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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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IM-2024-08

### REGISTRATION AS A SEX OFFENDER

Wisconsin law requires a person to register as a sex offender in a variety of circumstances, including for committing a “sex offense.” A court may also order any person convicted of certain other crimes to register as a sex offender if the court determines that the person’s conduct was “sexually motivated” and that it would be in the interest of public protection to require the person to register. Generally, a person required to register must do so for 15 years, though in certain circumstances, a person must register for life. This information memorandum discusses the circumstances in which a person is required to register as a sex offender.<sup>1</sup>

### REGISTRATION REQUIREMENTS

State law makes sex offender registration mandatory for individuals convicted of sex offenses, and discretionary for individuals convicted of other offenses that were sexually motivated. Courts decide whether to require sex offender registration for non-sex offenses, such as battery, burglary, or kidnapping.

### When Registration is Required

A person can be required to register as a sex offender for a number of different reasons. Specifically, a person must register as a sex offender if he or she is any of the following:

- **Sex Offense.** Convicted or adjudicated delinquent for a sex offense, as defined below.
- **Comparable Offense.** In custody or on supervision for a sex offense or for a violation, or for the solicitation, conspiracy, or attempt to commit a violation, of a law of this state that is comparable to a sex offense.
- **Not Guilty by Reason of Mental Disease or Defect.** Found not guilty or not responsible by reason of mental disease or defect (NGI) and committed under an involuntary health commitment or as a consequence of being found not guilty or not responsible by reason of mental disease or defect.
- **Mental Health Conditional Release.** In institutional care or on conditional transfer from a mental health facility or conditional release from a commitment resulting from a finding of NGI for a sex offense or for a violation that is comparable to a sex offense.
- **Supervision in Wisconsin for Out-of-State Sex Offense.** On parole, extended supervision, or probation in Wisconsin from another state for a violation, or for the

The requirement to register as a sex offender is a consequence of a conviction for a sex offense.

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<sup>1</sup> For more information on the restrictions and requirements of registration, see *Legislative Council, Sex Offender Restrictions and Requirements*, [Information Memorandum](#) (March 23, 2021) and *Sex Offender Residency Restrictions*, [Issue Brief](#) (March 2021).

solicitation, conspiracy, or attempt to commit a violation, of a law that is comparable to a sex offense.

- **Interstate Compact on Placement of Juveniles.** A juvenile in Wisconsin and is on supervision from another state pursuant to the Interstate Compact on the Placement of Juveniles for a violation of a sex offense.
- **Lifetime Supervision.** Placed on lifetime supervision for serious sex offenders, as described below.
- **Chapter 980 Commitment.** In institutional care or on conditional release as a sexually violent person under ch. 980, Stats.
- **Court Order.** Ordered by a court to register as a sex offender under the court's discretionary authority to order registration for certain non-sex offenses, as described in more detail below.
- **Juvenile in Need of Protection or Services.** Required to register based on a finding that he or she was a juvenile in need of protection or services for having committed a sex offense, and is ordered to continue complying with registration requirements.
- **Out-of-State Sex Offender.** Registered as a sex offender in another state or with the Federal Bureau of Investigation and is a resident of Wisconsin, a student in Wisconsin, or employed or carrying on a vocation in Wisconsin.
- **Out-of-State Sex Offense.** A resident of Wisconsin, a student in Wisconsin, or employed or carrying on a vocation in Wisconsin and has been found to have committed a sex offense in another jurisdiction. This provision does not apply if 10 years have passed since the date on which the person was released from prison or placed on parole, probation, extended supervision, or other supervised release for the sex offense.

The term "sex offense,"<sup>2</sup> as used above, means any of the following:

- Sexual exploitation by a therapist. [s. 940.22 (2), Stats.]
- First-, second-, or third-degree sexual assault. [s. 940.225 (1), (2), or (3), Stats.]
- Incest. [s. 944.06, Stats.]
- Bestiality. [s. 944.18, Stats.]
- First- or second-degree sexual assault of a child. [s. 948.02 (1) or (2), Stats.]
- Engaging in repeated acts of sexual assault of the same child. [s. 948.025, Stats.]
- Sexual exploitation of a child. [s. 948.05, Stats.]
- Trafficking of a child. [s. 948.051, Stats.]
- Causing a child to view or listen to sexual activity. [s. 948.055, Stats.]
- Incest with a child. [s. 948.06, Stats.]
- Child enticement (causes or attempts to cause having sexual contact or sexual intercourse with child; causing child to engage in prostitution; exposing or causing child to expose genitals, pubic area, or intimate parts to child; recording child engaging in sexually explicit conduct). [s. 948.07 (1) to (4), Stats.]

