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☛ Details: Complaint.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

FAX

DATA SHEET

DATE: 6-19-08 TIME: _____FROM: ERIC S. RAINBOLTHOME PHONE #: 920-583-6006FAX #: (608) 266-3580

Sen. Jauch / Rep. Townsend

TO: % Sarah Barry

Sen. Bob Jauch

COMPANY: State Capitol.

MESSAGE: Ms. Barry, Thank you for taking the time to speak with me on Monday 6-16-08. The issues presented not only concern my individual fact situation, but also that the DOC is required to promulgate rules under § 301.46(8) which it has not. The DOC may adopt it "court case number" test (Fox p.3) ~~as~~ as an emergency rule, but that rule would violate Wis Stat § 227.10(3)(c), as a jurisdictional circumstance is the only case for the Special Bulletin Notice ^(SBN) under § 301.46(2m)(am) in my case; those with only one jurisdiction have no SBN. Wis Stat § 227.10(1) requires "each statement of general policy and each interpretation of a statute" shall be promulgated as a rule. Regarding § 227.41 Petition for a declaratory ruling (class-based denial) ("the practice of the Dept.") Fox p. 2, and the § 301.46(2m)(am) "separate court case numbers" interpretation, Fox pp. 3, 4, 12, squarely fit under § 227.10(1) as a "general policy" and "interpretation of a statute," which have not been promulgated as rules, as required, and fall under the authority of the JCARR. Thanks again for your time and for forwarding this packet to Rep. J. Townsend's office. E

WE ARE TRANSMITTING 14 PAGES including this page.

If you did not receive all pages please call: 920-921-2222

Thank You

EXHIBIT 8

Jim Doyle
Governor

Matthew J. Frank
Secretary



OFFICE OF LEGAL COUNSEL
3099 East Washington Avenue
Post Office Box 7925
Madison, Wisconsin 53707-7925

Writer's Direct Line: (608) 240-5035
Fax: (608) 240-3306

State of Wisconsin
Department of Corrections

October 2, 2006

Eric Rainbolt
457 Thomas St.
Fond du Lac, WI 54935-3154

Dear Mr. Rainbolt:

This letter is in response to your correspondence to Secretary Frank, wherein pursuant to Sec 227.41(1) stats., you petitioned the Department of Corrections to issue a declaratory ruling regarding the applicability of Sec. 301.46(2m)(am) stats., to you and the specific facts in your case. Sec. 227.41(1) stats., states in pertinent part, "Any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it." The issuance of such a ruling is clearly permissive rather than mandatory. Please be advised that it is not the practice of the Department to issue declaratory rulings to persons in its custody or under its supervision and accordingly, the Department respectfully declines to do so in this instance.

Sincerely,

Kevin Potter
Chief Legal Counsel

EX-116

released from prison or mental health institution. This notification is called a **Special Bulletin Notification**.

SPECIAL BULLETIN NOTIFICATION (SBN)

Wisconsin law does not require special notification for all offenders released from prison or institutions. The SBN is intended to highlight those cases which pose a significant risk to the community.

Criteria: A SBN is issued for offenders who meet any of the following criteria:

- **Committed under Chapter 980—Sexually Violent Person** and scheduled to be placed in the community under supervised release
- **Two Strike Cases**—Convicted of a sex offense, as defined by crimes requiring registration, on two or more **separate** occasions (separate court case numbers). A previous conviction can include a conviction from another state that is comparable to a Wisconsin crime requiring registration. Offenses/dispositions which **do not count** as a strike include the following list:
 - Juvenile adjudications
 - Read-ins
 - Convictions that have been reversed, set aside, vacated, or pardoned
- **ECRB Yes Cases**—Cases reviewed by the **End of Confinement Review Board (ECRB)** and referred for a **Special Purpose Evaluation (SPE)** to determine if commitment under Chapter 980 is warranted. Regardless of the results of the evaluation, a SBN will be issued prior to the release of these offenders.
- **Discretionary**—Discretion is provided to DOC and DHFS in determining if an SBN is warranted for those cases not requiring mandatory bulletins.

non-stay of
language / standard

If an offender is identified as an SBN case, this designation will continue throughout any and all periods of supervision/custody by DOC.

Preparation and Dissemination: The SBN is prepared and disseminated as follows:

- The DOC Bureau of Offender Programs (BOP) is responsible for preparing the SBN when an offender is released from prison to the community, to a detainer, or to confinement in a DHFS mental health institution pending 980 proceedings. The assigned agent is to prepare a SBN Release Plan to provide information necessary for construction of the SBN. Refer to Appendix _____ Administrative Directive 98-4 which includes a format for completing this plan.

