



## Legislative Fiscal Bureau

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March 30, 2006

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Substitute Amendment 2 to Assembly Bill 591: Global Positioning System Tracking for Certain Child Sex Offenders

On August 2, 2005, Assembly Bill 591 (AB 591) was introduced and referred to the Assembly Committee on Criminal Justice and Homeland Security. The bill would require the Department of Corrections to use global positioning system tracking for certain sex offenders. On November 9, 2005, the Assembly adopted and passed Assembly Substitute Amendment 2 to AB 591, on a vote of 96 to one. The bill, as amended, was messaged to the Senate and referred to the Senate Committee on Judiciary, Corrections and Privacy. The Senate Committee recommended concurrence on a vote of three to one. On March 7, 2006, the bill was placed on the Senate calendar and read a second time. On the same day, Senate Substitute Amendment 2 to AB 591 (SSA 2) and Senate Amendment 1 to SSA 2 were offered. Senate Amendment 1 to SSA 2 to AB 591 was adopted on a voice vote. Subsequent to adoption of SA 1 to SSA 2, the bill was referred to the Joint Committee on Finance on a vote of 19 to 11.

The attachments to this paper identify the provisions of AB 591: (a) as passed by the Assembly; (b) as proposed under SSA 2 to AB 591; and (c) as proposed under SSA 2 to AB 591, as amended by SA 1. Attachment 1 addresses provisions related to GPS tracking and Attachment 2 addresses county placement provisions for sex offenders.

### **CURRENT LAW**

*Sexual Assault of a Child Offenses.* First-degree sexual assault of a child is a Class B felony and defined as "sexual contact or sexual intercourse with a person who has not attained the age of 13 years." The maximum possible sentence for a Class B felony is 60 years, which includes up to 40 years in prison and up to 20 years on extended supervision. Second-degree sexual assault

of a child is a Class C felony and defined as "sexual contact or sexual intercourse with a person who has not attained the age of 16 years." The maximum sentence for a Class C felony is 40 years, which includes up to 25 years in prison and 15 years on extended supervision.

If a person is convicted of engaging in repeated acts of sexual assault of the same child, and is found to have committed three or more violations of either of the sexual assaults described above, the person is guilty of a Class B felony if at least three of the violations were first-degree sexual assaults on the same child under the age of 13 within a specified period of time. If fewer than three of the violations were first-degree sexual assaults on the same child under the age of 13 within a specified period of time, the offender is guilty of a Class C felony.

***Department of Corrections Electronic Monitoring.*** When an offender is on probation, parole, or extended supervision, he or she may be electronically monitored by the Department of Corrections at the probation and parole agent's recommendation. Such an offender wears a bracelet that is electronically linked to a unit in the offender's residence. Electronic calls to the unit notify Corrections whether or not the offender is home when scheduled, an alert is issued if the unit indicates an offender is violating his or her schedule. Corrections' monitoring unit staff may call the offender's parole agent or issue a warrant for the offender's arrest under certain circumstances. According to Corrections, in September 2005, there were 1,352 offenders on electronic monitoring, 207 of whom are offenders convicted of first-degree sexual assault of a child under 13, second-degree sexual assault of a child under 16, or engaging in repeated acts of sexual assault of the same child.

The Department also currently uses GPS technology to monitor 27 individuals, including nine offenders and 18 sexually violent persons, described below. With GPS technology, the offender carries a tracking device that records his or her location once per minute. Every ten minutes, the device sends the data to the Department's monitoring unit. If an offender has gone to a prohibited area, an alert is issued similar to electronic monitoring.

***Sexually Violent Persons Supervision.*** Under 1993 Act 479, a procedure was established for the involuntary civil commitment of individuals found to be sexually violent persons. A sexually violent person is defined as a person who has been: (a) convicted of a sexually violent offense; (b) adjudicated delinquent for a sexually violent offense; or (c) found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it more likely than not that the person will engage in acts of sexual violence.

A sexually violent offense is defined as: (a) first-degree sexual assault; (b) second-degree sexual assault; (c) first-degree sexual assault of a child under age 13; (d) second-degree sexual assault of a child under age 16; (e) engaging in repeated acts of sexual assault of the same child under age 16; (f) incest with a child; or (g) child enticement. In addition, a sexually violent offense may also include the following offenses if it is determined that the purpose of the act was for the offender's sexual arousal or gratification: (a) first-degree intentional homicide; (b) first-degree

reckless homicide; (c) second-degree intentional homicide; (d) second-degree reckless homicide; (e) battery, substantial battery or aggravated battery; (f) battery, substantial battery or aggravated battery to an unborn child; (g) false imprisonment; (h) taking hostages; (i) kidnapping; or (j) burglary. A sexually violent offense may also include any solicitation, conspiracy or attempt to commit any of the previously listed offenses.

If an individual is found to be a sexually violent person (SVP), he or she will be committed to the custody of the Department of Health and Family Services (DHFS) for control, care, and treatment until the court finds the individual is no longer a SVP. Within six months after initial commitment, and then at least every 12 months thereafter, DHFS must conduct an examination of the SVP to determine whether he or she has made sufficient progress for placement on supervised release or discharge. If the court finds the individual is appropriate for supervised release, the individual is subject to the conditions set by the court and to DHFS rules.

Under current law, for individuals found appropriate for supervised release, DHFS is required to make its best effort to arrange for placement in a residential facility or dwelling that is in the person's county of residence. The Department and county must prepare a plan that identifies any treatment and services the individual is to receive in the community. If the county of residence declines to prepare a plan, DHFS may arrange for another county to prepare a plan if that county agrees and the individual will be living in that county.

***Not Guilty by Reason of Mental Disease or Defect Community Supervision.*** In addition to SVP commitments, if a person is found not guilty by reason of mental disease or mental defect, he or she will be committed to DHFS custody for a period not to exceed the maximum term of confinement in prison that could be imposed on an offender convicted of the same felony. The person may be committed to institutional care or conditional release. A court must order institutional care if it finds by clear and convincing evidence that conditional release would pose a significant risk of bodily harm to the individual, to others or of serious property damage. A person committed to institutional care may petition the court for conditional release after at least six months in institutional care. If the court finds the individual is appropriate for conditional release, he or she is subject to the conditions set by the court and to DHFS rules.

***Lifetime Supervision for Serious Sex Offenders.*** Under current law, a court may place a person on lifetime supervision by the Department of Corrections if a person is convicted of a serious sex offense or found not guilty of a serious sex offense by reason of mental disease or defect. A court must determine that lifetime supervision is necessary to protect the public and must notify the person that he or she is being placed on lifetime supervision. A person placed on lifetime supervision is subject to the control of Corrections under conditions set by the court and regulations of the Department that are necessary to protect the public and promote the rehabilitation of the person placed on lifetime supervision.

"Serious sex offenses" for which a person may be placed on lifetime supervision include: (a) the commission of, or the solicitation, conspiracy or attempt to commit, sexual exploitation by a

therapist, first-, second- and third-degree sexual assault, first- and second-degree sexual assault of a child, engaging in repeated acts of sexual assault with the same child, sexual exploitation of a child, causing a child to view or listen to sexual activity, incest with a child, child enticement, soliciting a child for prostitution, exposing a child to harmful materials or harmful descriptions or narratives, possession of child pornography, using a computer to facilitate a child sex crime, and child sex offender working with children; or (b) a violation of, or the solicitation, conspiracy or attempt to commit a violation, under the statutes related to life and bodily security, property crimes, crimes against sexual morality or crimes against children, if a court determines that one of the purposes for the conduct constituting the violation was for a person's sexual arousal or gratification. If a prosecutor seeks lifetime supervision for a person who is charged with committing a serious sex offense under (b), a court is required to find a special verdict as to whether the conduct constituting the offense was for the defendant's sexual arousal or gratification.