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<sup>2</sup> The definition of "sex offense" includes a violation or the solicitation, conspiracy, or attempt to commit any of the listed crimes.

- Use of computer to facilitate child sex crime. [s. 948.075, Stats.]
- Soliciting a child for prostitution. [s. 948.08, Stats.]
- Sexual assault of a child placed in substitute care. [s. 948.085, Stats.]
- Sexual assault of a child by school staff person or person who works or volunteers with children. [s. 948.095, Stats.]
- Exposing child to harmful material (under certain conditions). [s. 948.11 (2) (a) or (am), Stats.]
- Possession of child pornography. [s. 948.12, Stats.]
- Working with children as child sex offender. [s. 948.13, Stats.]
- Abduction of another's child. [s. 948.30, Stats.]
- Human trafficking for purposes of a commercial sex act. [s. 940.302 (2) (a) 1. b., Stats.]
- False imprisonment and kidnapping, if the victim was a minor and the person who committed the offense was not the victim's parent. [s. 940.30 or 940.31, Stats.]

[s. 301.45 (1d) and (1g), Stats.]

## When Registration May be Ordered

Additionally, a court may order any person convicted of certain crimes other than the sex offenses listed above to register as a sex offender, if the court determines that the person's conduct was "sexually motivated" and that it would be in the interest of public protection to require the person to report.

### Applicable Offenses

Specifically, with certain findings as described below, a court may order a person to register as a sex offender if the person has been convicted of<sup>3</sup> any of the following:

- **Crimes against Life or Bodily Security.** Any crime under ch. 940, Stats.
- **Crimes against Sexual Morality.** Any crime under ch. 944, Stats.
- **Crimes against Children.** Any crime under ch. 948, Stats.
- **Invasion of privacy.** [s. 942.08, Stats.]
- **Depiction of Nudity.** Capturing, reproducing, possessing, distributing, or exhibiting an intimate representation depicting nudity. [s. 942.09, Stats.]

A court may order a person convicted of a non-sex offense to register as a sex offender if the court determines that the person's conduct was sexually motivated and that registration is in the interest of public protection.

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<sup>3</sup> Specifically, a court may make this order if it imposes a sentence or places a person on probation for any violation, or for the solicitation, conspiracy, or attempt to commit any violation, of one of the listed offenses. A court may also make this order for a person who is any of the following: (1) a juvenile subject to a petition for involuntary commitment for treatment and found to have committed one of the offenses listed; (2) adjudicated delinquent on the basis of one of the offenses listed; (3) a juvenile found to be in need of protection or services on the basis of one of the offenses listed; or (4) found NGI for one of the offenses listed. [ss. 51.20 (13) (ct) 1m., 938.34 (15m) (am), 938.345 (3), and 971.17 (1m) (b), Stats.]

- **Certain Property Crimes.** Certain violations of ch. 943, Stats., such as burglary and criminal damage to property. [ss. 943.01 to 943.15, Stats.]

### **Required Findings**

For a person convicted of one of the offenses listed above, the court may require the person to register a sex offender if the court makes two findings: that the person's conduct was sexually motivated and that it would be in the interest of public protection to require the person to report.

An act is "sexually motivated" if one of the purposes for the act is the actor's sexual arousal or gratification or the sexual humiliation or degradation of the victim. [ss. 973.048 (1m) (a) and 980.01 (5), Stats.]

When determining whether ordering a person to report is in the interest of public protection, a court may consider the following factors:

- The ages of the person and victim at the time of the violation.
- The relationship between the person and the victim.
- Whether the victim suffered bodily harm.
- 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.
- The probability that the person will commit other violations in the future.
- Any other factor the court determines to be relevant to the particular case.

[s. 973.048 (3), Stats.]

### **Exceptions to Registration Requirement**

State law exempts a person convicted of a sex offense from the registration requirement in certain situations. One exemption applies to certain young offenders; the other applies to privacy-related offenses.

#### **Underage Sexual Activity**

A person who engaged in certain underage sexual activity may be exempted from the registration requirement, if he or she meets either of two sets of criteria.

