



WISCONSIN LEGISLATIVE COUNCIL
PROPOSED REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
REVIEW OF CRIMES AGAINST
CHILDREN

March 1, 2007

PRL 2007-03

Special Committee on Review of Crimes Against Children

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATION

The Special Committee on Review of Crimes Against Children recommends the following bill draft to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature.

LRB-1721/1, Relating to Crimes Against Children and Providing Penalties

LRB-1721/1, relating to crimes against children, does all of the following:

- Reconciles the provisions of 2005 Wisconsin Acts 430, 431, and 437 relating to the offense of first-degree sexual assault of a child and global positioning system (GPS) tracking for persons convicted of first-degree sexual assault of a child.
- Specifies that mandatory minimum terms of confinement in prison for first-degree sexual assault of a child do not apply if the offender was under 18 years of age at the time of the violation.
- Clarifies that harm to the victim caused by the offender at the time of a first-degree sexual assault of a child, and not necessarily caused by the sexual intercourse or contact, would satisfy the great bodily harm element under s. 948.02 (1) (a), Stats., as affected by 2005 Wisconsin Act 437.
- Eliminates the separate definition of “sexual intercourse” that was created by 2005 Wisconsin Act 430 for prosecutions for first-degree sexual assault of a child, but maintains this definition for purposes of GPS tracking requirements.
- Reconciles provisions of 2005 Wisconsin Acts 60 and 276, relating to the time limits for commencing a prosecution of first-degree sexual assault of a child and the various offenses of engaging in repeated acts of first-degree sexual assault of a child.
- With two exceptions, eliminates the prohibition against prosecutors charging a violation of engaging in repeated acts of sexual assault of the same child in the same action as other offenses listed under s. 948.025 (3), Stats.
- Changes the penalty for intentionally causing great bodily harm to a child from a Class E felony to a Class C felony.
- Modifies the offense of soliciting a child for prostitution to prohibit intentionally soliciting or causing any child to engage in an act of prostitution.
- Creates separate penalty classes for neglect of a child and leaving a child unattended in a child care vehicle when bodily harm or great bodily harm result.
- Requires the court to order a presentence investigation report that includes an assessment of the risk of the defendant committing another sex-related crime against a child in certain cases.
- Removes the offenses of child enticement with the intent to cause bodily or mental harm to a child and child enticement with intent to give or sell a controlled substance or controlled

substance analog to a child from the list of offenses requiring mandatory sex offender registration.

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Review of Crimes Against Children and appointed the chairperson by a June 9, 2006 mail ballot. The committee was directed to review current crimes against children under ch. 948, Stats., that relate to child pornography, communicating with a child over a computerized communications system, sex offenders working or volunteering with children, and sexual assault of a child to determine whether these statutes should be clarified and whether the penalties for these offenses are consistent and appropriate. The charge also provided that recodifying other portions of ch. 948, Stats., could also be considered.

Membership of the Special Committee, appointed by an August 1, 2006 mail ballot, consisted of two Senators, five Representatives, and six public members. A list of committee members is included as *Appendix 3* to this report.

Summary of Meetings

The Special Committee held three meetings in Madison on the following dates:

October 4, 2006
November 15, 2006
December 14, 2006

At the October 4, 2006 meeting, the committee reviewed background material prepared by Legislative Council staff which summarized sex-related crimes against children under current law, the changes that were made to these crimes during the 2005-06 Legislative Session, and inconsistencies that were created in s. 948.02, Stats. (sexual assault of a child), as a result of those changes. The committee discussed multiple issues related to this statutory section, including the use of “great bodily harm” as an element of the most aggravated form of child sexual assault, the age structure for various forms of first-degree sexual assault, and the use of a separate definition of “sexual intercourse” for first-degree sexual assault of a child.

The committee also discussed the statute of limitations (SOL) for child sexual assault crimes and inconsistencies created in the SOL by recent enactments. The committee decided to explore options for dealing with the effects of extended or eliminated SOLs on child offenders and the prosecution of crimes related to an underlying sexual assault.

