



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Sex Offender Restrictions and Requirements

Sex offenders are subject to numerous restrictions and requirements imposed by state law, local ordinances, and the Department of Corrections (DOC), the Parole Commission, or a court. The term “sex offender” in this Information Memorandum generally refers to an individual who commits certain sex-related crimes and must report information to the Wisconsin Sex Offender Registry.

This Information Memorandum addresses restrictions imposed on sex offenders, such as limits on where they may live, where they may go, and what jobs they may hold. It also addresses requirements applicable to sex offenders in Wisconsin, such as global positioning system (GPS) monitoring and reporting to the Wisconsin Sex Offender Registry.

This Information Memorandum does not address restrictions and requirements that apply to criminal offenders more broadly, such as disqualifications from voting, holding public office, or possessing a firearm.

#### **CLASSIFICATIONS OF SEX OFFENDERS**

The set of restrictions and requirements that apply to a sex offender depend upon whether the offender falls into particular categories. Certain restrictions or requirements do not apply to all sex offenders, but instead, apply only to a “serious child sex offender,” to a sex offender convicted of a “serious sex offense,” or to a “sexually violent person.”

“Serious child sex offender” has two different definitions depending on the statutory section at issue, but both definitions include offenders who commit specified sex crimes against children under age 13. [ss. 304.06 (1q) (a) and 980.01 (4m), Stats.] “Serious sex offense” has three different definitions, but all include a list of specified sex crimes. [ss. 302.116 (1) (a), 304.06 (2m) (a) and 939.615 (1) (b), Stats.]

“Sexually violent person” (SVP) means a sex offender who is subject to an involuntary civil commitment process under ch. 980, Stats., *after* completing his or her criminal sentence. To be deemed an SVP, a person must: (1) have been convicted of a sexually violent offense<sup>1</sup>; and (2)

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<sup>1</sup> An offender can also qualify as an SVP if the offender was adjudicated delinquent for a sexually violent offense (applies to a juvenile) or was found not guilty of a sexually violent offense by reason of insanity or mental disease, defect or illness. A “sexually violent offense” includes specified sex offenses, such as 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> degree sexual assault, as well as certain non-sex crimes that were sexually motivated. [s. 980.01 (6) and (7), Stats.]

be dangerous because he or she suffers from a mental disorder that makes it likely the person will engage in acts of sexual violence. A sex offender only becomes an SVP after a court determination in a Chapter 980 commitment proceeding. [ss. 980.01 (7) and 980.06 Stats.]

A Chapter 980 commitment proceeding is different than a criminal conviction. A commitment proceeding happens after a sex offender has been convicted of a crime and typically begins when the offender is nearing the end of his or her prison sentence. The Wisconsin Department of Justice or a district attorney initiates the proceeding by filing a petition with the court. A trial is held to determine whether the sex offender is an SVP. If found to be an SVP, the individual is committed to a secure mental health unit or facility under the care of the Department of Health Services (DHS). [ss. 980.02, 980.06, and 980.065, Stats.]

Chapter 980 commitment is not for a specified period of time. Instead, an SVP must be reexamined every year to determine if he or she still qualifies as an SVP, and if he or she should be discharged from commitment or placed on supervised release. [s. 980.07, Stats.]

Supervised release allows an SVP to live out in the community, but remain under the care and control of DHS. An SVP may be granted supervised release by a court, if the SVP files a petition and meets specific statutory criteria. If a court finds that an SVP qualifies for supervised release, the court chooses a county where the SVP will be placed. The county and DHS must prepare a report and identify a proposed residence for the SVP. [s. 980.08, Stats.]

### **AUTHORITIES IMPOSING REQUIREMENTS AND RESTRICTIONS**

The Legislature, local municipalities, DOC, the Parole Commission, and sentencing courts all impose restrictions and requirements on sex offenders. The Legislature enacts statutes that apply to sex offenders statewide, municipalities enact local ordinances that apply to sex offenders within a particular city, village, town or county, and DOC, the Parole Commission, and sentencing courts impose conditions or rules of supervision on individual sex offenders that only apply to a particular person. Conditions or rules of supervision are regulations which an offender must follow while in the community on probation, parole, or extended supervision.

Sex offenders who violate state law requirements and restrictions can face criminal penalties, while those who violate municipal ordinances can face forfeitures or injunctions. Sex offenders who violate conditions or rules of supervision imposed by DOC, the Parole Commission, or a sentencing court can face a range of sanctions, including being revoked and sent back to prison.

