



1997 ASSEMBLY BILL 875

March 2, 1998 - Introduced by Representatives SCHAFER and KREIBICH, cosponsored by Senators ZIEN and FITZGERALD. Referred to Committee on Judiciary.

1 **AN ACT to amend** 51.37 (9), 51.37 (10) (c), 302.045 (3), 304.02 (2), 971.17 (3) (e),
2 975.18, 980.06 (2) (d) and 980.08 (6); and **to create** 302.11 (5m), 304.02 (6),
3 304.06 (1s), 973.09 (1c) and 975.10 (1m) of the statutes; **relating to:** prohibiting
4 use of or access to the internet by persons who have committed certain crimes
5 and who are on parole, probation or other type of supervised or conditional
6 release.

Analysis by the Legislative Reference Bureau

Under this bill, if a person is placed on parole, probation or other type of supervised or conditional release after committing certain crimes, the court or agency releasing the person must require as a condition of release that the person not use or have access to the internet. The following sections of this analysis describe in more detail both current law concerning these types of release and the changes made in current law by this bill.

Persons placed on probation or released from state prison on parole

Currently, a person convicted of a felony (a crime that carries a maximum sentence of imprisonment of one or more years in state prison) may be sentenced to imprisonment in state prison or may be placed on probation. If a person convicted of a felony is sentenced to imprisonment in state prison, he or she usually has 3 possible ways of being released on parole: discretionary parole granted by the parole

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commission (for which a person is usually eligible after serving 25% of the sentence or 6 months, whichever is greater); mandatory release on parole (usually granted automatically after the person serves two-thirds of the sentence); or special action parole release by the secretary of corrections (a program designed to relieve prison crowding). A person released on parole is subject to conditions of parole established by the parole commission and the department of corrections (DOC). If a person convicted of a felony is not sentenced to imprisonment but is instead placed on probation, the person is subject to conditions of probation established by the sentencing court and DOC.

Under this bill, if a court places a person on probation for a child sex crime, the court must impose a condition of probation that prohibits the person from using or having access to the internet. Likewise, under the bill, when the parole commission paroles a person from a sentence imposed for a child sex crime, the parole commission must impose a condition of parole that prohibits the person from using or having access to the internet. The child sex crimes covered by the bill are first and second degree sexual assault of a child, repeated sexual assault of a child, sexual exploitation of a child, causing a child to view or listen to sexual activity, child enticement, soliciting a child for prostitution, exposing a child to harmful material and possession of child pornography.

Persons released from institutional care after being found not guilty by reason of mental disease or defect

Currently, if a person is found not guilty of a felony by reason of mental disease or defect, he or she is committed to the custody of the department of health and family services (DHFS). When committing a person found not guilty by reason of mental disease or defect, a court must specify whether the person is to be placed in institutional care or on conditional release. If a person is placed in institutional care, he or she may petition for conditional release if at least 6 months have passed since the initial commitment order was entered. A person on conditional release is subject to the custody and control of DHFS and must abide by conditions set by the court and by the rules of DHFS. Current law also provides that, under certain circumstances, the director of a treatment facility at which a person is placed in institutional care may allow the person to be discharged under supervision, to be conditionally transferred to the custody of a legal guardian or other person or to take a temporary home visit or temporary leave from the institution.

Under this bill, if a person who has been found not guilty of a child sex crime by reason of mental disease or defect is placed on conditional release by a court, the court must impose a condition of release that prohibits the person from using or having access to the internet. In addition, if such a person is conditionally transferred, discharged under supervision or given a temporary home visit or leave, DHFS must, as a condition of such a release, prohibit the person from using or having access to the internet. The child sex crimes covered by the bill are first and second degree sexual assault of a child, repeated sexual assault of a child, sexual exploitation of a child, causing a child to view or listen to sexual activity, child enticement, soliciting a child for prostitution, exposing a child to harmful material and possession of child pornography.

ASSEMBLY BILL 875***Persons released from institutional care after being found to be a sexually violent person***

Current law provides a procedure for the involuntary civil commitment of sexually violent persons. A sexually violent person is a person who has committed certain sexually violent offenses and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence. A person who has been found to be a sexually violent person is committed to DHFS for control, care and treatment. The person may be committed to institutional care in an appropriate facility or the court may order the person to be placed on supervised release. In addition, a person initially committed to institutional care may later be granted supervised release by a court if it is no longer substantially probable that the person will engage in acts of sexual violence if he or she is not confined in institutional care. A sexually violent person who is placed on supervised release is subject to conditions of release set by the court and to the rules of release established by DHFS.

This bill provides that if a court places a sexually violent person on supervised release the court must require as a condition of release that the person not use or have access to the internet.

