvenile comply with the requirements under s. 301.49 (4), the
17 court may consider any of the following:

18 1. The ages, at the time of the violation, of the juvenile and the victim of the
19 violation.

20 2. The relationship between the juvenile and the victim of the violation.

21 3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to
22 the victim.

23 4. Whether the victim suffered from a mental illness or mental deficiency that
24 rendered him or her temporarily or permanently incapable of understanding or
25 evaluating the consequences of his or her actions.

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

2 6. Any other factor that the court determines may be relevant to the particular
3 case.

4 (d) If the court orders a juvenile to comply with the requirements under s.
5 301.49 (4), the court shall order the juvenile to continue to comply for a period of not
6 less than 15 years and may order the juvenile to comply until his or her death.

7 (e) If the court orders a juvenile to comply with the requirements under s.
8 301.49 (4), the clerk of the court in which the order is entered shall promptly forward
9 a copy of the order to the department of corrections. If the finding of delinquency on
10 which the order is based is reversed, set aside, or vacated, the clerk of the court shall
11 promptly forward to the department of corrections a certificate stating that the
12 finding of delinquency has been reversed, set aside, or vacated.

13 **SECTION 11.** 938.345 (3m) of the statutes is created to read:

14 **938.345 (3m) OPERATOR'S LICENSES OR STATE IDENTIFICATION CARDS.** (a) Except
15 as provided in par. (b), if, under sub. (3) (a), the court orders the juvenile to comply
16 with the reporting requirements under s. 301.45, the court may order the juvenile
17 to comply with the requirements under s. 301.49 (4) if the court determines that it
18 is in the interest of public protection to have the juvenile comply with the
19 requirements under s. 301.49 (4).

20 (b) If, under sub. (3) (a), the court orders the juvenile to comply with the
21 reporting requirements under s. 301.45 based on a violation of, or the solicitation,
22 conspiracy, or attempt to commit a violation of, a serious sex offense, as defined under
23 s. 301.49 (1) (c), the court shall order the juvenile to comply with the requirements
24 under s. 301.49 (4).

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1 (c) In determining under par. (a) whether it is in the interest of public protection
2 to have the juvenile comply with the requirements under s. 301.49 (4), the court may
3 consider any of the following:

4 1. The ages, at the time of the violation, of the juvenile and the victim of the
5 violation.

6 2. The relationship between the juvenile and the victim of the violation.

7 3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to
8 the victim.

9 4. Whether the victim suffered from a mental illness or mental deficiency that
10 rendered him or her temporarily or permanently incapable of understanding or
11 evaluating the consequences of his or her actions.

12 5. The probability that the juvenile will commit other violations in the future.

13 6. Any other factor that the court determines may be relevant to the particular
14 case.

15 (d) If the court orders a juvenile to comply with the requirements under s.
16 301.49 (4), the court shall order the juvenile to continue to comply for a period of not
17 less than 15 years and may order the juvenile to comply until his or her death.

18 (e) If the court orders a juvenile to comply with the requirements under s.
19 301.49 (4), the clerk of the court in which the order is entered shall promptly forward
20 a copy of the order to the department. If the finding of need of protection or services
21 on which the order is based is reversed, set aside, or vacated, the clerk of the court
22 shall promptly forward to the department a certificate stating that the finding has
23 been reversed, set aside, or vacated.

24 **SECTION 12.** 971.17 (1m) (title) of the statutes is amended to read:

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1 971.17 **(1m)** (title) SEXUAL ASSAULT; REGISTRATION AND TESTING; OPERATOR'S
2 LICENSES OR STATE IDENTIFICATION CARDS.

3 **SECTION 13.** 971.17 (1m) (c) of the statutes is created to read:

4 971.17 **(1m)** (c) 1. Except as provided in subd. 2., if, under par. (b) 1m. or 2m.,
5 the court orders the defendant to comply with the reporting requirements under s.
6 301.45, the court may order the defendant to comply with the requirements under
7 s. 301.49 (4) if the court determines that it would be in the interest of public
8 protection to have the defendant comply with the requirements under s. 301.49 (4).