Topics to be considered at future meetings were also identified and include the addition of an aggravated offense under the child pornography statute, changes to the repeat offense enhancer, an additional category of child neglect triggered by some measure of physical harm to the victim, uniformity of penalties, child offenders, crimes triggering sex offender registration, predators using popular web sites, and disseminating sex offender information to the public.

At the November 15, 2006 meeting, the Special Committee heard testimony from the following invited speakers: Dr. Anna Salter, psychologist, Tony Streveler, Policy Initiatives Advisor, Bill Grosshans, Assistant Administrator, Division of Community Corrections, Melissa Roberts, Director of Sex Offender Programs, Department of Corrections (DOC), and Thomas Fallon, Assistant Attorney General, Department of Justice (DOJ).

Dr. Salter described the main types of child sex offenders, risk factors for recidivism, risk assessment tools, and treatment benefits. She suggested that the state focus resources on the offenders who are at the highest risk to re-offend and recommended more treatment and assessment resources for other offenders. Mr. Streveler provided the committee with details on recidivism rates for both child sex-related crimes and other crimes. The committee discussed the relative rates of recidivism for types of crimes other than child sex crimes, female sex offenders, and the type of treatment offenders receive in prisons that are not specialized to house sex offenders.

Melissa Roberts and Bill Grosshans noted that the sex offender placement program in Wisconsin is often looked upon by other states as a national model. They showed a slideshow presentation which provided statistics on the number of offenders in Wisconsin at various stages of supervision, supervision strategies, assessment of offenders, case management and tools, registration of offenders, noncompliance with registration, and other issues.

Mr. Fallon discussed statistics regarding the reporting and substantiation of reports of child sexual abuse and other statistics. He suggested that the committee consider requiring a presentence investigation for all sex offenses, make modification to other statutes such as possession of child pornography, child prostitution, and neglect of a child. He noted that Wisconsin has become a leader in arresting, training officers, forensic exams, and identifying victims of Internet offenses, but that the state could do more with increased resources. The committee also discussed new ways the state could approach incarceration of sex offenders, with a new focus on utilizing emerging research in order to direct resources where they can provide the most benefit.

At the December 14, 2006 meeting, the committee discussed draft legislation that had been requested by the committee and prepared by Legislative Council staff, and decided which provisions to change and which to include in the committee's final proposal. The committee agreed to include all of the agreed-upon proposals into one bill draft for the committee to vote on by mail ballot.

PART III

RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the bill draft as recommended by the Special Committee on Review of Crimes Against Children.

Reconciliation of 2005 Wisconsin Acts 430, 431, and 437

Background

In the 2005-06 Legislative Session, two acts, 2005 Wisconsin Acts 430 and 437, modified the offense of first-degree sexual assault of a child. 2005 Wisconsin Act 431 created provisions to require GPS tracking for certain offenders convicted of first-degree sexual assault of a child. The Revisor of Statutes has determined that provisions of these acts are mutually inconsistent.

2005 Wisconsin Act 430 (“Act 430”), commonly referred to as “Jessica’s Law,” modified the offense of first-degree sexual assault of a child as follows:

- Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony and is subject to a mandatory minimum term of confinement in prison of 25 years.
- Whoever has sexual intercourse with a person who has not attained the age of 16 years by the use or threat of force or violence is guilty of a Class B felony and is subject to a mandatory minimum term of confinement in prison of 25 years.
- Whoever has sexual contact with a person who has not attained the age of 16 years by the use or threat of force or violence if the actor is at least 18 years of age when the sexual contact occurs is guilty of a Class B felony and is subject to a mandatory minimum term of confinement in prison of five years.
- Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony.

Act 430 also created a new definition of “sexual intercourse” for purposes of the offense of first-degree sexual assault of a child. Under the act, “sexual intercourse” means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of an inanimate object into the genital or anal opening either by the defendant or upon the defendant’s instruction. The emission of semen is not required. Under prior law, “sexual intercourse” for purposes of the offense of first-degree sexual assault of a child was the same as the general definition, for other sexual assault crimes, and also included the intrusion, however slight, of any part of a person’s body into the genital or anal opening either by the defendant or upon the defendant’s instruction.