Persons paroled from a commitment under the sex crimes law

Under prior law, persons who were convicted of certain sex crimes could, upon conviction, be committed to DHFS for specialized treatment in an appropriate institution. Although no person could be committed under this prior law after July 1, 1980, there are persons committed before that date who remain in the custody of DHFS. A person committed to DHFS for specialized care may be paroled if it appears to DHFS that the person is capable of making an acceptable adjustment in society. This bill provides that if DHFS paroles a person convicted of a sex crime and committed for specialized treatment, DHFS must require as a condition of parole that the person not use or have access to the internet.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 51.37 (9) of the statutes is amended to read:
- 2 **51.37 (9)** If in the judgment of the director of Mendota mental health institute,
- 3 Winnebago mental health institute or the Milwaukee county mental health complex,
- 4 any person who is committed under s. 971.14 or 971.17 is not in such condition as
- 5 warrants his or her return to the court but is in a condition to receive a conditional
- 6 transfer or discharge under supervision, the director shall report to the department

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1 of health and family services, the committing court and the district attorney of the
2 county in which the court is located his or her reasons for the judgment. If the court
3 does not file objection to the conditional transfer or discharge within 60 days of the
4 date of the report, the director may, with the approval of the department of health
5 and family services, conditionally transfer any person to a legal guardian or other
6 person, subject to the rules of the department of health and family services. If the
7 person being conditionally transferred or discharged under supervision was
8 committed under s. 971.17 after being found not guilty by reason of mental disease
9 or defect for a violation of s. 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11
10 or 948.12, the department of health and family services must require as a condition
11 of the transfer or discharge that the person not use or have access to the internet.

12 Before a person is conditionally transferred or discharged under supervision under
13 this subsection, the department of health and family services shall so notify the
14 municipal police department and county sheriff for the area where the person will
15 be residing. The notification requirement does not apply if a municipal department
16 or county sheriff submits to the department of health and family services a written
17 statement waiving the right to be notified. The department of health and family
18 services may contract with the department of corrections for the supervision of
19 persons who are transferred or discharged under this subsection.

20 **SECTION 2.** 51.37 (10) (c) of the statutes is amended to read:

21 51.37 (10) (c) Any patient who is granted a home visit or leave under this
22 subsection shall be restricted to the confines of this state unless otherwise
23 specifically permitted. The patient may, in addition, be restricted to a particular
24 geographic area. If a patient granted a home visit or leave was committed under s.
25 971.17 or ch. 975 after being convicted of or found not guilty by reason of mental

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1 disease or defect for a violation of s. 948.02, 948.025, 948.05, 948.055, 948.07, 948.08,
2 948.11 or 948.12, the department must require as a condition of the home visit or
3 leave that the patient not use or have access to the internet. Other conditions
4 appropriate to the person's treatment may also be imposed upon the home visit or
5 leave.

6 **SECTION 3.** 302.045 (3) of the statutes is amended to read:

7 302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department
8 determines that an inmate has successfully completed the challenge incarceration
9 program, the parole commission shall parole the inmate under s. 304.06, regardless
10 of the time the inmate has served. When the parole commission grants parole under
11 this subsection, it must require the parolee to participate in an intensive supervision
12 program for drug abusers as a condition of parole. If the inmate is serving a sentence
13 for a violation of s. 948.11 or 948.12 and the parole commission grants parole under
14 this subsection, it must require as a condition of parole that the parolee not use or
15 have access to the internet.

16 **SECTION 4.** 302.11 (5m) of the statutes is created to read:

17 302.11 (5m) (a) In this subsection, "child sex crime" means a violation of s.
18 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11 or 948.12.

19 (b) When an inmate serving a sentence for a child sex crime is released on
20 parole under sub. (1) or (1g) (b), the parole commission must require as a condition
21 of parole that the parolee not use or have access to the internet.

22 **SECTION 5.** 304.02 (2) of the statutes is amended to read:

23 304.02 (2) The department shall promulgate rules for the special action release
24 program, including eligibility criteria, procedures for the secretary to decide whether
25 to grant a prisoner a special action release to parole supervision, procedures for

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1 notifying persons, offices or agencies under s. 304.06 (1) (c) and (g) of releases, and,
2 subject to sub. (6), conditions of release. If applicable, the department shall also
3 comply with s. 304.063.

4 **SECTION 6.** 304.02 (6) of the statutes is created to read:

5 304.02 (6) (a) In this subsection, “child sex crime” means a violation of s. 948.02,
6 948.025, 948.05, 948.055, 948.07, 948.08, 948.11 or 948.12.

7 (b) When an inmate serving a sentence for a child sex crime is released on
8 parole under this section, the department must require as a condition of parole that
9 the parolee not use or have access to the internet.

10 **SECTION 7.** 304.06 (1s) of the statutes is created to read:

11 304.06 (1s) (a) In this subsection, “child sex crime” means a violation of s.
12 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11 or 948.12.

13 (b) When the parole commission grants parole under sub. (1) to a person serving
14 a sentence for a child sex crime, the parole commission must require as a condition
15 of parole that the parolee not use or have access to the internet.