PAGE 10 FROM DEPT OF CORRECTIONS
"SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION" MANUAL 10

February 18, 2008

Eric S. Rainbolt
P.O. Box 147
Fox Lake, Wisconsin 53933-0147

Richard Raemisch, Secretary
Kathryn Anderson, Chief Legal Counsel
Department of Corrections
P.O. Box 7925
Madison, Wisconsin 53707-7925

Re: Request for Secretary's investigation and final decision

Dear Secretary Raemisch and Chief Anderson:

Department employees have taken action upon me that I believe conflicts with state law. I do not believe that you, Secretary Raemisch and Chief Anderson, are aware of this, or I am sure you would have corrected it already. I hereby give notice of and respectfully request the Secretary's investigation and final decision concerning the facts, law and Department action set forth herein.

FACTS. It was for violations of §948.02 "between 6-2-89 & 7-26-89" (ct. 1) and "between 8-8-89 & 8-11-89" (ct. 4) and "on or about 8-11-89" (ct. 5) that I was arrested on 5-18-90 and appeared in Fond du Lac Co. Case No. 90-CF-114. One month after my arrest, count 5 was transferred out to Grant County's jurisdiction (June 1990) and assigned Case No. 90-CR-177. Both cases concern the same victim; there was only one arrest; I was 18. On 4-29-91 and 5-29-91 I was convicted and sentenced in 90-CF-114 and 90-CR-177, respectively, for the 1989 offenses.

ACTION. On 11-23-03, the Department applied §301.46(2m)(am) to both 1990 court case numbers and ordered a Special Bulletin Notice (SBN). According to page 10 of the Department's Sex Offender Registration and Community Notification Manual (2005) (herein "S.O. Manual," and attached), "Wisconsin law does not require special notification for all offenders released from prison or institutions. The SBN is intended to highlight those cases which pose a significant risk to the community." I challenged this action in writing to the Department. On 5-18-04 and 6-2-04 Sally Tess responded that this SBN action is "mandatory," "not subject to discretion," and "not affected by mitigating documentation" under that law.

LAW. Please see the attached copy of the S.O. Manual, p. 10, where the Department has interpreted §301.46(2m)(am) as follows: "**Criteria:** A SBN is issued for offenders who meet any of the following criteria: *** **Two Strike Cases—** Convicted of a sex offense, as defined by crimes requiring registration, on two or more **separate** occasions (**separate court case numbers**)."¹ In 1990 I appeared before the court as an 18 year old, first-time offender, with one arrest and one victim from 1989. Thirteen years later, the Department determined that these exact facts made me a 2-strike, repeat SBN sex offender whose "previous criminal history places him in a classification level which reflects the potential to reoffend." Please see form DOC-1748 re: SBN #1234.

Also, please see the S.O. Manual, p. 10, where the Department has published its intention to attach this classification for life when it stated: "If an offender is identified as an SBN case, this designation will continue throughout any and all periods of supervision/custody by DOC." Given this declaration, an inquiry into this "previous criminal history" that mandates the Department's SBN action upon me is reasonable, fair, and warranted.

PREVIOUS CRIMINAL HISTORY. Within the documents of SBN #1234, et al., the Department has established and settled the following facts concerning me:

Form DOC-2143	"PRIOR RECORD"	"Juvenile Record: None" "Adult Record: None"
Form DOC-1790	"OFFENDER HISTORY"	<u>Section 6</u> - "All known sex offenses occurred within one 3-month period of time." <u>Section 7</u> - "Only one known sex offense victim."

Yet the Department has publicly declared through its distribution of form DOC-1748 and related documents to law enforcement, Senator Carol Roessler, the Fond du Lac City Council, media, and others, that these facts describe a 2-strike, repeat SBN sex offender whose "previous criminal history places him in a classification level which reflects the potential to reoffend." Again, the Department has established and settled that I have no prior record—not for anything—and yet simultaneously tells the public and the police department making the notification level determination that the SBN before their eyes is for a prior sex offense history that the Department has said elsewhere in their same SBN that I do not have. This is not fair to me and not fair to the public who is being troubled by these assertions.

SEPARATE OCCASIONS. The Department lacks authority for its "separate court case numbers" interpretation of §301.46(2m)(am); there is no support by rule (§301.46(8)), case law, or statute. This published interpretation becomes the Department's written admission concerning the statute's ambiguity under the current view, at least according to this state's high courts. "Separate occasions" for felonies has already been statutorily defined for the Department by the legislature as a conviction date prior to a new violation date. Under this, I have no "separate occasions." I knew the Secretary and Office of Legal Counsel could not be aware of these facts when I came across the Department's favorable ruling in *State v. Schwarz* (2004-05).