Lifetime supervision begins: (a) upon the end of the individual's sentence, whether released or discharged from prison, probation, parole, or extended supervision; (b) if the person has been committed to a mental health facility for the serious sex offense, upon the termination of his or her commitment or his or her discharge from the commitment; or (c) if the previous situations apply, upon the person being sentenced for a serious sex offense.

A person placed on lifetime supervision may file a petition with the court requesting that lifetime supervision be terminated if: (a) he or she has not been convicted of a crime that was committed during the period of lifetime supervision; and (b) he or she has been on lifetime supervision for at least 15 years. The petition must be filed with the court that ordered the lifetime supervision. After receiving a petition for termination of lifetime supervision, the court will send a copy of the petition to the district attorney, who will conduct a criminal history record search to determine whether the person has been convicted of a criminal offense that was committed during the period of lifetime supervision. No later than 30 days after receipt of the petition, the district attorney will report the results of the criminal history record search to the court and may also provide a written response to the petition.

If the person has not been convicted of a criminal offense committed during the period of lifetime supervision, the court will: (a) order the person to be examined by a physician or psychologist approved by the court; (b) notify Corrections that it may submit a report; and (c) schedule a hearing on the petition. If Corrections prepares and submits the report, the report must include information concerning the person's conduct while on lifetime supervision and an opinion as to whether lifetime supervision of the person is still necessary to protect the public.

The physician or psychologist who conducts an examination will prepare a report of his or her examination that includes his or her opinion of whether the person petitioning for termination of lifetime supervision is a danger to public. The physician or psychologist must file the report with the court within 60 days after completing the examination, and the court will provide copies of the report to the person filing the petition and the district attorney. The contents of the report are

confidential until the physician or psychologist testifies at a hearing. The person petitioning for termination of lifetime supervision must pay the cost of an examination.

At the hearing, the court must take evidence it considers relevant to determining whether lifetime supervision should be continued because the person who filed the petition is a danger to the public. The person who filed the petition and the district attorney who received the petition may offer evidence relevant to the issue of the person's dangerousness and the continued need for lifetime supervision. If it determines after a hearing that lifetime supervision is no longer necessary to protect the public, the court may grant a petition requesting termination of lifetime supervision. If the court denies the petition, the person may not file a subsequent petition requesting termination of lifetime supervision until at least three years have elapsed since the most recent petition was denied.

As of January, 2006, 13 offenders have been placed on lifetime supervision.

## **SUMMARY OF SSA 2 TO AB 591**

Senate Substitute Amendment 2 to AB 591 would require lifetime global positioning system tracking for certain child sex offenders, and would include provisions regarding county placements of certain sex offenders. The substitute amendment is summarized below.

*Definitions.* Under the substitute amendment, the following definitions would be created:

1. "Exclusion Zone" means a zone in which a person who is tracked using a global positioning system device is prohibited from entering except for purposes of traveling through it to get to another destination;
2. "Global Positioning System Tracking" means tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone. "Global positioning system tracking" includes comparable technology;
3. "Inclusion Zone" means a zone in which a person who is tracked using a global positioning system (GPS) tracking device is prohibited from leaving;
4. "Lifetime Tracking" means GPS tracking that is required for a person for the remainder of the person's life or until terminated;
5. "Serious Child Sex Offense" is a violation of any of the following, and includes the solicitation, conspiracy, or attempt to engage in conduct in violation of any of the following:

- a. First-degree sexual assault of a child;
- b. Second-degree sexual assault of a child, if the court finds the offense involved the use or threat of force or violence;
- c. Engaging in repeated acts of sexual assault of the same child, if at least three of the violations were first-degree sexual assault of a child;
- d. Engaging in repeated acts of sexual assault of the same child, if fewer than three violations were first-degree sexual assault, and the court finds the offense involved the use or threat of force or violence.

6. "Sex Offense" is either: (a) a violation, solicitation, conspiracy, or attempt to commit a violation of one of the following: sexual exploitation by a therapist, first-degree sexual assault, second-degree sexual assault, third-degree sexual assault, incest, first-degree sexual assault of a child under the age of 13, second-degree sexual assault of a child under the age of 16, engaging in repeated acts of sexual assault with the same child, sexual exploitation of a child, causing a child to view or listen to sexual activity, incest with a child, child enticement, use of a computer to facilitate a child sex crime, soliciting a child for prostitution, sexual assault of a student by a school instructional staff person, exposing a child to harmful material or harmful descriptions or abduction of another's child, or false imprisonment or kidnapping if the victim was a minor and the person who committed the violation was not the victim's parent; or (b) a crime under federal law or the law of any state that is comparable to one of the above crimes.

Under SSA 2 to AB 591, if a person is convicted or found not guilty by reason of mental disease or defect, the court must determine, immediately after trial, based on a preponderance of the evidence presented at trial, and without a jury, if the offense involved a finding of the use or threat of force or violence. If the court makes such a determination, the court must enter that finding into the record.

***Who is Covered.*** The substitute amendment would require the Department of Corrections to arrange for lifetime GPS tracking of: (a) any person placed on probation, extended supervision, or parole for committing a serious child sex offense; (b) any person placed on conditional release after having been found not guilty of a serious child sex offense by reasons of mental disease or mental defect; (c) any person placed on probation or discharged under Chapter 975 of the statutes for a serious child sex offense (Sex Crimes Law); (d) any person placed on supervised release under Chapter 980 of the statutes; or (e) any direct discharge or release of a person who was convicted of, found not guilty by reasons of mental disease or defect, or committed under Chapter 980 for a serious child sex offense.

In addition to lifetime GPS tracking of certain individuals, SSA 2 would require Corrections to use GPS tracking for individuals if all the following apply: (a) the individual has been convicted under federal law or the law of another state of a crime that is comparable to a serious child sex offense, or found not guilty of, or not responsible for, such a crime by reason of mental disease or

defect; and (b) the individual resides, is employed, is carrying on a vocation, or is a student in Wisconsin. For individuals placed on probation, parole, or extended supervision for committing a sex offense, the Department may use GPS tracking.

***Department Duties and Costs.*** Under SSA 2, the Department would be required to include the following information on the sex offender registry:

1. If the person is a sexually violent person, a notice of that status, written in red letters;
2. A current color photograph of the person, if available, and a physical description including sex, race, height, weight, eye color, and hair color;
3. The person's name and home address;
4. Whether the person has responded to the last contact letter from the Department;
5. The crime committed for which the person must register;
6. Any conditions of the person's supervised release, except for any condition that may reveal the identity of the victim of the crime;
7. The date, time, and place of any scheduled hearings for supervised release or discharge under Chapter 980 of the statutes;
8. The name and court of the judge who authorized the supervised release or discharge;
9. The most recent date on which the information was updated.

For each person subject to GPS tracking, the Department of Corrections would be required to create individualized exclusion and inclusion zones for the individual if necessary to protect public safety. For exclusion zones, Corrections would focus on areas where child congregate, with perimeters of 100 to 250 feet, and on areas where the individual was prohibited from going as a condition of probation, extended supervision, parole, conditional release, or supervised release. In addition to creating exclusion and/or inclusion zones, Corrections would be required to ensure that the individual's GPS tracking device or comparable technology immediately alerts the Department and the local law enforcement agency if the person either leaves his or her assigned inclusion zone or stays in an exclusion zone longer than the time needed to travel through the zone to get to another destination.