2005 Wisconsin Act 437 (“Act 437”) modified the offense of first-degree sexual assault of a child so that it is a Class B felony to have sexual contact or sexual intercourse with a person who is under 13 years of age and it is a Class A felony to have sexual contact or sexual intercourse with a person who is under 13 years of age if the sexual contact or sexual intercourse resulted in great bodily harm.

2005 Wisconsin Act 431 (“Act 431”), effective July 1, 2007, requires GPS tracking for certain sex offenders, including persons found to have committed first-degree sexual assault of a child as follows: (a) the person had sexual intercourse with a person under 12 years of age; (b) the person had sexual intercourse by use or threat of force or violence with a person under 16 years of age; or (c) the person had sexual contact by use or threat of force or violence with a person under 16 years of age and the person was 18 years of age or older at the time of the offense.

Committee members raised concerns about applying a 25-year mandatory minimum prison term to offenders under 18 years old. Committee members also discussed possible increases in litigation and confusion relating to having a separate definition of “sexual intercourse” that applies only to the offense of first-degree sexual assault of child.

Description

The bill draft reconciles the provisions of 2005 Wisconsin Acts 430, 431, and 437. The bill draft also makes the following substantive changes to these provisions:

- Under the bill draft, mandatory minimum terms of confinement in prison for first-degree sexual assault of a child do not apply if the offender was under 18 years of age at the time of the violation.
- The bill draft modifies the offense created by 2005 Wisconsin Act 437 to clarify that the great bodily harm need not result from the sexual intercourse or contact. Under the bill draft, a person is guilty of a Class A felony if the person has sexual intercourse or contact with a child under 13 years of age and causes great bodily harm.
- The bill draft eliminates the definition of “sexual intercourse” that applies only to the offense of first-degree sexual assault of a child but maintains the definition for purposes of GPS tracking requirements.
- The bill draft requires GPS tracking and a 25-year mandatory term of imprisonment for persons convicted of first-degree sexual assault of a child if the person caused great bodily harm.

Statute of Limitations for Prosecution of Sexual Assault of a Child

Background

Current law imposes time limits for commencing prosecution for most crimes. The 2003 Wisconsin Statutes required that prosecution for a sexual assault of a child be commenced before the victim reaches the age of 45. However, also under the 2003 statutes, if the state collected DNA evidence in connection with a sexual assault of a child before the time period for commencing prosecution of the sexual assault expired (e.g., before the victim reached the age of 45) and did not match the DNA evidence with an identified person until after the time period expired, the state was permitted to commence prosecution of the person who was the source of the DNA for the sexual assault within one year after making the match.

The statutes were affected by two Wisconsin acts in the 2005-06 Legislative Session.

2005 Act 60 provides that if the state collects DNA evidence in connection with a sexual assault of a child and does not match the DNA evidence with an identified person, as described above, the one-year extension to the time period for commencing prosecution for the sexual assault also applies to prosecution for a crime that is related to the sexual assault.

2005 Act 276 eliminates all time limits for commencing prosecution for a first-degree sexual assault of a child.

The committee supported having no SOL time limit for prosecution of first-degree sexual assault of a child. The committee members also agreed that crimes related to an instance of first-degree sexual assault of a child for which the SOL had expired should be prosecuted if DNA evidence identified the perpetrator of the first-degree sexual assault of a child.

Description

This bill draft eliminates the time limits for commencing a prosecution of first-degree sexual assault of a child and the various offenses of engaging in repeated acts of first-degree sexual assault of a child.

The bill draft provides that, within 12 months after a DNA profile is matched to an identified person for a violation of second-degree sexual assault of a child, a prosecution may be brought for the second-degree sexual assault of a child violation or for a crime that is related to the sexual assault violation, or both.