"We will not read into the statute language that the legislature did not put in. One of the maxims of statutory construction is that courts should not add words to a statute to give it a certain meaning. Such an action is a clear sign that the statutory language, as written, is ambiguous." *Schwarz*, 2005 WI 34, ¶120. "We agree with the DOC that the proper methodology is to examine the legislative history and case law *** and the interplay among several [] statutes." *Id.* @ ¶21. "A general rule of statutory interpretation is that statutes dealing with the same subject matter should be read together and harmonized." *Id.* @ ¶27. "Where two statutes relate to the same subject matter, the specific statute controls the general statute." 2004 WI App 136, ¶15. In many ways I am simply re-presenting a position already adopted by the Department and the Supreme Court. Here §939.62(2m)(b) and §973.0135(1)(a) are both specific in explaining just how to "separate" the felony "occasions." Wis.Stat. §301.46(2m)(am) is general in explaining

the action to take once the "occasions" have been separated. In explaining just how to separate the felony occasions, the legislature could not have intended that some other method of separation be utilized, especially when it employed the same "occasions" language.

UNDER THE COURTS. Every incident (count) under any one or more court case numbers is interpreted as a separate conviction and is therefore a "separate occasion" under State v. Wittrock, 119 Wis.2d 664 (1984) and State v. Hopkins, 168 Wis.2d 802 (1992). In this view, "separate occasions" may not be defined as "separate court case numbers" since one court case number may contain multiple sex offense incidents (counts). A review of CCAP (wcca.wicourts.gov) confirms they usually do. But the Department has already determined that legislative intent does not allow for a construction of §301.46(2m)(am)'s "separate occasions" under the SBN fllogdages of Wittrock and Hopkins. However, every agency must conform precisely to the statutes from which it derives its power. Trojan v. Bd. of Regents, 128 Wis.2d 270, 274-75 (CA 1985); Grogan v. PSC, 109 Wis.2d 75, 81 (CA 1982).

UNDER THE STATUTES. There is a family of post Wittrock and Hopkins "separate occasions" legislation that specifically contemplates felonies that include sex offenses; these use distinct and specific language to determine a "separate occasion" for the invocation of their provisions. Wis. Stat. §301.46(2m)(am) limits the Department's authority to order an SBN to the circumstances of "separate occasions" specified in the statute. This statute can be properly harmonized with §939.62(2m)(b)² and with §973.0135(1)(a)², and thereby give effect to its leading idea and purpose, using the legislature's intent from the legislature's own language.

Two specific and different methods for separating occasions are used by legislature. Wittrock and Hopkins defined "separate occasions" for misdemeanors under §939.62. The later expressions of law—§939.62(2m)(b), §973.0135(1)(a), and §301.46(2m)(am)—all cover the same subject matter, i.e. the special considerations given to repeat felony offenders, including felony sex offenses. Under the illumination of the Wittrock and Hopkins decisions, the legislature chose for both §939.62(2m)(b) and §973.0135(1)(a) to employ a distinctly different and specific device to determine "separate occasions" for felonies. The "serious sex offense" of §939.62(2m)(a) and the "serious felony" of §973.0135(1)(b) include the sex offenses listed at §301.46(1)(b) and §301.45(1d)(b) and therefore bear a direct relationship to each other. The felony "occasions" at issue therein are separated by a specific separation method within the statutes, and are separated differently than the misdemeanor "occasions" under §939.62 according to Wittrock and Hopkins. Since these different methods also co-exist within the same statute (§939.62), one can infer that the legislature was aware of the different denotations and the specific effects of each, and intended those words to have their precise meanings for felonies. These specific statutes clearly define just who is a prior felony offender and just what makes an occasion "separate": a conviction date that preceds a new violation date. These specific, defining statutes relate to the same subject matter as the "separate occasions" under §301.46(2m)(am), for they all include the felony sex offenses at issue therein. And again, the specific, defining statute controls the general one. Schwarz, 2004 WI App 136, ¶15.

- 1) §939.62(2m)(b) "1. ...has been convicted of a serious felony on 2 or more separate occasions at any time preceding the [3rd] serious felony," and, "2. ... has been convicted of a serious child sexual assault on at least one occasion at any time preceding the date of violation of the serious child sexual assault."
- 2) §973.0135(1)(a) "'prior offender' means...the person has been convicted of a serious felony on at least one separate occasion at any time preceding the serious felony for which he or she is being sentenced."

I have asked for this to be fixed and Department employee Sally Tess informed me that the imposition of the repeater SBN for separate court case numbers from 1989 that concern the same victim, under §301.46(2m)(am) was and is "mandatory," "not subject to discretion," and "not affected by mitigating documentation." And, "If an offender is identified as an SBN case, this designation will continue throughout any and all periods of supervision/custody by DOC [for life]." S.O. Manual, p. 10. These taken together mean the Department would impose and publicly publish a lifetime "special danger" classification status upon me and others with no opportunity for review— with no remedy, **even if the classification is wrong**. For the Department to take any action upon me without providing a remedy for a possible wrong can only mean either that the Department is never wrong, or that the Department would willingly allow someone to be injured by its action. I'm not trying to be smart here, it's just the conclusion I'm left with. I would hope, and choose to believe, that the Secretary and Office of Legal Counsel would find both of these positions unacceptable, and are interested in correcting any wrong action the Department's employees may have taken. All people are prone to mistakes, and good government will fix them.