9 2. If the court orders the defendant under par. (b) 2m. to comply with the
10 reporting requirements under s. 301.45 and the defendant is found not guilty by
11 reason of mental disease or defect for a violation of, or for the solicitation, conspiracy,
12 or attempt to commit a violation of, a serious sex offense, as defined in s. 301.49 (1)
13 (c), the court shall order the defendant to comply with the requirements under s.
14 301.49 (4).

15 3. In determining under subd. 1. whether it would be in the interest of public
16 protection to have the defendant comply with the requirements under s. 301.49, the
17 court may consider any of the following:

18 a. The ages, at the time of the violation, of the defendant and the victim of the
19 violation.

20 b. The relationship between the defendant and the victim of the violation.

21 c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to
22 the victim.

23 d. Whether the victim suffered from a mental illness or mental deficiency that
24 rendered him or her temporarily or permanently incapable of understanding or
25 evaluating the consequences of his or her actions.

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1 e. The probability that the defendant will commit other violations in the future.

2 f. Any other factor that the court determines may be relevant to the particular
3 case.

4 4. If the court orders a defendant to comply with the requirements under s.
5 301.49 (4), the court shall order the defendant to continue to comply for a period of
6 not less than 15 years and may order the defendant to comply until his or her death.

7 5. If the court orders a defendant to comply with the requirements under s.
8 301.49 (4), the clerk of the court in which the order is entered shall promptly forward
9 a copy of the order to the department of corrections. If the finding of not guilty by
10 reason of mental disease or defect on which the order is based is reversed, set aside,
11 or vacated, the clerk of the court shall promptly forward to the department of
12 corrections a certificate stating that the finding has been reversed, set aside, or
13 vacated.

14 **SECTION 14.** 973.0485 of the statutes is created to read:

15 **973.0485 Sex offender operator's licenses or state identification cards.**

16 **(1)** Except as provided in sub. (2), if, under s. 973.048 (1m) or (2m), a court orders
17 a person to comply with the reporting requirements under s. 301.45 the court may
18 order the person to comply with requirements under s. 301.49 (4) if the court
19 determines that it would be in the interest of public protection to have the person
20 comply with the requirements under s. 301.49 (4).

21 **(2)** If, under s. 973.048 (2m), a court orders a person to comply with the
22 reporting requirements under s. 301.45 based on a violation of, or for the solicitation,
23 conspiracy, or attempt to commit a violation of, a serious sex offense, as defined in
24 s. 301.49 (1) (c), the court shall order the person to comply with the requirements
25 under s. 301.49 (4).

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1 **(3)** In determining under sub. (1) whether it would be in the interest of public
2 protection to have the person comply with the requirements under s. 301.49 (4), the
3 court may consider any of the following:

4 (a) The ages, at the time of the violation, of the person and the victim of the
5 violation.

6 (b) The relationship between the person and the victim of the violation.

7 (c) Whether the violation resulted in bodily harm, as defined in s. 939.22 (4),
8 to the victim.

9 (d) Whether the victim suffered from a mental illness or mental deficiency that
10 rendered him or her temporarily or permanently incapable of understanding or
11 evaluating the consequences of his or her actions.

12 (e) The probability that the person will commit other violations in the future.

13 (f) Any other factor that the court determines may be relevant to the particular
14 case.

15 **(4)** If the court orders a person to comply with the requirements under s. 301.49
16 (4), the court shall order the person to continue to comply for a period of not less than
17 15 years and may order the person to comply until his or her death.

18 **(5)** If the court orders a person to comply with the requirements under s. 301.49
19 (4), the clerk of the court in which the order is entered shall promptly forward a copy
20 of the order to the department of corrections. If the conviction on which the order is
21 based is reversed, set aside, or vacated, the clerk of the court shall promptly forward
22 to the department of corrections a certificate stating that the conviction has been
23 reversed, set aside, or vacated.

24 **SECTION 15. Initial applicability.**

