



## Sex Offender Residency Restrictions

Prepared by: Katie Bender-Olson, Senior Staff Attorney

Although community members often object when a sex offender moves in nearby, a sex offender may live in any location unless there is a law, ordinance, or rule that specifically prohibits it. State laws, municipal ordinances, and conditions the Department of Corrections (DOC) imposes on individual sex offenders do limit where sex offenders may live. However, whether a particular sex offender may live in a location largely depends on the category of offender and the community where the offender resides.

### CATEGORY OF SEX OFFENDER

The term “sex offender” generally refers to a person convicted of particular sex-related crimes who is required to register with the Wisconsin Sex Offender Registry.<sup>1</sup> There is a small subset of sex offenders called “sexually violent persons” (SVP) who are subject to an involuntary civil commitment process under ch. 980, Stats., after completing their criminal sentences.<sup>2</sup> The sex offenders deemed SVPs by a court are confined in a Department of Health Services (DHS) secure treatment center after being released from state prison.

A court may eventually discharge an SVP or grant the SVP supervised release, if the SVP files a petition and meets specific statutory criteria. Supervised release allows an SVP to live in the community, but remain under the care and control of DHS. If a court finds the SVP qualifies for supervised release, the court orders the SVP’s county of residence to prepare a report identifying appropriate housing for the SVP within that county.<sup>3</sup> Different residency restrictions apply to a sex offender who is an SVP than to other sex offenders.

### LOCAL ORDINANCES RESTRICT WHERE MANY SEX OFFENDERS LIVE

Local governments impose most of the existing residency restrictions on sex offenders. This means limitations vary depending on the city, village, town, and county in which a sex offender resides.

A municipality or county can enact an ordinance restricting where a sex offender may live within a particular jurisdiction. More than 150 municipalities in Wisconsin have enacted a sex offender residency restriction ordinance. These local ordinances typically prohibit a sex offender, or particular type of sex offender (e.g. “serious child sex offender”), from residing within a certain distance of identified locations like schools, playgrounds, and day care centers. Sex offender residency restriction ordinances vary and exist more often in cities and villages than in townships.

Local ordinances that are too restrictive may be subject to legal challenges. Ordinances that severely limit the geographic areas within a municipality where a sex offender could legally reside have occasionally been invalidated by courts.<sup>4</sup>

### STATE LAW IMPOSES FEW LIMITS ON WHERE SEX OFFENDERS LIVE

Wisconsin statutes do not limit where most sex offenders may live. State law restricts only where an SVP on supervised release may live, and where DOC may initially place sex offenders released to parole or extended supervision.

### Restrictions on SVPs on Supervised Release

A court may grant an SVP supervised release to live in the community, but the SVP must live in a particular location identified by his or her county of residence and approved by the court. State law prohibits the residence from being within 1,500 feet of 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.<sup>5</sup>

## Restrictions on Newly Released Sex Offenders

State law restricts where DOC may place a sex offender upon his or her initial release into the community on 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.<sup>6</sup> 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.<sup>7</sup> 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 unless it is also the offender's county of residence.<sup>8</sup>

## DOC RESTRICTS WHERE INDIVIDUAL SEX OFFENDERS LIVE

DOC rules of supervision restrict where a certain sex offender may live by requiring the offender to receive approval of his or her residence. DOC has authority to impose conditions or rules that a particular offender must follow while on probation, parole, or extended supervision in the community.

Offenders who committed a "serious sex offense" must live in DOC-approved housing as a condition of extended supervision.<sup>9</sup> DOC must also attempt to minimize the population density of these offenders who are on supervision, which may factor into a DOC decision to approve or deny an offender's request to live in a particular residence.<sup>10</sup> In addition, standard rules of supervision that DOC generally applies to all sex offenders prohibit an offender from residing or staying overnight anywhere other than a preapproved residence without prior approval.<sup>11</sup>

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<sup>1</sup> The [Wisconsin Sex Offender Registry](#) is a DOC registry of convicted sex offenders residing in the state. The registry permits public access to certain information about sex offenders, including the offender's name, address, picture, and offense. [ss. 980.01 (7) and 980.06, Stats.]

<sup>2</sup> To be deemed an SVP, a person must: (1) have been convicted of a sexually violent offense; and (2) 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 ch. 980 commitment proceeding. 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 first-, second-, or third-degree sexual assault, as well as certain other crimes that were sexually motivated. [s. 980.01 (6) and (7), Stats.]

<sup>3</sup> The county must form a committee to identify housing somewhere in the county. However, if the SVP's county of residence is Milwaukee County, then the committee must identify housing in the SVP's city, village, or town of residence. [s. 980.08 (4) (dm) 1., Stats.]

<sup>4</sup> See, e.g., *Hoffman v. Village of Pleasant Prairie*, 249 F. Supp. 3d 951 (E.D. Wis. 2017) (U.S. District Court in Wisconsin found village ordinance violated the Ex Post Facto and Equal Protection Clauses of the U.S. Constitution); *Evenstad v. City of West St. Paul*, 306 F. Supp. 3d 1086 (D. Minn. 2018) (U.S. District Court in Minnesota granted preliminary injunction against city ordinance based on balance of equities and conclusion that ordinance is excessive in relation to its stated purpose).

<sup>5</sup> s. 980.08 (4) (dm) 1., Stats.

<sup>6</sup> s. 301.03 (20) (a), Stats.

<sup>7</sup> s. 301.03 (20) (b), Stats.

<sup>8</sup> The restriction is specific to "paroling" a sex offender, meaning it only applies to offenders committing their offenses prior to January 1, 2000. [s. 304.06 (2m) (b) and (c), Stats.]

<sup>9</sup> s. 302.116, Stats.

<sup>10</sup> s. 301.03 (19), Stats.

<sup>11</sup> Item #4, [Standard Sex Offender Rules of Supervision](#).