CONCLUSION. My crimes occurred in 1989; I was charged in 1990, convicted and sentenced in 1991. I have no other, subsequent felonies or sex offenses. The application of §301.46(2m)(am) to these 1989 facts occurred in 2003. These same facts and concerns have already been across the desks of the Bureau of Offender Programs (BOP) and the Sex Offender Registration Program (SORP) who have asserted in writing that they have no discretion in the matter, whatsoever, but a request for the Department's discretionary action was not made by me. That is the reason why I respectfully ask for a final review and determination of this matter by the Department Secretary and Office of Legal Counsel. I seek the Department's recognition that the facts surrounding 90-CF-114 and 90-CR-177 together are properly seen as only one occasion (one strike) and that §301.46(2m)(am) does not apply to me, for the foregoing reasons.

I thank you in advance for your assistance in this matter. I respectfully request your response within 15 days and I look forward to your reply.

Sincerely,



Eric S. Rainbolt

att: DOC-Sex Offender Registration and Community Notification Manual (2005), p. 10

c: file



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Jim Doyle
Governor

Rick Raemisch
Secretary

State of Wisconsin
Department of Corrections

March 3, 2008

Mr. Eric S. Rainbolt
P.O. Box 147
Fox Lake, Wisconsin 53933-0147

Re: Your letter dated February 18, 2008

Dear Mr. Rainbolt:

I am responding to your letter dated February 18, 2008 to Secretary Rick Raemisch regarding Special Bulletin Notifications. You admit that you have been convicted on more than one occasion of sexual assaults. Therefore, DOC's previous responses to you that it is required to issue Special Bulletin Notifications about you are correct. DOC's previous responses to you that it has no discretion, but must issue Special Bulletin Notifications about you, are also correct.

The cases you cited do not discuss Special Bulletin Notifications, but discuss when separate counts may be properly joined for purposes of criminal proceedings. Also, many of the cases you cited were unpublished decisions, so may not be cited as precedent.

If you have any questions or concerns, feel free to write or call me at (608) 240-5014.

Sincerely,

Deborah Rychlowski
Attorney

cc: Office of the Secretary

March 25, 2008

Eric S. Rainbolt
P.O. Box 147
Fox Lake, WI 53933-0147

Secretary Rick Raemisch
c/o Atty. Deborah Rychlowski
Department of Corrections
P.O. Box 7925
Madison, WI 53707-7925

Re: Your response dated March 3, 2008

Dear Secretary Raemisch/Ms. Rychlowski:

I am in receipt of your letter dated March 3, 2008 wherein you responded to my February, 2008 letter concerning Special Bulletin Notifications (SBNs) on behalf of Secretary Raemisch. Unfortunately, your response was based on a mistaken understanding of the law at issue and a misreading of my original correspondence. I respectfully redirect you to the language of the law at issue and, as the Secretary's designee on this matter, I present the following to you for the Secretary's and the Department's official position.

You previously stated on behalf of Secretary Raemisch:

You admit that you have been convicted on more than one occasion of sexual assaults. Therefore, DOC's previous responses to you that it is required to issue Special Bulletin Notifications about you are correct.

Your assertion that I have made any such admission is hereby denied. Being "convicted on more than one occasion of sexual assaults" does not require the DOC to issue an SBN, but **separate** occasions does.

Sec. 301.46(2m)(am) authorizes the DOC to issue an SBN upon evidence that I have "on 2 or more **separate occasions** been convicted...for a sex offense." In 1994, the legislature established that "**separate occasions**" for **felonies** occurs where there is a prior conviction date (old occasion) and a subsequent offense date (new, separate occasion). See Wis. Stats. §973.0135(1)(a) (defining "prior offender") and §939.62(2m) (defining repeat felony offenders). In 1996, the legislature decided and declared that "**separate occasions**" for sex offenders should now incur an SBN under §301.46(2m)(am). Both §973.0135(1)(a) and §939.62(2m) consider and reject my 1989 §948.02 violations as "separate occasions" by definition. These statutes all consider the same subject of felony "separate occasions;" there is no reason why these statutes should not be read together and harmonized, with the specific statute [§973.0135(1)(a) and §939.62(2m)] controlling the general statute [§301.46(2m)(am)]. The DOC has no other method to "separate occasions" that possesses greater authority than the statutory language cited above.