### **REQUIREMENTS AND RESTRICTIONS ON SEX OFFENDERS**

Sex offenders are subject to numerous requirements and restrictions. The restrictions include Sex Offender Registry reporting, residency restrictions, physical location restrictions, occupational restrictions, and behavioral restrictions. The requirements include GPS monitoring, lie detector testing, and chemical castration. Not all requirements and restrictions discussed below apply to every sex offender.

### ***SEX OFFENDER REGISTRY – REQUIREMENT TO REGISTER WITH DOC***

Sex offenders must “register” with the Wisconsin Sex Offender Registry by complying with requirements to regularly report certain information to DOC.<sup>2</sup> The registry is a catalogue of convicted sex offenders who reside in the state and contains information such as names and aliases, physical characteristics, residential address, place of employment, email and Internet profiles used by the offender, and sex-related crime of conviction. [s. 301.45 (2) (a), Stats., and s. DOC 332.04 (2), Wis. Adm. Code.]

Sex offenders must generally register for either 15 years after being discharged from parole or extended supervision, or for the offender’s lifetime. Lifetime sex offender registration applies to a person who has been: (1) convicted of a sex offense on two or more separate occasions; (2) convicted of certain sexual assault crimes; (3) committed as a sexually violent person under ch. 980, Stats.; or (4) ordered by a court to comply for life. A sex offender who intentionally fails to report or update required registry information is subject to criminal penalties. [s. 301.45 (5) (b) and (6) (a), Stats.]

The Wisconsin Sex Offender Registry provides public Internet access to some, but not all, information contained in the registry.<sup>3</sup> Information related to a particular sex offender is publicly available during the period that the offender is required to register.

### ***RESIDENCY RESTRICTIONS – LIMITS ON WHERE A SEX OFFENDER MAY LIVE***

State law, municipal ordinances, and DOC conditions of supervision all limit where certain sex offenders may reside, though most residency restrictions are imposed by municipalities.

#### ***Statewide Residency Restrictions***

State law imposes restrictions on where an SVP on supervised release may live, and on where DOC may initially place sex offenders released to parole or extended supervision. State law does not restrict where other sex offenders may live.

#### **Sexually Violent Persons**

The statutes restrict where an SVP on supervised release may live. State law requires a court granting supervised release to an SVP to place the SVP in his or her county of residence, unless the court has “good cause” for selecting a different county. State law does not define “good cause,” but provides that a lack of housing resulting from municipal ordinances does not qualify.

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<sup>2</sup> A person must generally register as a sex offender if he or she was convicted of a “sex offense,” or if he or she is subject to a court order requiring registration. A “sex offense” is one of more than 20 offenses identified in the statutes, and includes crimes such as first degree sexual assault, use of a computer to facilitate a child sex crime, and human trafficking. [s. 301.45 (1d) (b) and (1g), Stats.]

A person must register as a sex offender if ordered to do so by a court, even if the person did not commit a “sex offense.” A court may order a person to register for commission of a non-sex crime if all the following apply: (1) the offender committed certain crimes; (2) requiring the offender to register is in the interest of public protection; and (3) the offender’s conduct was sexually motivated. A person’s conduct is “sexually motivated” if the conduct was done for the person’s sexual arousal or gratification or for the sexual humiliation or degradation of the victim. [ss. 973.048 (1m) (a) and 980.01 (5), Stats.]

<sup>3</sup> The public may access the Wisconsin Sex Offender Registry at: <http://offender.doc.state.wi.us/public>.

State law also prohibits placement of an SVP within 1,500 feet of particular locations. The supervised release plan developed by DHS for an SVP must ensure that the proposed SVP residence is 1,500 feet or farther from any school premises, child care facility, public park, place of worship, or youth center.

If the SVP committed a sexually violent offense against an adult-at-risk or elder-at-risk, the plan must ensure the residence is at least 1,500 feet from a nursing home or assisted living facility. If the SVP is a serious child sex offender, the plan must ensure that the residence is not on a property adjacent to a child's primary residence, meaning that the properties share a property line (without regard to a road) if the living quarters are within 1,500 feet of one another. None of the prohibitions apply to an SVP who already resided in a location before a school, public park, child's residence, or other prohibited location was established within 1,500 feet. [s. 980.08 (4) (f) 2. to 4., Stats.]