16 **SECTION 8.** 971.17 (3) (e) of the statutes is amended to read:

17 971.17 (3) (e) An order for conditional release places the person in the custody
18 and control of the department of health and family services. A conditionally released
19 person is subject to the conditions set by the court and to the rules of the department
20 of health and family services. If the person being conditionally released was
21 committed under this section after being found not guilty by reason of mental disease
22 or defect for a violation of s. 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11
23 or 948.12, the court must require as a condition of conditional release that the person
24 not use or have access to the internet.

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1 (f) Before a person is conditionally released by the court under this subsection,
2 the court shall so notify the municipal police department and county sheriff for the
3 area where the person will be residing. The notification requirement under this
4 paragraph does not apply if a municipal department or county sheriff submits to the
5 court a written statement waiving the right to be notified.

6 (g) If the department of health and family services alleges that a released
7 person has violated any condition or rule, or that the safety of the person or others
8 requires that conditional release be revoked, he or she may be taken into custody
9 under the rules of the department. The department of health and family services
10 shall submit a statement showing probable cause of the detention and a petition to
11 revoke the order for conditional release to the committing court and the regional
12 office of the state public defender responsible for handling cases in the county where
13 the committing court is located within 48 hours after the detention. The court shall
14 hear the petition within 30 days, unless the hearing or time deadline is waived by
15 the detained person. Pending the revocation hearing, the department of health and
16 family services may detain the person in a jail or in a hospital, center or facility
17 specified by s. 51.15 (2). The state has the burden of proving by clear and convincing
18 evidence that any rule or condition of release has been violated, or that the safety of
19 the person or others requires that conditional release be revoked. If the court
20 determines after hearing that any rule or condition of release has been violated, or
21 that the safety of the person or others requires that conditional release be revoked,
22 it may revoke the order for conditional release and order that the released person be
23 placed in an appropriate institution under s. 51.37 (3) until the expiration of the
24 commitment or until again conditionally released under this section.

25 **SECTION 9.** 973.09 (1c) of the statutes is created to read:

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1 973.09 (1c) (a) In this subsection, “child sex crime” means a violation of s.
2 948.02, 948.025, 948.05, 948.055, 948.07, 948.08, 948.11 or 948.12.

3 (b) If a person is convicted of a child sex crime and the court places the person
4 on probation for that crime, the court shall order as a condition of probation that the
5 person not use or have access to the internet.

6 **SECTION 10.** 975.10 (1m) of the statutes is created to read:

7 975.10 (1m) When a person is paroled under this section, the department must
8 require as a condition of parole that the person not use or have access to the internet.

9 **SECTION 11.** 975.18 of the statutes is amended to read:

10 **975.18 Establishment of regulations.** The Subject to s. 975.10 (1m), the
11 department may promulgate rules concerning parole, revocation of parole,
12 supervision of parolees, and any other matters necessary for the administration of
13 this chapter.

14 **SECTION 12.** 980.06 (2) (d) of the statutes is amended to read:

15 980.06 (2) (d) An order for supervised release places the person in the custody
16 and control of the department. If a court places a person on supervised release, the
17 court must require as a condition of supervised release that the person not use or
18 have access to the internet. A person on supervised release is also subject to the any
19 other conditions set by the court and to the rules of the department.

20 (e) Before a person is placed on supervised release by the court under this
21 section, the court shall so notify the municipal police department and county sheriff
22 for the municipality and county in which the person will be residing. The notification
23 requirement under this paragraph does not apply if a municipal police department
24 or county sheriff submits to the court a written statement waiving the right to be
25 notified.

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1 (f) If the department alleges that a released person has violated any condition
2 or rule, or that the safety of others requires that supervised release be revoked, he
3 or she may be taken into custody under the rules of the department. The department
4 shall submit a statement showing probable cause of the detention and a petition to
5 revoke the order for supervised release to the committing court and the regional
6 office of the state public defender responsible for handling cases in the county where
7 the committing court is located within 48 hours after the detention. The court shall
8 hear the petition within 30 days, unless the hearing or time deadline is waived by
9 the detained person. Pending the revocation hearing, the department may detain
10 the person in a jail or in a hospital, center or facility specified by s. 51.15 (2). The state
11 has the burden of proving by clear and convincing evidence that any rule or condition
12 of release has been violated, or that the safety of others requires that supervised
13 release be revoked. If the court determines after hearing that any rule or condition
14 of release has been violated, or that the safety of others requires that supervised
15 release be revoked, it may revoke the order for supervised release and order that the
16 released person be placed in an appropriate institution until the person is discharged
17 from the commitment under s. 980.09 or until again placed on supervised release
18 under s. 980.08.

19 **SECTION 13.** 980.08 (6) of the statutes is amended to read:

20 980.08 (6) The provisions of s. 980.06 (2) (d), (e) and (f) apply to an order for
21 supervised release issued under this section.

22 **SECTION 14. Initial applicability.**

23 (1) CONDITIONS OF PAROLE. The treatment of sections 302.045 (3), 302.11 (5m),
24 304.02 (6) and 304.06 (1s) of the statutes first applies to persons who are released on
25 parole on the effective date of this subsection.