My first sex offense conviction occurred on April 29, 1991 in Fond du Lac Co. Case No. 90-CF-114. The DOC has no evidence that I have committed a new sex offense after that date. Grant County Case No. 90-CR-177 (DOC's 2nd strike) may have a conviction date of May 29, 1991 (30 days after 90-CF-114) but the offense occurred earlier "on or about 8-11-89." See the respective JOCs. Again, the legislature has been quite clear that "separate occasions" occur for felonies where there is a prior conviction date and a later, new offense date; these felonies include my §948.02 violations.

Having no evidence that I have committed a new sex offense after my first conviction on April 29, 1991, the DOC has failed to establish for SBN purposes that there are any "separate occasions" according to law. The DOC has cited no authority by which it has separated the "occasions" under §301.46(2m)(am) and reached its 2-strike conclusion; but I have provided you with great authority—the legislature's own words—on what "separate occasions" are and how to separate them [as described in §973.0135(1)(a) and §939.62(2m)]. In the absence of greater authority, the DOC has not shown that 90-CF-114 and 90-CR-177 are "separate" according to law. Therefore, the conditions of §301.46(2m)(am) have not been met, and the DOC's imposition of these SBN provisions upon me is without basis and in violation of law and my rights under the same.

On February 18, 2008, the DOC gave me notice that it intends to issue an SBN concerning my release from prison on April 22, 2008. I respectfully insist that the DOC fully establish its right to issue this 2-strike SBN under §301.46(2m)(am) concerning me, in a timely and meaningful manner (i.e., before the SBN is issued), or cease and desist from any and all SBN activities concerning me. Please provide the following in support:

(1) The DOC's official interpretation of "separate occasions" under §301.46(2m)(am) and its lawful source. (2) How the DOC applies the §301.46(2m)(am) "separate occasions" language to me. (3) Why the "separate occasions" language of §973.0135(1)(a) and §939.62(2m) must be rejected as an inferior interpretation of the "separate occasions" in §301.46(2m)(am). (4) Provide both the exact method and authority by which the DOC separates "occasions" under §301.46(2m)(am). (5) In light of the foregoing, please provide the authority and basis for the DOC's assertion on SBN form DOC-1748 that "previous criminal history places him in a classification level which reflects the potential to reoffend." (6) Please identify by case number, offense date, and conviction date the "previous criminal history"—the present criminal offense and the previous criminal offense referred to in SBN form DOC-1748 that supports this statement. (7) Will the DOC accept and hear a §227.41 Petition for Declaratory Ruling on this matter from me? (8) Will the DOC suspend any and all SBN activities until this matter is fully dealt with? Please answer all eight questions, referring to them by their number. Thank you.

Thank you for your attention to this matter. Given the limited timeframe, I respectfully request a response within 10 days. I look forward to your reply.

Sincerely,



Eric S. Rainbolt

c: Senator Carol Roessler
file

Jim Doyle
Governor

Rick Raemisch
Secretary



State of Wisconsin
Department of Corrections

Mailing Address

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April 3, 2008

Mr. Eric S. Rainbolt
P.O. Box 147
Fox Lake, Wisconsin 53933-0147

Re: Your letter dated March 25, 2008

Dear Mr. Rainbolt:

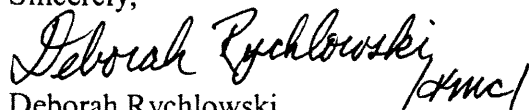
I am responding to your letter dated March 25, 2008 to Secretary Rick Raemisch, in care of myself, regarding Special Bulletin Notifications. You admit that you were convicted of sexual assault in case no. 1990CF000114 in Fond du Lac County. You admit that you were convicted of sexual assault in case no. 90-CR-177 on May 29, 1991 in Grant County. The DOC has determined that you have, on two or more separate occasions, been convicted of sexual assault. Therefore, DOC's previous responses to you that it is required to issue Special Bulletin Notifications about you are correct. DOC's previous responses to you that it has no discretion, but must issue Special Bulletin Notifications about you, are also correct.

The statutes you cite concern presumptive mandatory release statutes and when one may be charged as a repeat offender. Those statutes are not relevant to SBN notices.

As far as your request for a declaratory ruling under Sec. 227.41 Wis. Stats., please be advised that this section does not provide a method for review of a determination already made by an agency, but only a method for requesting an agency to make a determination. See *Aiello v. Litscher*, 104 Fed. Supp. 2d 1124 (2001). DOC has already determined that it has to issue an SBN in your situation. Thus, DOC will not entertain your request for a declaratory ruling.

If you have any questions or concerns, feel free to write or call me at (608) 240-5014.