For individuals on supervised release or conditional release who are on GPS tracking, Corrections would be required to notify DHFS, upon request, of any tracking information for the person if: (a) Corrections has been alerted that the individual has improperly stayed in an exclusion

zone or improperly left an inclusion zone; or (b) the individual fails to make required payments to Corrections for his or her GPS tracking costs.

For each person subject to GPS tracking, SSA 2 would require Corrections to determine the costs of GPS tracking for the individual and how much of the costs that the individual is able to pay. The Department could require the person to pay those costs. For individuals on conditional release or supervised release, DHFS would be required to pay the GPS tracking costs to the extent that costs are not covered by any required payments by individuals. In determining how much of the costs a person is able to pay, Corrections would consider the following: (a) the person's financial resources; (b) present and future earning ability of the person; (c) the needs and earning ability of the person's dependents; (d) any other costs that the person is required to pay in conjunction with his or her supervision; and (e) any other factors that Corrections considers appropriate.

Under SSA 2, Corrections would be required to implement a continuous GPS tracking system. The system would be required to do all the following:

1. Use field monitoring equipment that supports cellular communications with as large a coverage area as possible and automatically provide instantaneous or nearly instantaneous information regarding the whereabouts of a person who is being monitored, including information regarding the person's presence in an exclusion zone or absence from an inclusion zone;
2. Use land line communications equipment to transmit information regarding the location of persons when they are in areas in which no commercial cellular service is available.
3. Immediately alert the Department and the local law enforcement agency if the persons leaves any inclusion zone or stays in any exclusion zone for any longer period than the time needed to travel through the zone to get to another destination.

Under SSA 2, the Department of Administration would be required to delegate authority to Corrections to enter into contracts for GPS tracking services. Corrections would be required to contract with a vendor using a competitive process under s. 16.75 of the statutes to provide GPS tracking services.

***Termination of Lifetime GPS Tracking.*** Under the substitute amendment, a person subject to lifetime GPS tracking could petition for the termination of lifetime tracking with the circuit court in the county in which he or she was convicted or found not guilty or not responsible by reason of mental disease or defect. However, the person could not file a termination petition earlier than 20 years after the date on which lifetime tracking began. Further, the following individuals would be prohibited from filing for termination of lifetime tracking: (a) a person who was convicted of any crime during the period of lifetime tracking; (b) a person who had been placed on supervised release under Chapter 980; or (c) a person placed on parole or discharged under Chapter 975.

Upon receiving a petition to terminate lifetime tracking, the court would send a copy of the petition to the district attorney, who would conduct a criminal history record search. No later than 30 days after the date of receiving the petition, the district attorney would be required to report the results of the criminal history search and may provide a written response to the petition. If the individual has not been convicted of a criminal offense during the period of lifetime tracking, the court will: (a) order that the person be examined by a physician or psychologist approved by the court; (b) notify the Department that it may submit a report concerning the individual's conduct while on lifetime tracking and an opinion as to whether lifetime tracking is still necessary to protect the public; and (c) schedule a hearing on the petition. The physician or psychologist who conducts an examination would be required to prepare a report of his or her examination, including an opinion of whether the individual is a danger to the public, and file the report with the court within 60 days after completing the examination. The report would remain confidential until the physician or psychologist testifies at the hearing. The cost for the examination would be paid for by the individual petitioning for termination of lifetime tracking.

Under SSA 2, a hearing on a termination petition could not be conducted until the report of the examination has been filed with the court. At the hearing, the court would consider evidence it considers relevant to the petition, and the petitioner and the district attorney may offer evidence relevant to the issue of the person's dangerousness and the continued need for lifetime tracking. The court may grant the petition if it determines after the hearing that lifetime tracking is no longer necessary to protect the public. If the petition is denied, the individual may not file a subsequent petition requesting termination of lifetime tracking until at least five years have elapsed since the most recent petition.

In addition, SSA 2 would provide that the Department may file a petition for termination of lifetime tracking if the person is permanently physically incapacitated. The petition must include affidavits from two physicians that explain the nature of the person's permanent physical incapacitation. The Department would file the petition in the county in which the person was convicted, found not guilty or responsible by reason of mental disease or defect, or found to be a sexually violent person, and forward a copy of the petition to the district attorney or, for individuals committed under Chapter 980, to the agency that filed the Chapter 980 petition.

Upon its own motion or motion of the district attorney or appropriate agency, the court would be allowed to order that the individual be examined by a physician who is approved by the court. If an examination is ordered, the physician would be required to prepare a report that includes his or her opinion of whether the person is permanently physically incapacitated, and file the report within 60 days after completing the examination. The report would remain confidential until the physician testifies at the hearing. Costs of the examination would be paid by Corrections. The court would conduct a hearing and take evidence it considers relevant to determining whether the person is permanently physically incapacitated so that he or she is not a danger to the public. The court would be allowed to grant a petition after the hearing if it determined that the permanent physical incapacitation was such that the person was no longer a danger to the public.

***Exception to Lifetime Tracking Requirement.*** The substitute amendment would provide that an individual is not subject to lifetime tracking if all the following apply: (a) the serious child sex offense did not involve sexual intercourse by the use or threat of force or violence and did not involve sexual intercourse with a victim under the age of 12; (b) at the time of the serious child sex offense, the person had not attained the age of 19 years, was not more than four years older than the child, and was not more than four years younger than the child; and (c) it is not necessary, in the interest of public protection, to subject the person to GPS tracking.

An individual would be allowed to petition the court if the individual believed that he or she was not subject to lifetime GPS tracking. The individual would be required to send a copy of the petition to the district attorney, who would make a reasonable attempt to contact the victim of the original crime to inform the victim of his or her right to make or provide a statement. Before deciding on the petition, the court would allow the victim of the crime to make a statement at the hearing or to submit a written statement to the court. In addition, the court could request the petitioner be examined by a physician or a psychologist who is approved by the court. If the person refuses to undergo an examination, the court would be required to deny the motion without prejudice. The physician or psychologist would be required to file a report of his or her examination containing an opinion whether it would be in the interest of public protection to have the person subject to tracking and the basis of that opinion. The report would remain confidential until the physician or psychologist has testified at the hearing. Unless determined to be indigent, the individual would be responsible for the cost of services provided by the physician or psychologist.

The petitioner would have the burden of proving by clear and convincing evidence that he or she is not subject to lifetime GPS tracking. In deciding whether the person has met the burden, the court could consider any of the following: (a) the ages, at the time of the violation, of the person and the child with whom he or she had sexual contact or intercourse; (b) the relationship between the person and the child; (c) whether the violation resulted in bodily harm with the child; (d) whether the child suffered from mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluation the consequences of his or her actions; (e) the probability that the individual will commit other violations in the future; the report of the examination by the physician or psychologist, if any; or (f) any other factor that the court determines may be relevant to the particular case.

***Tampering with GPS Tracking Device.*** The substitute amendment would create a felony, providing that whoever, without the authorization of Corrections, intentionally tampers with a GPS tracking device or comparable technology is guilty of a Class I felony (punishable by up to 18 months in prison and two years extended supervision and/or a fine of up to \$10,000).