Finally, the bill draft provides that, within 12 months after a DNA profile is matched to an identified person for a violation of first-degree sexual assault of a child, a prosecution may be brought for a crime that is related to the sexual assault violation.

Physical Abuse of a Child

Background

Under current law, it is a Class E felony to intentionally cause great bodily harm to a child. The committee supported increasing this penalty to make it consistent with other penalties for offenses under ch. 948, Stats., that result in serious harm to a child.

Description

The bill draft increases the penalty for this offense to a Class C felony.

Soliciting a Child for Prostitution

Background

Under current law, whoever intentionally solicits or causes any child to practice prostitution is guilty of a Class D felony.

The committee received testimony that there are few prosecutions for this offense because it is unclear what is meant by "to practice prostitution."

Description

The bill draft modifies the offense so that it prohibits soliciting or causing any child to engage in an act of prostitution. As under current law, it is also a violation to establish a child in a place of prostitution under the bill draft.

Criminal Neglect of a Child

Background

Under current law, any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of a Class A misdemeanor or, if death is a consequence, a Class D felony.

Also under current law, a person responsible for a child's welfare while the child is being transported in a child care vehicle may not leave the child unattended at any time from the time the child is placed in the care of that person to the time the child is placed in the care of another person responsible for the child's welfare. A person who violates this provision is guilty of a Class A misdemeanor or, if death is a consequence, a Class G felony.

Committee members raised a concern that there are cases of serious child neglect that result in bodily harm or great bodily harm to a child and that may be prosecuted, under this offense, only as a Class A misdemeanor. Committee members agreed that cases in which neglect results in such harm should have a higher penalty.

Description

The bill draft creates offenses for cases in which bodily harm is a consequence of neglect and in which great bodily harm is a consequence of neglect. Under the bill draft, the offense involving bodily harm is a Class H felony and the offense involving great bodily harm is a Class F felony.

The bill draft creates offenses for cases in which bodily harm is a consequence of leaving a child unattended in a child care vehicle and in which great bodily harm is a consequence. Under the bill draft, the offense involving bodily harm is a Class I felony and the offense involving great bodily harm is a Class H felony.

Presentence Investigation

Background

Under s. 972.15, Stats., the court may order a presentence investigation after a person is convicted of a crime and before sentencing. The committee heard testimony on the improvements in the scientific understanding of sex offenders and their risk of recidivism based on characteristics such as their relationship to the victim, the victim's gender, and other factors. Committee members determined that providing this type of information to the sentencing court would assist the court in appropriately sentencing child sex offenders and potentially focus resources on offenders with a higher risk of re-offending.

Description

The bill draft requires courts to order a presentence investigation and risk assessment in cases in which there is a conviction for a felony requiring sex offender registration, and the victim was under the age of 18 at the time of the offense, unless the court finds that the information that would be provided by the risk assessment and presentence report would not materially benefit DOC or the court.

Sex Offender Registry

Background

Under current law, sex offender registration is required following a conviction for a sex offense, as that term is defined in s. 301.45 (1d) (b), Stats. "Sex offense" is defined to include all of the types of child enticement offenses under s. 948.07, Stats. Under s. 948.07 (5) and (6), Stats., child enticement includes causing or attempting to cause any child under 18 years of age to go into any vehicle, building, room, or secluded place, with intent to cause bodily or mental harm to a child or to give or sell a controlled substance or controlled substance analog to a child.

The committee considered the addition and deletion of various offenses from the list of sex offenses requiring mandatory offender registration and agreed that sex offender registration should not be required for these two child enticement offenses because they are not necessarily sexually motivated.

Description

The bill draft removes s. 948.07 (5) and (6), Stats., from the list of offenses requiring sex offender registration. A person convicted of one of these offenses could still be required to register as a sex offender under s. 973.048 (1m), Stats., which allows a court to require a person to register as a sex offender when being sentenced for the solicitation, conspiracy, or attempt to commit any violation of ch. 948, Stats., if the court determines that the underlying conduct was sexually motivated and that it would be in the interest of public protection to require registration.

