

State of Wisconsin



1997 Assembly Bill 431

Date of enactment: **April 17, 1998**

Date of publication*: **May 1, 1998**

1997 WISCONSIN ACT 130

AN ACT *to renumber and amend* 51.20 (13) (ct) 1., 51.20 (13) (ct) 2., 301.45 (7) (c) 1. and 2., 938.34 (15m) (a), 938.34 (15m) (b), 971.17 (1m) (b) 1., 971.17 (1m) (b) 2., 973.048 (1) and 973.048 (2); *to amend* 301.45 (1) (intro.), 301.45 (1) (e), 301.45 (7) (c) (intro.) and 948.13 (2); and *to create* 51.20 (13) (ct) 3., 301.45 (1m), 301.45 (7) (c) 2m., 301.46 (2m) (at), 938.34 (15m) (c), 948.13 (2m), 971.17 (1m) (b) 3. and 973.048 (3) of the statutes; **relating to:** exempting certain persons from the sex offender registration requirements and the prohibition on child sex offenders working with children.

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

SECTION 1. 51.20 (13) (ct) 1. of the statutes, as created by 1995 Wisconsin Act 440, is renumbered 51.20 (13) (ct) 2m. and amended to read:

51.20 (13) (ct) 2m. If the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed a violation, or to have solicited, conspired or attempted to commit a violation, of s. 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the subject individual was not the victim's parent, the court shall require the individual to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the individual, that the individual is not required to comply under s. 301.45 (1m).

SECTION 2. 51.20 (13) (ct) 2. of the statutes, as created by 1995 Wisconsin Act 440, is renumbered 51.20 (13) (ct) 1m. and amended to read:

51.20 (13) (ct) 1m. Except as provided in subd. 4-2m., if the subject individual is before the court on a peti-

tion filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed any violation, or to have solicited, conspired or attempted to commit any violation, of ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the subject individual to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the subject individual report under s. 301.45.

SECTION 3. 51.20 (13) (ct) 3. of the statutes is created to read:

51.20 (13) (ct) 3. In determining under subd. 1m. whether it would be in the interest of public protection to have the subject individual report under s. 301.45, the court may consider any of the following:

- The ages, at the time of the violation, of the subject individual and the victim of the violation.
- The relationship between the subject individual and the victim of the violation.
- Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.
- Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

or permanently incapable of understanding or evaluating the consequences of his or her actions.

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

g. Any other factor that the court determines may be relevant to the particular case.

SECTION 4. 301.45 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Act 440, is amended to read:

301.45 (1) WHO IS COVERED. (intro.) ~~A~~ Except as provided in sub. (1m), a person shall comply with the reporting requirements under this section if he or she meets any of the following criteria:

SECTION 5. 301.45 (1) (e) of the statutes, as affected by 1995 Wisconsin Act 440, is amended to read:

301.45 (1) (e) Is ordered by a court under s. 51.20 (13) (ct) 1m, 938.34 (15m) (am), 971.17 (1m) (b) ~~2~~, 1m, or 973.048 (1m) to comply with the reporting requirements under this section.

SECTION 6. 301.45 (1m) of the statutes is created to read:

301.45 (1m) EXCEPTION TO REGISTRATION REQUIREMENT. (a) A person is not required to comply with the reporting requirements under this section if all of the following apply:

1. The person meets the criteria under sub. (1) (a) to (dh) based on any violation, or on the solicitation, conspiracy or attempt to commit any violation, of s. 948.02 (1) or (2) or 948.025 or of a law of another state that is comparable to s. 948.02 (1) or (2) or 948.025.

2. At the time of the violation, or of the solicitation, conspiracy or attempt to commit the violation, of s. 948.02 (1) or (2) or 948.025 or of a law of another state that is comparable to s. 948.02 (1) or (2) or 948.025, the person had not attained the age of 19 years and was not more than 4 years older or not more than 4 years younger than the child.