### **Initial Placement of Other Sex Offenders**

The statutes also restrict where DOC may place any sex offender who is released to parole or extended supervision. DOC must place an offender who committed a "sex offense" in one of three locations: (1) the county where the offender resided when he or she committed the sex offense; (2) the county where the offender was convicted; or (3) a sex offender treatment facility. However, DOC cannot parole an offender who committed a "serious sex offense" in a county containing a prison offering a specialized sex offender treatment program (currently, Juneau, Racine, and Winnebago Counties), unless it is also the offender's county of residence. [ss. 301.03 (20) and 304.06 (2m) (b) and (c), Stats.]

The requirement for DOC to place an offender in one of the three noted locations only applies to initial placement. DOC can later authorize an offender to live in a location other than those listed. [s. 301.03 (20) (b), Stats.]

### ***Local Ordinance Residency Restrictions***

Local ordinances restrict where a sex offender may live within a particular city, village, town, or county. More than 150 municipalities in Wisconsin have enacted a sex offender residency restriction ordinance. Local ordinances typically prohibit a sex offender from residing within a specified distance of certain locations, such as schools, daycare centers, and playgrounds. Individual ordinances differ in which locations are prohibited, how far a sex offender must live from these locations, and the particular sex offenders to whom the ordinance applies.<sup>4</sup>

### ***DOC Residency Restrictions***

DOC rules of supervision restrict where a certain sex offender may live by requiring the offender to receive approval of his or her residence. Offenders who committed a "serious sex offense" must live in DOC-approved housing as a condition of extended supervision. [s. 302.116, Stats.] DOC must attempt to minimize the population density of sex offenders on supervision, which may factor into a DOC decision to approve or deny an offender's request to live in a particular residence. [s. 301.03 (19), Stats.] In addition, standard rules of supervision that DOC generally

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<sup>4</sup> Consult the local ordinances for the city, village, town, or county in which you live to determine where a sex offender is prohibited from living within your municipality or county.

applies to all sex offenders prohibit an offender from residing or staying overnight anywhere other than a pre-approved residence without prior approval.<sup>5</sup>

***PHYSICAL LOCATION RESTRICTIONS – LIMITS ON WHERE A SEX OFFENDER MAY GO***

State statutes, local ordinances, and DOC conditions of supervision prohibit sex offenders from being in certain locations. There are a few explicit limits on where a sex offender may go, and most are imposed by municipalities and DOC.

State law prohibits a registered sex offender from being on any school premises unless the offender first notifies the school. The sex offender must notify designated school officials of the specific date, time, and place of the visit and his or her status as a registered sex offender. [s. 301.475, Stats.]

Some local ordinances prohibit sex offenders from “loitering” in particular areas, typically those frequented by children. Individual ordinances differ in which locations are prohibited and the particular sex offenders to whom the prohibition applies.

DOC also imposes rules of supervision on offenders, which may include prohibiting an offender from going to certain locations, such as a victim’s home, job site, or school. These rules are specific to each individual sex offender.

***OCCUPATIONAL RESTRICTIONS – LIMITS ON WHAT JOBS A SEX OFFENDER MAY HOLD***

State law prohibits sex offenders from doing certain types of work. A sex offender convicted of a “serious child sex offense” cannot hold a job or volunteer position that requires the offender to work or interact primarily and directly with children under 16. [s. 948.13 (2) (a), Stats.] State law also prohibits a sex offender from providing paid martial arts instruction to a minor. A transportation network company, such as Uber, cannot employ a sex offender as a driver. [ss. 440.03 (17) (a) 1. a. and (b) and 440.445 (2) (a) 2. and 3., Stats.]

State law also makes sex offenders who committed certain offenses ineligible to receive many types of occupational licenses. For instance, sex offenders are ineligible for a license to operate a child care center or to drive a school bus if they commit sexual assault, child enticement, possession of child pornography, or other specified crimes. [ss. 48.65 (1), 48.685 (1) (c) and (2) (ar), and 343.12 (7) (c), Stats. and s. Trans 112.15 (1), Wis. Adm. Code.] A sex offender is also ineligible to receive other individual occupational licenses if that offender’s crime is determined to be “substantially related” to the work of the occupation, or if that offender’s crime is a felony and a felony conviction makes a person ineligible for a particular license.