Sincerely,


Deborah Rychlowski
Attorney

April 4, 2008

Eric S. Rainbolt
P.O. Box 147
Fox Lake, Wisconsin 53933-0147

Secretary Raemisch
Department of Corrections
P.O. Box 7925
Madison, Wisconsin 53707-7925

Re: 2/18/08 letter; 3/3/08 response; 3/25/08 redirect letter

Dear Secretary Raemisch:

On March 25, 2008 I sent you the attached letter in care of your previous designee, Ms. Deborah Rychlowski. That letter addresses the "two strike" §301.46(2m)(am) Special Bulletin Notice (SBN) your Department (DOC) is issuing concerning my release from prison on April 22, 2008. That letter asserts that the conditions of §301.46(2m)(am) have not been satisfied by my fact situation and that that law has not authorized the DOC to issue the SBN. Please review the attached letter for my entire position on the matter.

In addition, please consider the following:

See State v. Radke, 2003 WI 7, where the Supreme Court declared:

The "two strikes" law [applies]...when an offense is **committed** by a person with a particular criminal history. (P25)

[T]he "two strikes law" is...for those offenders who demonstrate that they have not been sufficiently deterred by **their first conviction**. (P28)

The "two strikes" law focuses on crimes of sexual conduct that victimize children who have **already been convicted of a similar crime**. (P30)

Please review your Department's own SBN and 'two strike' publications for they functionally equate the words "occasion" and "strike"; I have shown and established the same in my previous letters to the DOC. The DOC has declared and held that Case Nos. 90-CF-114 and 90-CR-177 are two occasions and two strikes. But 90-CF-114 and 90-CR-177 are **not** the "**separate** occasions" required by law. Your Department has declared that these cases constitute two "strikes" but they don't fit within the law that created and defined "two strikes" at §939.62(2m). I am not even a "prior offender" as defined in §973.0135(1)(a)—a law with similar "occasions" language. And the Supreme Court thrice explained in Radke, id., that two strikes involve a prior conviction and a new offense on a later date. My facts **absolutely do not** fit this description.

Your Department is in the process of issuing a two strike SBN concerning me. The conditions for this SBN have not been met; your Department is **not** authorized by law to issue this two strike SBN for 90-CF-114 and 90-CR-177 because those cases do not fit the two strikes law (§939.62(2m)), and they are **not** the "separate occasions" required by law. The DOC has no evidence of any sex offense committed by me after my first arrest on May 18, 1990, or after my first conviction on April 29, 1991. The DOC has disclosed **no** authority by which it determines "separate occasions". I have provided your Department with numerous legislative Acts, dates, statutes, and Supreme Court case law that all clearly explain that "two strikes" and "separate occasions" refer to a prior conviction and a new, subsequent sex offense, and have also clearly shown that this does not apply to my.

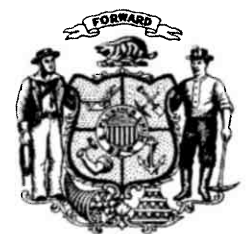
Again, I respectfully renew my request in my March 25, 2008 letter and its eight points and insist as a matter of law that your Department disclose and prove the authority by which the DOC has determined "**separate occasions**" (not just "occasions" as in the 3/3/08 response, but **separate** "occasions") and two "strikes" that is lawfully superior to that which has been presented to you in my 2/18/08, 3/25/08 and present letters to you, or, in the absence of this proper authority, that your Department cease and desist from all of your two strike SBN activities concerning me and retake any and all SBN documents that have been disseminated outside of the Department.

Thank you for your attention to this matter. I respectfully request your immediate response to this matter as failure to act timely on the Department's behalf may cause a violation of state law and in the process cause me irreparable harm. I look forward to your reply.

Sincerely,

Eric S. Rainbolt

c: file



June 20, 2008

Eric S. Rainbolt
457 Thomas Street
Fond du Lac WI 54935

Sen. Bob Jauch
ATTN: Ms. Sarah Barry
State Capitol, Room 118 South
PO Box 7882
Madison, WI 53707-7882

Re: 6-16-08 conversation; 6-19-08 failed fax transmission
Fond du Lac Co. Case No. 90-CF-114; Grant Co. Case No. 90-CR-177

Dear Ms. Barry,

Enclosed please find the remaining 7 pages of the fax transmission that failed on 6-19-08. Together, including the cover page, they should number 14 pages. (Ref: FAX, p. -) Also enclosed is the response I received from Rep. Townsend on this matter. While I appreciate his efforts, his response failed to address my reason for contacting legislators or to consider the reason why § 301.46(2m)(am) was created.

A § 301.46(2m)(am) Special Bulletin Notice ("SBN") is a dramatic and special declaration of public danger. It usually involves high-profile TV, radio, newspaper, and internet messages to the community. An 18 year old with no prior record (me in 1989) is being classified under this law with ch. 980 predators and the insane, because I crossed a county line; an 18 year old with exactly the same facts who did not cross a county line

would not be so classified and subjected to an SBN. A 70 year old man with 200 counts of sexual assault spanning 20 years would NOT have this "Separate occasions" SBN law applied to him, if all 200 counts were under one court case number, according to the DOC's stated interpretation of that law.