3. It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements under this section.

(b) If a person believes that he or she is not required under par. (a) to comply with the reporting requirements under this section and the person is not before the court under s. 51.20 (13) (ct), 938.34 (15m), 971.17 (1m) (b) or 973.048, the person may move a court to make a determination of whether the person satisfies the criteria specified in par. (a). A motion made under this paragraph shall be filed with the circuit court for the county in which the person was convicted, adjudicated delinquent, found in need of protection or services or found not guilty or not responsible by reason of mental disease or defect, except that if the person meets the criteria of sub. (1) (dh) the person shall file the motion in the circuit court for the county in which he or she resides.

(be) A person who files a motion under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of

whether the person is required to comply with the reporting requirements under this section shall send a copy of the motion to the district attorney for the county in which the motion is filed. The district attorney shall make a reasonable attempt to contact the victim of the crime that is the subject of the person's motion to inform the victim of his or her right to make or provide a statement under par. (bv).

(bm) A court shall hold a hearing on a motion made by a person under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section. The district attorney who receives a copy of a motion under par. (be) may appear at the hearing.

(bv) Before deciding a motion filed under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section, the court shall allow the victim of the crime that is the subject of the motion to make a statement in court at the hearing under par. (bm) or to submit a written statement to the court. A statement under this paragraph must be relevant to whether the person satisfies the criteria specified in par. (a).

(d) 1. Before deciding a motion filed by a person under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) requesting a determination of whether the person is required to comply with the reporting requirements under this section, a court may request the person to be examined by a physician, psychologist or other expert approved by the court. If the person refuses to undergo an examination requested by the court under this subdivision, the court shall deny the person's motion without prejudice.

2. If a person is examined by a physician, psychologist or other expert under subd. 1., the physician, psychologist or other expert shall file a report of his or her examination with the court, and the court shall provide copies of the report to the person and, if he or she requests a copy, to the district attorney. The contents of the report shall be confidential until the physician, psychologist or other expert has testified at the hearing held under par. (bm). The report shall contain an opinion regarding whether it would be in the interest of public protection to have the person register under this section and the basis for that opinion.

3. A person who is examined by a physician, psychologist or other expert under subd. 1. is responsible for paying the cost of the services provided by the physician, psychologist or other expert, except that if the person is indigent the cost of the services provided by the physician, psychologist or other expert shall be paid by the county. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), except that the person

shall be considered indigent without another determination under s. 977.07 (1) if the person is represented by the state public defender or by a private attorney appointed under s. 977.08.

(e) At the hearing held under par. (bm), the person who filed the motion under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m) (b) 2m. or 973.048 (2m) has the burden of proving by clear and convincing evidence that he or she satisfies the criteria specified in par. (a). In deciding whether the person has satisfied the criterion specified in par. (a) 3., the court may consider any of the following:

1. The ages, at the time of the violation, of the person and of the child with whom the person had sexual contact or sexual intercourse.
2. The relationship between the person and the child with whom the person had sexual contact or sexual intercourse.
3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the child with whom the person had sexual contact or sexual intercourse.
4. Whether the child with whom the person had sexual contact or sexual intercourse suffered from a mental illness or mental deficiency that rendered the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
5. The probability that the person will commit other violations in the future.
6. The report of the examination conducted under par. (d).
7. Any other factor that the court determines may be relevant to the particular case.

SECTION 7. 301.45 (7) (c) (intro.) of the statutes, as affected by 1995 Wisconsin Act 440, is amended to read:

301.45 (7) (c) (intro.) A person about whom information is maintained in the registry under sub. (2) may request expungement of all pertinent information in the registry ~~on if any of the grounds that his or her~~ following applies:

1m. The person's conviction, delinquency adjudication, finding of need of protection or services or commitment has been reversed, set aside or vacated.