Appendix 1

Committee and Joint Legislative Council Votes

WLC: 0051/1 was recommended by the Special Committee on Review of Crimes Against Children to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature.

Special Committee Vote

The Special Committee voted to recommend WLC: 0051/1 (which subsequently became LRB-1721/1) to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature. The vote on the draft was as follows:

- WLC: 0051/1, relating to crimes against children: Ayes, 11 (Sens. Darling and Lazich; Reps. Jeskewitz, Kaufert, Kleefisch, and Owens; and Public Members Brennan, Davidoski, Greipp, Murray and Southworth); Noes, 0; and Not Voting, 2 (Rep. Pocan and Public Member Tobin).

Appendix 2

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

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Co-Chair

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Joint Legislative Council

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Wisconsin Rapids, WI 54494

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Appendix 3

Review of Crimes Against Children

Senator Alberta Darling, Chair
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STUDY ASSIGNMENT: The committee is directed to review current crimes against children under ch. 948, Stats., that relate to child pornography, communicating with a child over a computerized communications system, sex offenders working or volunteering with children, and sexual assault of a child to determine whether these statutes should be clarified and whether the penalties for these offenses are consistent and appropriate. Recodifying other portions of ch. 948, Stats., may also be considered.

13 MEMBERS: 2 Senators, 5 Representatives, and 6 Public Members.

LEGISLATIVE COUNCIL STAFF: Anne Sappenfield, Senior Staff Attorney; Larry Konopacki, Staff Attorney; Patrick Mueller, Legislative Intern; and Kelly Mautz, Support Staff.

Appendix 4

Committee Materials List

(Copies of documents are available at www.legis.state.wi.us/lc)

January 18, 2007 Mail Ballot				
<ul style="list-style-type: none"> • WLC: 0051/1, relating to crimes against children. 				
December 14, 2006 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • WLC: 0006/2, relating to reconciling 2005 Wisconsin Acts 430, 431, and 437 • WLC: 0011/1, relating to time to prosecute a crime that is related to a sexual assault • WLC: 0014/1, relating to soliciting a child for prostitution • WLC: 0016/1, relating to sex offender registration • WLC: 0017/1, relating to the offenses of neglecting a child and leaving a child unattended in a child care vehicle • WLC: 0018/1, relating to intentionally causing great bodily harm to a child • WLC: 0022/1, relating to possession of child pornography • WLC: 0023/1, relating to sexual intercourse with a child age 16 or older • WLC: 0024/1, relating to possession of child pornography • WLC: 0025/1, relating to presentence investigation and risk assessment for certain sex-related crimes against children, and providing rule-making authority • WLC: 0026/1, relating to violations charged in the same action with a change of engaging in repeated acts of sexual assault of the same child 				
November 15, 2006 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • WLC: 0011/1, relating to time to prosecute a crime that is related to a sexual assault (November 6, 2006) • WLC: 0013/1, relating to engaging in repeated acts of sexual assault of the same child (November 7, 2006) • Memo No. 2, <i>Options for Legislative Changes Recommended for the Special Committee on Review of Crimes Against Children</i> (November 7, 2006) • Memo No. 3, <i>Statutes of Limitations for Prosecution of Sexual Assault of a Child in Other States</i> (November 8, 2006) • Presentation, by Department of Corrections Staff (November 15, 2006) • Handout, <i>General and Child Sexual Recidivism Rates for Offenders on Community Supervision</i>, by Department Of Corrections Staff (November 15, 2006) • Presentation, <i>Child Sex Offender Types and Recidivism Rates</i>, by Dr. Anna Salter, DOC (November 15, 2006) 				
October 4, 2006 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • Staff Brief 06-02, <i>Review of Crimes Against Children</i> (September 19, 2006) • Memo No. 1, <i>Statute of Limitations for Sexual Assault of a Child Prosecutions</i> (September 21, 2006) • WLC: 0006/1, relating to reconciling 2005 Wisconsin Acts 430, 431, and 437 • Chapter 948, Stats. 				