So no mandatory SBN for the old man with 200 counts and only one case number. Under the same scenario, if the old man had offended in two counties and was assigned two court case numbers, he would now be given a mandatory SBN. But, if the old man consolidated those cases under one number, that man would receive no mandatory SBN according to the Department of Corrections — one case number again.

A person with no prior record offends in two counties and that person is specially classified by the DOC with predators and the insane for a mandatory SBN of public danger — for life. But if that offender has remained within one county, or has consolidated several case numbers under § 971.12 the DOC states that the legislature intended that these jurisdictional particulars display no public danger that would mandate an SBN under the law. Either the legislature did intend the public danger SBN to hinge on a jurisdictional issue, and its lifetime application, or the DOC's "case number" interpretation of § 301.46(2m)(am)'s "separate occasions" is arbitrary, capricious, and violates legislative intent. This brings the next issue.

NO RULE BY DOC, IN VIOLATION OF LAW. Sec. 301.46(8) requires the DOC to promulgate rules to carry out its duties under subsec. (2m)(am). The DOC's

"case number" interpretation and policy concerning "separate occasions" under § 301.46(2m)(am) has not been promulgated as a rule in violation of § 227.10(1). The DOC may under § 227.24, or the JCRAR may order under § 227.26(2)(b), the promulgation of this DOC interpretation/policy as an emergency rule under § 227.26(2)(b), but please take notice that the rule would violate the equal protection/treatment provisions of both § 227.10(3)(c) and the constitutions, as the scenarios on pages 1-2 display. I would be required to file a formal complaint under § 227.26(2)(c) because that rule would cause me to be treated unequally with those persons under similar circumstances.

Rep. Townsend suggested in his response that I go to court, but I would much rather seek resolution of this matter at the lowest level possible. This matter is within the scope and authority of the JCRAR to act under at least 3 of the reasons at § 227.19(4)(d), including arbitrariness, capriciousness, and failure to comply with legislative intent.

LEGISLATIVE INTENT. It seems to me that the legislature intended a mandatory SBN for "separate occasions" to issue under § 301.46(2m)(am) for those offenders who meet the criteria of the felony repeater statute (2 and 3 "strikes" laws, § 939.62 [2m]) but were not subjected to its life-imprisonment provisions for whatever reason.

Rep. Townsend's response correctly noted that § 939.62 does not contain a specific definition for "separate occasions", but that definition is not necessary since § 939.62(2m)^(b) very clearly contains the legislature's method/procedure to "separate" occasions for felonies —

there must be a new offense date that occurs after a previous conviction date. This identifies a repeat sex offender, and it is this offender who is to be classified with the ch. 980 predators and the insane for a mandatory SBN for life under § 301.46(2m)(am) and lifetime GPS tracking under § 301.48.

Both Rep. Townsend and the DOC (see FAX, p. 12, ¶ 2) declare that § 939.62(2m) is not relevant to mandatory SBNs under § 301.46(2m)(am). But if it were true, that mandatory SBNs bear no relationship to the repeater statute (§ 939.62(2m), 2 & 3 "strike" law), then why does the DOC refer to "Two Strike Cases" in its official publication on mandatory SBNs (FAX, p. 3) and have blanks for 1ST STRIKE and "2ND STRIKE" on form DOC-1759 and other DOC forms and publications. I know of no other such "strikes" language from the law. The language for "strikes" was brought into Wisconsin law by Act of April 13, 1994, 1993 Wis. Act 289, § 16, 1993 Wis. Laws 1096. The language is the same for "two strike" sex offenses at 1997 Wis. Act 326, § 15, which became law on July 15, 1998. (As a side note, both of these "strike" laws allow for the counting of "priors," but the "activating" strike must come after the law's effective date, in 1994 and 1998, respectively; my convictions were 30 days apart in 1991 for 1989 offenses)

LAW REVIEW. An analysis of the "strikes" law was conducted by the Wisconsin Law Review at 1995 Wis. L. Rev. 933. At p. 944 it states: "The general public has made clear to these legislators that if a defendant already has been in the criminal justice system

and has not responded to treatment, then society owes that inmate nothing further." And at p. 949, n. 65, ¶ 2, "As one staffer explained to me, the law is designed to expose the 'worst of the worst.'" And it is this "worst of the worst" that the § 301.46(2m)(am) SBN law is trying to catch. That is why those persons described in § 301.46(2m)(am) are subject also to mandatory lifetime GPS tracking under § 301.48. I was 18; it was 1989; there was only one person my crime involved, just two counties. One county: no SBN, no GPS. Two counties: SBN and GPS for life. This what the "case numbers" interpretation of "separate occasions" results in. I believe the DOC is wrong.

SUPREME COURT'S CONSTRUCTION. The DOC has declared that I am a "Two Strike Case." See DOC letters and FAX, p. 3. Please consider the following recent case, State v. Radke, 2003 WI 7:

P 25 - The "two strikes" law [applies] ... when an offense is committed by a person with a particular criminal history.