(d) The department shall purge all of that the information maintained in the registry under sub. (2) concerning a person to whom par. (c) applies if the department receives all of the following:

SECTION 8. 301.45 (7) (c) 1. and 2. of the statutes, as affected by 1995 Wisconsin Act 440, are renumbered 301.45 (7) (d) 1. and 2., and 301.45 (7) (d) 2., as renumbered, is amended to read:

301.45 (7) (d) 2. A certified copy of the court order reversing, setting aside or vacating the conviction, delinquency adjudication, finding of need of protection or services or commitment or a certified copy of the court's determination under sub. (1m) (b).

SECTION 9. 301.45 (7) (c) 2m. of the statutes is created to read:

301.45 (7) (c) 2m. A court has determined under sub. (1m) (b) that the person is not required to comply with the reporting requirements under this section.

SECTION 10. 301.46 (2m) (at) of the statutes is created to read:

301.46 (2m) (at) Paragraphs (a) and (am) do not apply to a person if a court has determined under s. 301.45 (1m) that the person is not required to comply with the reporting requirements under s. 301.45.

SECTION 11. 938.34 (15m) (a) of the statutes, as created by 1995 Wisconsin Act 440, is renumbered 938.34 (15m) (bm) and amended to read:

938.34 (15m) (bm) If the ~~child~~ juvenile is adjudicated delinquent on the basis of a violation, or the solicitation, conspiracy or attempt to commit a violation, of s. 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the ~~child~~ juvenile was not the victim's parent, the court shall require the ~~person~~ juvenile to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under s. 301.45 (1m).

SECTION 12. 938.34 (15m) (b) of the statutes, as created by 1995 Wisconsin Act 440, is renumbered 938.34 (15m) (am) and amended to read:

938.34 (15m) (am) Except as provided in par. (a) ~~(bm)~~, if the ~~child~~ juvenile is adjudicated delinquent on the basis of any violation, or the solicitation, conspiracy or attempt to commit any violation, under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the ~~child~~ juvenile to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the ~~child~~ juvenile report under s. 301.45.

SECTION 13. 938.34 (15m) (c) of the statutes is created to read:

938.34 (15m) (c) In determining under par. (am) whether it would be in the interest of public protection to have the juvenile report under s. 301.45, the court may consider any of the following:

1. The ages, at the time of the violation, of the juvenile and the victim of the violation.
2. The relationship between the juvenile and the victim of the violation.
3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.
4. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily

or permanently incapable of understanding or evaluating the consequences of his or her actions.

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

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

SECTION 14. 948.13 (2) of the statutes is amended to read:

948.13 (2) Whoever has been convicted of a serious child sex offense and subsequently engages in an occupation or participates in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age is guilty of a Class C felony. This subsection does not apply to a person who is exempt under a court order issued under sub. (2m).

SECTION 15. 948.13 (2m) of the statutes is created to read:

948.13 (2m) (a) A person who has been convicted of a crime under s. 948.025 (1) may petition the court in which he or she was convicted to order that the person be exempt from sub. (2) and permitted to engage in an occupation or participate in a volunteer position that requires the person to work or interact primarily and directly with children under 16 years of age. The court may grant a petition filed under this paragraph if the court finds that all of the following apply:

1. At the time of the commission of the crime under s. 948.025 (1) the person had not attained the age of 19 years and was not more than 4 years older or not more than 4 years younger than the child with whom the person had sexual contact or sexual intercourse.

1m. The child with whom the person had sexual contact or sexual intercourse had attained the age of 13 but had not attained the age of 16.

2. It is not necessary, in the interest of public protection, to require the person to comply with sub. (2).

(b) A person filing a petition under par. (a) shall send a copy of the petition to the district attorney who prosecuted the person. The district attorney shall make a reasonable attempt to contact the victim of the crime that is the subject of the person's petition to inform the victim of his or her right to make or provide a statement under par. (d).

(c) A court may hold a hearing on a petition filed under par. (a) and the district attorney who prosecuted the person may appear at the hearing.

(d) Before deciding a petition filed under par. (a), the court shall allow the victim of the crime that is the subject of the petition to make a statement in court at any hearing held on the petition or to submit a written statement to the court. A statement under this paragraph must be relevant to the issues specified in par. (a) 1., 1m. and 2.