***County Placement.*** The substitute amendment would provide that, upon his or her release to parole or extended supervision, a person convicted of a sex offense would be placed in one of the following locations: (a) the county in which the person was convicted of the sex offense; (b) a sex offender treatment facility that existed before January 1, 2006; or (c) the county in which the person

resided on the date of the sex offense. If the person's county of residence is a county that contains a first class city, the person must be placed in the city, village, or town in which the person resided on the date of the sex offense. Corrections could authorize a person to reside in a location other than one of the specified counties, if the Department initially placed the person in one of the specified counties.

For individuals found not guilty of a sex offense by reason of mental disease or defect, SSA 2 would maintain current law for DHFS and the person's county of residence to prepare a plan for the person's conditional release. The substitute amendment would also require that, if the county of residence contains a first class city, DHFS must place the person in the city, village, or town in which he or she resided on the date of the sex offense. Further, the person may not be placed in a facility that did not exist prior to January 1, 2006 while on conditional release. If the county of residence of the individual declines to prepare a treatment plan for the individual, DHFS could arrange for one of the following counties to prepare a plan, if the county agrees to do so: (a) the county in which the person was found not guilty by reason of mental disease or defect, if the person will be living in that county; or (b) a county in which a treatment facility for sex offenders is located, if the person will be living in that facility.

***Community Placement for Supervised Release.*** Under current law, DHFS must make its best effort to arrange placement for an individual found appropriate for supervised release under Chapter 980 in the individual's county of residence. The Department then works with the county to prepare a plan regarding the individuals' treatment and service needs. If the county of residence declines to prepare a plan, DHFS may arrange for another county to prepare a plan if that county agrees and if the individual will be living in that county. If DHFS is unable to arrange for another county to prepare a plan, the court must designate a county department to prepare the plan, order the county to prepare the plan, and place the person on supervised release in that county, except that the court may not designate any county where there is a facility in which persons committed to institutional care under Chapter 980 are placed, unless that county is also the person's county of residence.

Under SSA 2, if the county of residence declines to prepare a plan, DHFS may arrange for the county in which the individual was convicted or a county in which a treatment facility for sex offenders is located to prepare a plan if that county agrees. If DHFS is unable to arrange for one of the counties to prepare a plan, the court must designate one of those county departments to prepare the plan and order the county to prepare the plan.

Further, SSA 2 would provide that, as a condition of supervised release, for the first year of supervised release, the court must restrict the person to the person's home, except for outings that are under the direct supervision of a Corrections escort and that are for employment purposes, religious purposes, or for caring for the person's basic living needs.

***Initial Applicability - GPS Tracking.*** Under SSA 2, the GPS tracking provisions would first apply as follows: (a) to persons released by Corrections to parole or extended supervision on the bill's effective date; (b) to persons placed on probation by the court on the effective date; (c) to

persons placed on conditional release by the court on the effective date; (d) to persons placed on probation or discharged under Chapter 975 for a serious sex crime on or after the effective date of the bill; and (e) to individuals who, on or after the effective date of the bill, are: (i) directly released from prison; (ii) directly discharged from a commitment after being found not guilty by reason of mental disease or defect; or (iii) directly discharged under Chapter 980.

The provision related to a finding of the use or threat of force or violence by the court would first apply to persons convicted or found not guilty by reasons of mental disease or defect on the effective date of the bill.

***Initial Applicability - County Placement.*** The SSA 2 provisions relating to county placement of sex offenders would first apply to individuals: (a) released by Corrections to parole or extended supervision on the bill's effective date; (b) placed on conditional release by the court on the effective date; or (c) placed on supervised release by the court on the effective date.

***Effective Date.*** The substitute amendment would become effective on the first day of the sixth month after publication.

## **SUMMARY OF SENATE AMENDMENT 1 TO SSA 2 TO AB 591**

Senate Amendment 1 to SSA 2 would modify what offenses are considered "serious child sex offenses" by assuming that 2005 Assembly Bill 784 will be enacted into law. Included in the provisions of Assembly Bill 784 (AB 784) are modifications to the offenses of first-degree sexual assault of a child and engaging in repeated acts of sexual assault of the same child. On November 11, 2005, AB 784 was passed by the Assembly on an 82 to 11 vote and messaged to the Senate. On March 7, 2006, Senate Substitute Amendment 2 to AB 784 (SSA 2 to AB 784) was offered and adopted by the Senate on a vote of 33 to 0. As with the original bill, SSA 2 to AB 784 would provide modifications to the offenses of first-degree sexual assault of a child and engaging in repeated acts of sexual assault of the same child. The summary below includes: (a) the offense modifications provided in both AB 784 and SSA 2 to AB 784; and (b) the resulting definitions of "serious child sex offense" under SSA 2 to AB 591, as amended by SA 1, if either AB 784 or SSA 2 to AB 784 is enacted.

***Offense Modifications - AB 784.*** Under AB 784, the offense of first-degree sexual assault of a child would be modified to include: (a) sexual contact or sexual intercourse with a person who has not attained the age of 13 years; or (b) sexual contact or sexual intercourse with a person who has not attained the age of 16 years by use or threat of force violence.

***Offense Modifications - SSA 2 to AB 784.*** Senate Substitute Amendment 2 to AB 784 would define "sexual intercourse" to mean vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of any inanimate object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen would

not be required. This definition differs from the current law definition under the crimes against children statutes by the deletion of the phrase ",however slight, of any part of a person's body or" after the word "intrusion."

Further, SSA 2 to AB 784 would modify the statute for first-degree sexual assault of a child to include:

- a. Sexual intercourse with a person who has not attained the age of 12 years old;
- b. Sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence;
- c. Sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence, if the actor is at least 18 years of age when the sexual contact occurs; or
- d. Sexual contact with a person who has not attained the age of 13 years.

Under SSA 2 to AB 784, the offense of engaging in repeated acts of sexual assault of the same child would be modified, providing it would be a Class B felony:

- a. If at least three of the violations were either a. or b. above;
- b. If at least three of the violations were either a., b., or c. above, but fewer than three of the violations were a. or b.;
- c. If at least three of the violations were a., b., c., or d. but fewer than three of the violations were a., b., or c.

**"Serious Child Sex Offense" under SSA 2 to AB 591, as amended by SA 1 - if AB 784 is enacted.** Under SSA 2 to AB 591, as amended by SA 1, if the provisions of AB 784 were enacted, "serious child sex offense" for the purposes of lifetime GPS tracking would include a violation of, or the solicitation, conspiracy, or attempt to engage in, first- or second-degree sexual assault of a child, or engaging in repeated acts of first-degree sexual assault of a child, if any of the following applies: (a) the actor has sexual intercourse with a person who has not attained the age of 12 years; (b) the actor has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence; or (c) the actor has sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence and the actor is at least 18 years of age when the contact occurs.

**"Serious Child Sex Offense" under SSA 2 to AB 591, as amended by SA 1 - if SSA 2 to AB 784 is enacted.** Under SSA 2 to AB 591, as amended by SA 1, if the provisions of SSA 2 to

AB 784 were enacted, a "serious child sex offense" for the purpose of GPS tracking would include a violation of, or the solicitation, conspiracy, or attempt to engage in, any of the following:

1. One of the following first-degree sexual assault offenses: (a) sexual intercourse with a person who has not attained the age of 12 years old; (b) sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence; or (c) sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence, if the actor is at least 18 years of age when the sexual contact occurs.