First, a person who meets all of the following criteria may be exempt:

- The person meets the criteria for registration based on a violation of first or second degree sexual assault of a child, engaging in repeated sexual assault of a child, or sexual assault of a child placed in a shelter care facility, group home, or residential care facility.
- The violation did not involve sexual intercourse by the use or threat of force or violence or with a victim under the age of 12.
- At the time of the violation, the person was 18 or younger and not more than four years older or younger than the victim.
- It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements.

Alternatively, a person who meets all of the following criteria may be exempt:

- The person was convicted of third degree sexual assault (sexual intercourse without consent).
- At the time of the violation, the person was 18 or younger and the victim was at least 15.
- It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements.

A person who believes he or she is not required to comply with the reporting requirements under either set of criteria above may file a motion with the court; the court must hold a hearing on a motion for an exemption. At the hearing, the person requesting the exemption must prove by clear and convincing evidence that he or she has satisfied the required criteria for exemption. In deciding whether it is not necessary, in the interest of public protection, to require a person to comply with the reporting requirements, a court may consider the following factors:

- The ages, at the time of the violation, of the person and of the victim.
- The relationship between the person and the victim.
- Whether the violation resulted in bodily harm to the victim.
- 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.
- The probability that the person will commit other violations in the future.
- The report of any examination by a physician, psychologist, or other court-approved expert.
- Any other factor that the court determines may be relevant to the particular case.

[s. 301.45 (1m), Stats.]

### **Privacy-Related Offenses**

A person who would be required to register due to being adjudicated delinquent or convicted of certain violations of invasion of privacy but has his or her adjudication or conviction expunged is exempted from the registration requirement. [s. 301.45 (1p) (a), Stats.]

Similarly, if the person was under the age of 21 at the time of violating s. 942.09 (representations depicting nudity), the court may provide that the person be released from the reporting requirement upon satisfying any court order or dispositional order or successfully completing his or her sentence or probation. A person successfully completes a sentence if he or she is not convicted of a subsequent offense during the term of the sentence; a person successfully completes probation if probation is not revoked and the person satisfies the conditions of probation. [ss. 301.45 (1p) (b) and 973.048 (1m) (b), Stats.]

## **RELEASE FROM REGISTRATION REQUIREMENTS**

Generally, a person who is required to register as a sex offender must register for 15 years following release from prison, discharge from probation or supervision, or disposition, whichever is later. [s. 301.45 (5) (a), Stats.]

Generally, a person subject to the registration requirements must register for 15 years, though under certain circumstances, a person may be required to register for life.

Some people, however, are required to register for life. Specifically, the lifetime registration requirement applies to anyone who has been:

- Convicted or found not guilty or not responsible by reason of mental disease or defect of a sex offense two or more times, including convictions that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint.<sup>4</sup>
- Convicted or found not guilty or not responsible by reason of mental disease or defect of any of the following offenses: (1) first-degree sexual assault; (2) second-degree sexual assault; (3) first degree sexual assault of a child; (4) second-degree sexual assault of a child; (5) engaging in repeated acts of sexual assault of the same child; or (6) sexual assault of a child placed in a shelter care facility, group home, or residential care center.
- Found to be a sexually violent person under ch. 980, Stats.
- Ordered by a court to report for life in certain types of proceedings or in the court's discretion.
- Ordered by a court to be subject to lifetime supervision by the Department of Corrections (DOC) due to a conviction for a serious sex offense.<sup>5</sup>

[ss. 301.45 (5) (am) and (b) and 939.615, Stats.]

A person may petition for termination of lifetime supervision with the court that ordered the supervision under certain circumstances. If the court grants the petition requesting termination, it may also order that the person is no longer required to comply with the reporting requirements. [s. 939.615, Stats.]

This information memorandum was prepared by Tom Koss, Staff Attorney, on June 17, 2024.

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<sup>4</sup> This provision was changed in 2023 Wisconsin Act 254. For determinations made prior to September 2, 2017, this provision applied to a person who “has, on 2 or more separate occasions, been convicted” of a sex offense.

<sup>5</sup> A court may order a person who has been convicted of a “serious sex offense” be placed on lifetime supervision by DOC, if the court finds that lifetime supervision is necessary to protect the public. A person subject to lifetime supervision is subject to the control of DOC under conditions set by the court and regulations established by DOC that “are necessary to protect the public and promote the rehabilitation of the person placed on lifetime supervision.” The statutes also establish a process for a person to request termination of lifetime supervision and sex offender registration.