(e) 1. Before deciding a petition filed under par. (a), the court may request the person filing the petition to be examined by a physician, psychologist or other expert

approved by the court. If the person refuses to undergo an examination requested by the court under this subdivision, the court shall deny the person's petition without prejudice.

2. If a person is examined by a physician, psychologist or other expert under subd. 1., the physician, psychologist or other expert shall file a report of his or her examination with the court, and the court shall provide copies of the report to the person and, if he or she requests a copy, to the district attorney. The contents of the report shall be confidential until the physician, psychologist or other expert has testified at the hearing held under par. (c). The report shall contain an opinion regarding whether it would be in the interest of public protection to require the person to comply with sub. (2) and the basis for that opinion.

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

(f) The person who filed the petition under par. (a) has the burden of proving by clear and convincing evidence that he or she satisfies the criteria specified in par. (a) 1., 1m. and 2. In deciding whether the person has satisfied the criterion specified in par. (a) 2., the court may consider any of the following:

1. The ages, at the time of the violation, of the person who filed the petition and the victim of the crime that is the subject of the petition.

2. The relationship between the person who filed the petition and the victim of the crime that is the subject of the petition.

3. Whether the crime that is the subject of the petition resulted in bodily harm to the victim.

4. Whether the victim of the crime that is the subject of the petition suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the person who filed the petition will commit other serious child sex offenses in the future.

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

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

SECTION 16. 971.17 (1m) (b) 1. of the statutes, as created by 1995 Wisconsin Act 440, is renumbered 971.17 (1m) (b) 2m. and amended to read:

971.17 (1m) (b) 2m. If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the defendant was not the victim's parent, the court shall require the defendant to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the defendant, that the defendant is not required to comply under s. 301.45 (1m).

SECTION 17. 971.17 (1m) (b) 2. of the statutes, as created by 1995 Wisconsin Act 440, is renumbered 971.17 (1m) (b) 1m. and amended to read:

971.17 (1m) (b) 1m. Except as provided in subd. 4-2m., if the defendant under sub. (1) is found not guilty by reason of mental disease or defect for any violation, or for the solicitation, conspiracy or attempt to commit any violation, of ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the defendant to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the defendant report under s. 301.45.

SECTION 18. 971.17 (1m) (b) 3. of the statutes is created to read:

971.17 (1m) (b) 3. In determining under subd. 1m. whether it would be in the interest of public protection to have the defendant report under s. 301.45, the court may consider any of the following:

- a. The ages, at the time of the violation, of the defendant and the victim of the violation.
- b. The relationship between the defendant and the victim of the violation.
- c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.
- d. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
- e. The probability that the defendant will commit other violations in the future.
- g. Any other factor that the court determines may be relevant to the particular case.

SECTION 19. 973.048 (1) of the statutes, as created by 1995 Wisconsin Act 440, is renumbered 973.048 (2m) and amended to read:

973.048 (2m) If a court imposes a sentence or places a person on probation for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the person was not the victim's parent, the court shall require the person to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the person, that the person is not required to comply under s. 301.45 (1m).

SECTION 20. 973.048 (2) of the statutes, as created by 1995 Wisconsin Act 440, is renumbered 973.048 (1m) and amended to read:

973.048 (1m) Except as provided in sub. (1) (2m), if a court imposes a sentence or places a person on probation for any violation, or for the solicitation, conspiracy or attempt to commit any violation, under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the person to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the person report under s. 301.45.

SECTION 21. 973.048 (3) of the statutes is created to read:

973.048 (3) In determining under sub. (1m) whether it would be in the interest of public protection to have the person report under s. 301.45, the court may consider any of the following:

- (a) The ages, at the time of the violation, of the person and the victim of the violation.
- (b) The relationship between the person and the victim of the violation.
- (c) Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.
- (d) Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
- (e) The probability that the person will commit other violations in the future.
- (g) Any other factor that the court determines may be relevant to the particular case.