2. Engaging in repeated acts of sexual assault of a child, if: (a) at least three of the violations were either 1.(a) or 1.(b) above; or (b) at least three of the violations were 1.(a), 1.(b), or 1.(c) above, but fewer than three of the violations were either 1.(a) or 1.(b).

3. Under the 2003 Wisconsin statutes, first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of a child, if any of the following applies: (a) the actor has sexual intercourse with a person who has not attained the age of 12 years; (b) the actor has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence; or (c) the actor has sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence and the actor is at least 18 years of age when the contact occurs.

It should be noted that SSA 2 to AB 591, as amended by SA 1, assumes that some form of AB 784 will be enacted, providing alternative sections depending on which AB 784 provisions are adopted. Since the senate amendment relies on the provisions of AB 784 or SSA 2 to AB 784 for the definition of "serious child sex offenses," if AB 784 were not enacted, it is unclear how "serious child sex offenses" would be defined under SSA 2 to AB 591, as amended by SA 1.

***Exception to Lifetime Tracking.*** In addition to modifying serious child sex offenses, SSA 2 to AB 591, as amended by SA 1, would allow the Department of Corrections to terminate a person's lifetime tracking after 10 years if the victim of the serious child sex offense for which the person is being tracked is a relative of the person being tracked. The amendment defines "relative" as a child, brother, sister, first cousin, second cousin, nephew, niece, grandchild, or great grandchild, or any other person related by blood, marriage, or adoption.

The attachments to this paper identify the provisions of AB 591: (a) as passed by the Assembly; (b) as proposed under SSA 2 to AB 591; and (c) as proposed under SSA 2 to AB 591, as amended by SA 1. Attachment 1 addresses provisions related to GPS tracking and Attachment 2 addresses county placement provisions for sex offenders.

## **FISCAL EFFECT**

The Department of Corrections prepared a fiscal estimate for SSA 2 to AB 591, as amended by SA 1, (SA 1 to SSA 2). Under SA 1 to SSA 2, an individual would be placed on lifetime

tracking for a serious child sexual assault offense if any of the following applied: (a) the actor had sexual intercourse with a person who had not attained the age of 12 years; (b) the actor had sexual intercourse with a person who had not attained the age of 16 years by use of threat of force or violence; or (c) the actor had sexual contact with a person who had not attained the age of 16 years by use or threat of force or violence, and the actor was at least 18 years old when the contact occurred. Corrections reviewed the admissions to probation, parole, and extended supervision during the 2004 calendar year for the offenses of first-degree sexual assault of a child, second-degree sexual assault of a child, and engaging in repeated acts of sexual assault of the same child. In 2004, the Department identified a total of 700 offenders admitted to probation, parole, or extended supervision for one of the applicable offenses.

Since the current statutes do not differentiate between sexual intercourse and contact, or include the element of the use or threat of force or violence, Corrections reviewed records of offenders convicted of first- or second-degree sexual assault of a child. Based on its review, the Department estimated that: (a) 51% of the cases of first- or second-degree sexual assault of a child for offenders who were released on parole in 2004 indicated that sexual intercourse had occurred; (b) 18% of cases of first-degree sexual assault of a child for offenders sentenced to probation in 2004 involved sexual intercourse, excluding digital penetration; and (c) approximately 14% of offenders convicted of first- or second-degree sexual assault of a child involving sexual contact with a person under the age of 16 by use or threat of force or violence, and where the offender was 18 years old or older.

Assuming the 2004 data is representative of future statistics, the Department estimated that of the 700 offenders admitted to community corrections annually, 245 individuals would require lifetime GPS tracking each year. In addition, Corrections' fiscal estimate indicated that approximately 20 individuals are directly discharged from prison annually for the applicable offenses, and approximately 20 individuals are annually placed on supervised or conditional release for the applicable offenses by DHFS. As a result, approximately 285 individuals would require GPS tracking under SA 1 to SSA 2. The Department estimates that the number of tracked individuals would increase each year to approximately 5,700 offenders in the 20<sup>th</sup> year after the effective date, when population increases would level out. Based on these population projections, Corrections estimated the potential costs of SA 1 to SSA 2, as indicated below.

*Equipment.* According to the Department, the only technology currently available that can send immediately alerts to Corrections is active GPS technology. With GPS technology, an individual has a tracking device that records his or her location once per minute. Every ten minutes, the tracking device sends cumulative data to Corrections. The individual's location can be tracked by computer, and an alert will be issued if the offender is in a prohibited area. Corrections currently leases active GPS technology at a flat rate of approximately \$11 per day per individual. This rate excludes staffing costs associated with responding to or analyzing alert data and additional per-call charges the Department may incur, depending on the regional communication technologies.

Based on the current rate for GPS technology equipment, Corrections estimates costs of \$1.2 million for 285 individuals in the first year, \$2.3 million for 570 individuals in the second year, increasing each year until populations level out. Further, the Department indicates that additional costs could be incurred if telephone installation or payment of phone bills is necessary.

*Monitoring Center Staff.* Under SA 1 to SSA 2, Corrections indicates it would require additional staff to monitor the GPS tracking technology. The Department currently has 27.5 positions for 1,352 offenders on electronic monitoring, including 23.5 corrections communication operators and 4.0 supervisors. Based on a caseload of 57.5 offenders per corrections communication operator, Corrections would need an additional \$311,000 and 6.0 positions annually (5.0 communication operators and 1.0 supervisor) until the tracking population leveled out. The Department estimates it would also have one-time costs in the first year of \$53,300.

*Probation and Parole Agents.* Corrections indicates that the workload of probation and parole agents will increase with active GPS technology, as agents' responsibilities would increase, including: (a) determining and mapping out exclusion and inclusion zones for 285 individuals annually; (b) analyzing individuals' tracking data and responding to issued alerts; (c) determining individuals' financial situation and ability to pay tracking costs; and (d) preparing offender reports for the courts. As a result of increased workload, the Department estimates it would need \$752,600 and 11.25 positions each year until population increases level out. Positions would include 9.75 probation and parole agents, 0.75 correctional field supervisor, 0.5 program support supervisor, and 0.25 office operations associate. One-time costs in the first year are estimated to be \$64,800.

*Financial Systems Staffing.* While it would be probation and parole agents who would evaluate and determine an offender's ability to pay, Corrections indicates that \$53,800 and two half-time financial specialist positions would be needed each year to maintain the financial evaluation tracking system and the receipt of funds. One-time costs in the first year are estimated to be \$9,000.

*Chapter 980 Escorts.* Under SA 1 to SSA 2, for the first year, the court must restrict an individual on supervised release to the person's home, except for outings that are under the direct supervision of a Corrections escort and that are for employment purposes, religious purposes, or for caring for the person's basic living needs. Based on an estimated 10 individuals released to supervised release annually, Corrections indicates that it would utilize overtime for existing probation and parole agent positions. Assuming only five of the individuals would secure employment for the final six months of the first year, and 12 hours a week would be scheduled for outings related to the individual's basic living needs, the Department estimates approximately 12,200 hours annually for overtime for a cost of \$459,000. Costs would be charged to DHFS.

In total, Corrections estimates costs of \$2.9 million and 19.25 positions in the first year, and \$5.1 million and 36.50 positions in the second year. In subsequent years, costs are estimated to increase by approximately \$2.2 million and 17.25 positions annually.