***BEHAVIORAL RESTRICTIONS – RESTRICTIONS ON WHAT A SEX OFFENDER MAY DO***

Criminal laws prohibit sex offenders from engaging in certain behaviors that are permitted for other people. A sex offender cannot change his or her name or use a name other than one by

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<sup>5</sup> “Standard Sex Offender Rules of Supervision,” available on the DOC website at: <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/SupervisionRules.aspx>.

which he or she is identified with DOC. [s. 301.47, Stats.] In addition, a sex offender cannot photograph, film, or videotape a minor without parental written consent. [s. 948.14, Stats.]<sup>6</sup>

DOC also imposes rules of supervision that may prohibit a sex offender from engaging in certain behavior, such as having unsupervised contact with children. These rules are specific to each individual sex offender and typically relate to the particular offender's crime or situation.

#### ***REQUIREMENT FOR GPS MONITORING***

GPS tracking is mandatory for certain sex offenders, and is at the discretion of DOC for other sex offenders. Sex offenders who are SVPs or who commit particular types of child sex offenses are subject to GPS tracking for their entire lives.<sup>7</sup> Other sex offenders are subject to GPS tracking only if DOC determines it is appropriate using a standard risk assessment instrument used to evaluate the individual's risk of reoffending. [s. 301.48 (2) and (2g), Stats.]

Discretionary GPS tracking imposed on these sex offenders is a condition of supervision, so the length of time GPS is used varies for individual offenders. DOC also has a policy requiring homeless sex offenders on supervision to be on GPS monitoring for the period during which they are homeless. [Division of Community Corrections, Administrative Directive #15-12.]

Sex offenders on GPS tracking have their whereabouts monitored by DOC. If necessary to protect public safety, DOC creates "inclusion zones," zones an individual sex offender cannot leave, and "exclusion zones," zones an individual sex offender cannot enter except to travel through to get to another destination. "Exclusion zones" must focus on areas where children congregate and areas where the offender is prohibited from going as a condition of supervision. The DOC tracking system alerts DOC and local law enforcement if a sex offender leaves an inclusion zone or stays in an exclusion zone for too long. [s. 301.48 (3) (a) and (c), Stats.]

#### ***REQUIREMENT FOR LIE DETECTOR TESTING***

DOC can choose to subject sex offenders in its custody to lie detector testing.<sup>8</sup> DOC may require a sex offender to participate in a lie detector program as part of the offender's correctional programming or care and treatment, as a condition of supervision, or both. DOC selects individual sex offenders for lie detector testing based on an offender's criminal record of sexual offenses, adjustment under supervision, and compliance with programming, among other considerations. [s. 301.132, Stats., and s. DOC 332.17 (1), Wis. Adm. Code.]

Lie detector testing is used for specified purposes, such as holding a sex offender accountable for his or her behavior while on supervision, verifying the accuracy of information the sex offender self-reports, deterring the sex offender from re-offending, and identifying particular sex

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<sup>6</sup> As of the writing of this publication, s. 948.14, Stats., *Registered sex offender and photographing minors*, is not enforceable because the Wisconsin Court of Appeals held that the statute is unconstitutionally overbroad. [See *State v. Oatman*, 2015 WI App 76.]

<sup>7</sup> The lifetime GPS tracking requirement does not apply if: (1) DOC files a petition to terminate lifetime tracking and a court determines the offender is permanently physically incapacitated so that he or she is not a danger to the public; (2) the offender moves out of state; or (3) the offender files a petition requesting termination of lifetime tracking after 20 years and a court determines lifetime tracking is no longer necessary to protect the public. [s. 301.48 (6), (7), and (7m), Stats.]

<sup>8</sup> DHS can similarly choose to require an SVP to submit to lie detector testing as a condition of community placement. [s. 51.375, Stats., and ch. DHS 98, subch. V, Wis. Adm. Code.]

offenders who need more intensive supervision or treatment. Lie detector testing cannot be used as a punishment or sanction. [s. DOC 332.16, Wis. Adm. Code.]

***REQUIREMENT FOR CHEMICAL CASTRATION***

DOC or the Parole Commission can choose to require certain serious child sex offenders to undergo pharmacological treatment using an antiandrogen or chemical equivalent as a condition of parole. The requirement can only apply to sex offenders convicted of s. 948.02 (1) or (2), Stats., *Sexual Assault of a Child - 1<sup>st</sup> or 2<sup>nd</sup> Degree*, or s. 948.025 (1), Stats., *Repeated Acts of Sexual Assault of the Same Child*, against a child under 13 years old. [s. 304.06 (1q), Stats.] DOC reports that it currently offers such pharmacological treatment to qualifying individuals on supervision, but never requires offenders to receive it.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Katie Bender-Olson on October 25, 2017.

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