P 28 - [T]he "two strikes law" is ... for those offenders who demonstrate that they have not been sufficiently deterred by their first conviction.

P 30 - The "two strikes" law focuses on crimes of sexual conduct that victimize children who have already been convicted of a similar crime.

The DOC says I am a "two strikes" case (see FAX, p. 3) because of 90-CF-114 and 90-CR-177, but my facts do not fit the "two strikes" law. For the DOC to use "specific" "strikes" language (FAX, p. 3) for an SBN,

and to simultaneously assert that the "strikes" (repeat offender) law is "not relevant to SBN notices," (FAX, p.12) ⁹² is nonsense and doublespeak. Mandatory SBNs and lifetime GPS tracking — just who is § 301.46(2m)(am) trying to describe and regulate if not the ch. 980 predators, the insane (NGI), and repeat offenders who meet the criteria of § 939.62(2m)(b)1. and 2., but were not charged with the same in their repeat offense?

This is why I need your help, Ms. Barry — the help of Sen. Jauch. Others with unwarranted SBNs because of "case numbers" need it too. How much time and money has been and will be wasted preparing and disseminating unneeded SBNs (meetings, distributions, police, TV, radio, newspaper, etc.) and 24-hour GPS tracking — for life^(#), based on the DOC's current interpretation?

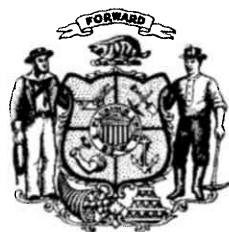
Bare bones. DOC was required to make a rule; it didn't. My attempts to address this issue straight and to the point have met with shifting sands. I believe § 301.46(2m)(am)'s "separate occasions" applies to those who meet § 939.62(2m)(b)'s criteria — to repeat offenders who have committed a new crime after having been already convicted. The DOC's "case number" view is over-simplified and applies a lifetime classification unequally to people with similar circumstances. The intervention of Sen. Jauch and the JCRAR is requested for rules and legislative oversight of DOC interpretations that they may conform to legislative intent. Thank you.

Sincerely,

Eric Scott Rainbolt



WISCONSIN STATE LEGISLATURE





JOHN TOWNSEND

STATE REPRESENTATIVE • 52ND DISTRICT

June 19, 2008

Eric Rainbolt
457 Thomas St
Fond du Lac, WI 54935

Dear Mr. Rainbolt:

Thank you for contacting my office to share your concerns about the Wisconsin Department of Corrections' decision to issue a special bulletin notification about you. I appreciate hearing from you.

As you know, section 301.46(2m)(am) of the Wisconsin Statutes requires the Department to issue a special bulletin notification to local law enforcement when a person who has been convicted of a sex offense on two separate occasions is released into a community. You were convicted of sexual assault in Fond du Lac County in April 1991, and then you were convicted of sexual assault in Grant County one month later. The convictions arose from separate incidents. The fact that you were originally charged for the Grant County assault in a Fond du Lac County court is irrelevant. You were convicted on two separate occasions, each for a different action. Therefore, section 301.46(2m)(am) applies to you, and the Department must issue the special bulletin notification.

You had indicated section 939.62 as grounds for your belief that you were not convicted on two separate occasions. However, section 939.62 does not address special bulletin notifications, nor does it define "separate" occasions. It applies only in cases where someone is to be tried as a repeat offender.

For these reasons, it appears that the Department's determination in your case is correct and that it must issue a special bulletin notification. As my office does not provide legal advice, you might want to get an attorney of your own if you still believe that the Department is wrong and wish to pursue this matter further.

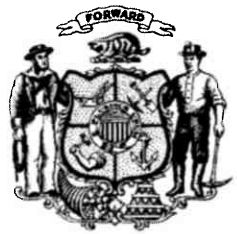
Once again, thank your for contacting my office. I hope you will continue to contact my office about issues that are important to you.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Townsend", with a large, stylized flourish at the end.

John F. Townsend
Wisconsin State Assembly
52nd Assembly District

JFT:mdp



Agenda - Decision item -

Fred Clark -

repeater
prior offender defined 929.622 M
973.0135 (1a)

Geri Reinbolt
- 457 Thomas Fordchula -

[301.46 (~~222~~)
2M, AU]

action taken - 227.10 -

980 predator cases
3rd par - can't pick
Bensez

action constitutes rule

- misinterpret clause

Dept corrections

- 37 years old, 18 sex offense - Fordchula
CO 1990 - grant CO picked up

2 case #s both COs -

- 13 years later - spe ball notification
law -

2 CO case #s -

arrested once - same incident

Sen Carol Roessler -

Separate court cases does not mean

rule - separate occasions -

~~separate court~~
case
incidents