It should be noted that Corrections' fiscal estimate assumes that lifetime tracking would be required for 20 years for the estimated 285 individuals. To the extent that some offenders' serious child sex offenses involved a victim who was a relative of the offender, the Department could terminate the person's tracking after 10 years. As a result, projected future costs could be lower. In addition, costs of tracking could be offset to the extent that the Department could collect payments from individuals. Currently, Corrections collects community supervision fees range from \$20 to \$60 per month for persons on probation, parole, or extended supervision. On average, the Department indicates it has a collection rate of approximately 70% for these fees. Considering the estimated costs of GPS tracking, the average collection rate, and individuals' other financial obligations, the Department indicates it would be unlikely that collection amounts would equal expenditure amounts.

*Sex Offender Registry.* In addition to the above costs related to GPS tracking, the Department's fiscal estimate identifies costs relating to updating the sex offender registry. The substitute amendment would require specific information to be listed on the sex offender registry, including the following data related to Chapter 980 individuals: (a) the name and court of the judge who authorized the person's supervised release or discharge under Chapter 980; (b) the date, time and place of any scheduled hearing for supervised release or discharge; and (c) any conditions relating to the person's supervised release. According to Corrections, the Chapter 980 data requirements are not currently available electronically to the Department. Corrections would have to make programming changes to record the new data and to update the display on the website. As a result, the Department estimates one-time costs of between \$195,000 and \$210,000 to contract for reprogramming, assuming 1,300-1,400 hours of work at a rate of \$150 per hour.

Since the bill does not appropriate any funding or create positions for Corrections or DHFS, any costs associated with SA 1 to SSA 2 would need to be addressed within these agencies' existing resources. If Corrections or DHFS determine that existing resources are not sufficient to implement the legislation, additional funding and positions would need to be provided, either through the 2007-09 biennial budget bill, or subsequent legislative action.

Prepared by: Chris Carmichael  
Attachments

# ATTACHMENT 1

## Comparison of Provisions Related to GPS Tracking

Provision	ASA 2 to AB 591	SSA 2 to AB 591	Amendment 1 to SSA 2
Who is Covered	<ul style="list-style-type: none"> <li>• Mandatory lifetime tracking:</li> <li>• Persons on probation, parole, or extended supervision for a "serious child sex offense"</li> <li>• Persons on conditional release or Chp. 980 supervised release for a serious child sex offense</li> <li>• Persons convicted of federal or other states' comparable serious child sex offense, who reside in this state and are employed or students</li> </ul>	<ul style="list-style-type: none"> <li>• Mandatory lifetime tracking:</li> <li>• Persons on probation, parole, or extended supervision for a "serious child sex offense"</li> <li>• Persons conditional release or Chp. 980 supervised release for a serious child sex offense</li> <li>• Persons convicted of federal or other states' comparable serious child sex offense, who reside in the state and are employed or students</li> <li>• Persons who, on or after the effective date of bill, are: (a) directly released from prison; (b) directly discharged from a not guilty by reason of mental disease or defect (NGI) commitment order; or (c) directly discharged under Ch.980.</li> <li>• Person placed on probation or discharged under Ch 975 for a serious sex crime on or after the effective date of the bill</li> </ul>	
Applicable Offenses	<ul style="list-style-type: none"> <li>• Discretionary tracking:</li> <li>• Persons on probation, parole, or extended supervision for a "sex offense"<sup>1</sup></li> </ul> <p><b>"Serious Child Sex Offense":</b></p> <ul style="list-style-type: none"> <li>• First-degree sexual assault of a child</li> <li>• Engaging in repeated acts of sexual assault of the same child, if at least three of the violations were first-degree sexual assault of a child</li> <li>• Second-degree sexual assault of a child, if court finds</li> </ul>	<ul style="list-style-type: none"> <li>• Discretionary tracking:</li> <li>• Persons on probation, parole, or extended supervision for a "sex offense"<sup>1</sup></li> </ul> <p><b>"Serious Child Sex Offense":</b> A violation of any of the following, including the solicitation, conspiracy, or attempt:</p> <ul style="list-style-type: none"> <li>• First-degree sexual assault of a child</li> <li>• Engaging in repeated acts of sexual assault of the same child, if at least three of the violations were first-degree sexual assault of a child</li> <li>• Second-degree sexual assault of a child, if court finds</li> </ul>	<p><b>A. If AB 784 is enacted <i>not</i> as proposed in SSA 2 to AB 784:</b></p> <p><i>"Serious Child Sex Offense"</i> means a violation (or the solicitation, conspiracy, or attempt) of: (a) first-degree sexual assault of a child; (b) second-degree sexual assault of a child; or (c) engaging in repeated acts of sexual assault of the same child, if any of the following applies:</p> <ol style="list-style-type: none"> <li>1. The actor has sexual intercourse with a</li> </ol>

<sup>1</sup> Section 301.45(1)(b) defines "sex offense" as a violation, or the solicitation, conspiracy, or attempt to commit a violation of one of the following: (a) sexual exploitation by therapist; (b) first-, second- or third-degree sexual assault; (c) incest; (d) first- or second-degree sexual assault of a child; (e) engaging in repeated acts of sexual assault of the same child; (f) sexual exploitation of a child; (g) causes a child to view or listen to sexual activity; (h) incest with a child; (i) child enticement; (j) use of computer to facilitate a child sex crime; (k) soliciting a child for prostitution; (l) sexual assault of a student by a school instructional staff person; (m) exposing a child to harmful material or harmful descriptions or narrations; (n) possession of child pornography; (o) child sex offender working with children; (p) abduction of another's child; or (q) false imprisonment or taking hostages if the victim was a minor and the offender was not the victim's parent.

Provision	ASA 2 to AB 591	SSA 2 to AB 591	Amendment 1 to SSA 2
	<p>offense involved use or threat of force or violence</p> <ul style="list-style-type: none"> <li>Engaging in repeated acts of sexual assault of the same child, if fewer than three violations were first-degree sexual assault of a child, if court finds offense involved use or threat of force or violence, and the offense involved a second-degree sexual assault of a child</li> <li>For a finding of use or threat of force or violence, the court must make the finding immediately after trial, based on a preponderance of evidence presented at trial, and without a jury</li> </ul> <p><i>"Sex Offense"</i> as defined under current law or comparable federal or other state law</p>	<p>offense involved use or threat of force or violence</p> <ul style="list-style-type: none"> <li>Engaging in repeated acts of sexual assault of the same child, if fewer than three violations were first-degree sexual assault of a child, if court finds offense involved use or threat of force or violence, and the offense involved a second-degree sexual assault of a child</li> <li>For a finding of use or threat of force or violence, the court must make the finding immediately after trial, based on a preponderance of evidence presented at trial, and without a jury</li> </ul> <p><i>"Sex Offense"</i> as defined under current or comparable federal or other state law</p>	<p>person who has not attained the age of 12 years</p> <ol style="list-style-type: none"> <li>The actor has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence</li> <li>The actor has sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence and the actor is at least 18 years of age when the contact occurs</li> </ol> <p><b>B. If AB 784 is enacted as proposed in SSA 2 to AB 784:</b></p> <ul style="list-style-type: none"> <li><i>"Serious child sex offense"</i> means a violation (or the solicitation, conspiracy, or attempt) of: first-degree sexual assault of a child under the 2003 statutes; (b) second-degree sexual assault of a child under the 2003 statutes; or (c) engaging in repeated acts of sexual assault of the same child under the 2003 statutes, if any of the following applies: <ol style="list-style-type: none"> <li>The actor has sexual intercourse with a person who has not attained the age of 12 years</li> <li>The actor has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence</li> <li>The actor has sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence and the actor is at least 18 years of age when the contact occurs.</li> </ol> </li> </ul> <p>• <i>"Serious child sex offense"</i> also means a violation of (or the solicitation, conspiracy, or attempt to engage in conduct in violation of) any of the following:</p> <ol style="list-style-type: none"> <li>First-degree sexual assault if sexual intercourse occurred with a person who has not attained the age of 12 years old;</li> <li>First-degree sexual assault if sexual intercourse occurred with a person who has not attained the age of 16 years by use or threat of</li> </ol>

<p><b>Provision</b></p>	<p><b>ASA 2 to AB 591</b></p>	<p><b>SSA 2 to AB 591</b></p>	<p><b>Amendment 1 to SSA 2</b></p>
<p>Other Definitions</p>	<ul style="list-style-type: none"> <li>• "Exclusion Zone": a zone in which a person who is tracked using a global positioning system tracking device is prohibited from entering except for purposes of traveling through it to get to another destination.</li> <li>• "Inclusion Zone": a zone in which a person who is tracked using a global positioning system tracking device is prohibited from leaving.</li> <li>• "Global Positioning Tracking System": tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone. "Global positioning system tracking" includes comparable technology.</li> </ul>	<ul style="list-style-type: none"> <li>• "Exclusion Zone": a zone in which a person who is tracked using a global positioning system tracking device is prohibited from entering except for purposes of traveling through it to get to another destination.</li> <li>• "Inclusion Zone": a zone in which a person who is tracked using a global positioning system tracking device is prohibited from leaving.</li> <li>• "Global Positioning Tracking System": tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone. "Global positioning system tracking" includes comparable technology.</li> </ul>	<p>force or violence;</p> <p>(c) First-degree sexual contact occurred with a person who has not attained the age of 16 years by use or threat of force or violence, if the actor is at least 18 years of age when the sexual contact occurs;</p> <p>(d) Engaging in repeated acts of sexual assault of the same child, if at least three of the violations were violations of a. or b. above.</p> <p>(e) Engaging in repeated acts of sexual assault of the same child, if at least three of the violations were violations of (a), (b), or (c) above, but fewer than three of the violations were violations of (a) or (b) above.</p> <ul style="list-style-type: none"> <li>• No matter which version of AB 784 is enacted, the finding of the use or threat of force or violence is deleted (now an element of the crime)</li> </ul> <p><b>"Sexual Intercourse"</b>: Vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of any inanimate object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of sperm is not required.</p>

Provision	ASA 2 to AB 591	SSA 2 to AB 591	Amendment 1 to SSA 2
Exceptions	<ul style="list-style-type: none"> <li>Persons on probation, extended supervision, parole, or conditional release may be excepted from lifetime tracking, if all the following apply:               <ol style="list-style-type: none"> <li>The serious child sex offense did not involve sexual intercourse by use or threat of force or violence and did not involve sexual intercourse with a victim under 12;</li> <li>At the time of the offense, the person was not yet 19, not more than 4 years older than the victim, and not more than 4 years younger than the victim; and</li> <li>It is not necessary in the interest of public protection.</li> </ol> </li> <li>Persons on Chp. 980 supervised release - no exception for lifetime tracking</li> </ul>	<ul style="list-style-type: none"> <li>Persons on probation, extended supervision, parole, or conditional release may be excepted from lifetime tracking, if all the following apply:               <ol style="list-style-type: none"> <li>The serious child sex offense did not involve sexual intercourse by use or threat of force or violence and did not involve sexual intercourse with a victim under 12;</li> <li>At the time of the offense, the person was not yet 19, not more than 4 years older than the victim, and not more than 4 years younger than the victim; and</li> <li>It is not necessary in the interest of public protection.</li> </ol> </li> <li>Persons on, or discharged from, Chp. 980 supervised release - no exception for lifetime tracking</li> <li>Persons placed on parole or discharged from Ch. 975 - no exception</li> </ul>	<p>Because age factors would be provided within the offense descriptions, exceptions to GPS tracking are deleted</p>
Duration of Tracking	<p>Lifetime, except those placed on discretionary tracking or those tracked because they were convicted under federal law or the laws of another state, who reside or are employed in Wisconsin</p>	<p>Lifetime, except those placed on discretionary tracking or those tracked because they were convicted under federal law or the laws of another state, who reside or are employed in Wisconsin</p>	<p>Specifically for cases where the victim of a serious child sex offense is a relative, DOC may terminate lifetime tracking after 10 years. "Relative" means a child, brother, sister, first cousin, 2<sup>nd</sup> cousin, nephew, niece, grandchild, or great grandchild, or any other person related by blood, marriage, or adoption.</p>
Petition to Terminate Lifetime Tracking (Offender's Petition, Department's Petition)	<ul style="list-style-type: none"> <li>May not file a petition for termination before 20 years after date tracking began</li> <li>Persons on Chp. 980 supervised release may not petition for termination of tracking</li> <li>Persons convicted of any crime while on tracking may not petition termination</li> <li>DOC may petition to terminate tracking if the person is permanently physically incapacitated</li> </ul>	<ul style="list-style-type: none"> <li>May not file a petition for termination before 20 years after date tracking began</li> <li>Persons on Chp. 980 supervised release may not petition for termination of tracking</li> <li>Persons convicted of any crime while on tracking may not petition termination</li> <li>Persons on parole or discharged from a Chp. 975 commitment may not petition for termination</li> <li>DOC may petition to terminate tracking if the person is permanently physically incapacitated</li> </ul>	

Provision	ASA 2 to AB 591	SSA 2 to AB 591	Amendment 1 to SSA 2
Duties of Department	<ul style="list-style-type: none"> <li>• Create individualized exclusion and inclusion zones</li> <li>• Ensure that GPS device immediately alerts violations</li> <li>• Upon request, notify DHFS if person on Chp. 980 supervised or conditional release violates zone restrictions or fails payment requirements</li> <li>• Determine all of the following: (a) the cost of GPS tracking; and (b) how much person is able to pay. In determining payment amount, DOC may consider the following:               <ol style="list-style-type: none"> <li>1. Person's financial resources</li> <li>2. Person's present &amp; future earning ability</li> <li>3. Needs &amp; earning ability of person's dependents</li> <li>4. Any other costs the person is required to pay</li> <li>5. Other factors DOC considers appropriate</li> </ol> </li> <li>• May prepare and submit a report to the court regarding a person's petition to end lifetime tracking</li> </ul>	<ul style="list-style-type: none"> <li>• Create individualized exclusion and inclusion zones</li> <li>• Upon request, notify DHFS if person on Chp. 980 supervised or conditional release violates zone restrictions or fails payment requirements</li> <li>• Determine all of the following: (a) the cost of GPS tracking; and (b) how much person is able to pay. In determining payment amount, DOC may consider the following:               <ol style="list-style-type: none"> <li>1. Person's financial resources</li> <li>2. Person's present &amp; future earning ability</li> <li>3. Needs &amp; earning ability of person's dependents</li> <li>4. Any other costs the person is required to pay</li> <li>5. Other factors DOC considers appropriate</li> </ol> </li> <li>• May prepare and submit a report to the court regarding a person's petition to end lifetime tracking</li> <li>• DOC will implement a continuous GPS tracking system. This system must do all the following:               <ol style="list-style-type: none"> <li>1. Use field monitoring equipment that supports cellular communications with as large a coverage area as possible and shall automatically provide instantaneous or nearly instantaneous information regarding the whereabouts of a person who is being monitored, including information regarding the person's presence in an exclusion or inclusion zone</li> <li>2. Use land line communications equipment to transmit information regarding location of persons who are subject to this section when they are in areas in which no commercial cellular service is available.</li> <li>3. Immediately alert the department and the local law enforcement agency having jurisdiction over the exclusion or inclusion zone if the person stays in any exclusion zone for any longer period than the time needed to travel through the zone to get to another destination or if the person leaves any inclusion zone.</li> </ol> </li> <li>• DOC must contract with a vendor using a competitive process under s. 16.75 for GPS system services</li> <li>• DOA will delegate authority to DOC to enter into contracts for GPS tracking systems</li> </ul>	

Provision	ASA 2 to AB 591	SSA 2 to AB 591	Amendment 1 to SSA 2
Costs of GPS Tracking	<ul style="list-style-type: none"> <li>• If required by DOC, person must pay costs based on above criteria</li> <li>• DHFS must pay tracking costs for persons on conditional or supervised release to the extent those persons are unable to pay</li> </ul>	<ul style="list-style-type: none"> <li>• DOC shall include the following information on the sex offender registry: (a) a notice in red letters if person in a sexually violent person under Chp. 980; (b) current color photo if available, and physical description including sex, race, height, weight, eye color and hair color; (c) person's name and home address; (d) person's compliance status; (e) sex offense conviction(s); (f) any conditions of person's supervised release, except anything that may reveal victim's identity; (g) date, time, place of scheduled hearings for supervised release or discharge under Ch.980; (h) judge who authorized supervised release or discharge under Ch.980; and (i) most recent date information was updated</li> <li>• DOC is required to escort individuals on Chp. 980 supervised release on all outings during the first year of release</li> </ul>	
New Offense	<p>Class I felony for tampering with a GPS tracking device</p>	<p>Class I felony for tampering with a GPS tracking device</p>	
Initial Applicability	<ul style="list-style-type: none"> <li>• Persons released by DOC to parole or extended supervision on effective date</li> <li>• Persons placed on probation by the court on effective date of bill</li> <li>• Persons placed on conditional release by the court on the effective date</li> <li>• Persons placed on Chp. 980 supervised release on effective date</li> </ul>	<ul style="list-style-type: none"> <li>• Persons released by DOC to parole or extended supervision on effective date</li> <li>• Persons placed on probation by the court on effective date of bill</li> <li>• Persons placed on conditional release by the court on the effective date</li> <li>• Persons placed on Chp. 980 supervised release on effective date</li> <li>• Persons who, on or after the effective date of bill, are: (a) directly released from prison; (b) directly discharged from a NGI commitment order; or (c) directly discharged under Ch.980.</li> </ul>	

Provision	ASA 2 to AB 591	SSA 2 to AB 591	Amendment 1 to SSA 2
	<ul style="list-style-type: none"> <li>For finding of use or threat of force or violence, provision applies on date person is convicted or found not guilty by reason of mental disease or defect</li> </ul>	<ul style="list-style-type: none"> <li>Persons placed on probation or discharged under Ch. 975 for a serious sex crime on or after the effective date of the bill</li> <li>For finding of use or threat of force or violence, provision applies on date person is convicted or found not guilty by reason of mental disease or defect</li> </ul>	
Effective Date	First day of the sixth month after publication	First day of the sixth month after publication	

## ATTACHMENT 2

### Comparison of Provisions Related to County Placement of Sexual Offenders

Provision	ASA 2 to AB 591	SSA 2 to AB 591
Who is Covered	<ul style="list-style-type: none"> <li>• Persons convicted of a sex offense who are released to parole or extended supervision</li> <li>• Persons on Chp. 980 supervised release</li> <li>• Persons found not guilty by reason of mental disease or defect (NGI) of a sex offense and placed on conditional release</li> </ul>	<ul style="list-style-type: none"> <li>• Persons convicted of a sex offense who are released to parole or extended supervision</li> <li>• Persons on Chp. 980 supervised release</li> <li>• Persons found not guilty by reason of mental disease or defect (NGI) of a sex offense and placed on conditional release</li> </ul>
Applicable Offenses	<p><b>"Sex Offense"</b> as defined under current law or comparable federal or other state law<sup>2</sup></p>	<p><b>"Sex Offense"</b> as defined under current or comparable federal or other state law</p>
County Placement Requirements	<ul style="list-style-type: none"> <li>• DOC required to place offenders convicted of a sex offense upon release in one of the following locations:                             <ol style="list-style-type: none"> <li>1. County where person resided on the offense date</li> <li>2. County where person was convicted of offense</li> <li>3. In a sex offender treatment facility</li> <li>4. In another location, if the department initially placed person in one of above</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• DOC required to place offenders convicted of a sex offense upon release in one of the following locations:                             <ol style="list-style-type: none"> <li>1. County where person resided on the offense date. If the county contains a 1<sup>st</sup> class city, the person must be placed in the city, village or town where the person resided on the offense date</li> <li>2. County where person was convicted of offense</li> <li>3. In a sex offender treatment facility that existed before January 1, 2006</li> <li>4. In another location, if the department initially placed person in one of above</li> </ol> </li> <li>• If, when planning for a conditional release placement for an individual found NGI for a sex offense or a Chp. 980 supervised release, the county of residence prepares a plan, DHFS is required to place the individual in the city, village or town where the person resided on the offense date. The individual may not be placed in a facility that did not exist before January 1, 2006</li> </ul>

<sup>2</sup> Section 301.45(1d)(b) defines "sex offense" as a violation, or the solicitation, conspiracy, or attempt to commit a violation of one of the following: (a) sexual exploitation by therapist; (b) first-, second- or third-degree sexual assault; (c) incest; (d) first- or second-degree sexual assault of a child; (e) engaging in repeated acts of sexual assault of the same child; (f) sexual exploitation of a child; (g) causes a child to view or listen to sexual activity; (h) incest with a child; (i) child enticement; (j) use of computer to facilitate a child sex crime; (k) soliciting a child for prostitution; (l) sexual assault of a student by a school instructional staff person; (m) exposing a child to harmful material or harmful descriptions or narrations; (n) possession of child pornography; (o) child sex offender working with children; (p) abduction of another's child; or (q) false imprisonment or taking hostages if the victim was a minor and the offender was not the victim's parent.

<b>Provision</b>	<b>ASA 2 to AB 591</b>	<b>SSA 2 to AB 591</b>
	<p>individual's county of residence declines, arrange for any of the following counties for placement:</p> <ol style="list-style-type: none"> <li>1. The county in which the person was found NGI or from which the Chp. 980 placement was made, if the person will live in the county</li> <li>2. A county with a sex offender treatment facility, if the person will live in the facility</li> </ol>	<p>individual's county of residence declines, arrange for any of the following counties for placement:</p> <ol style="list-style-type: none"> <li>1. The county in which the person was found NGI or from which the Chp. 980 placement was made, if the person will live in the county</li> <li>2. A county with a sex offender treatment facility, if the person will live in the facility</li> </ol>
Initial Applicability	<ul style="list-style-type: none"> <li>• Persons released by DOC to parole or extended supervision on effective date</li> <li>• Persons placed on conditional release by the court on the effective date</li> <li>• Persons placed on supervised release by the court on the effective date</li> </ul>	<ul style="list-style-type: none"> <li>• Persons released by DOC to parole or extended supervision on effective date</li> <li>• Persons placed on conditional release by the court on the effective date</li> <li>• Persons placed on supervised release by the court on the effective date</li> </ul>