



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 176**

February 22, 2006 – Offered by Senator ROBSON.

1 **AN ACT** *to renumber* 302.11 (4m) and 302.116 (2); *to renumber and amend*
2 980.08 (5); *to amend* 46.10 (2), 51.42 (3) (aw) 1. d., 302.11 (1), 302.116 (1) (a),
3 304.06 (2m) (a), 980.08 (4) (c) and 980.08 (6m); and *to create* 302.11 (1g) (b) 3.,
4 302.11 (4m) (b), 302.116 (2) (b), 304.02 (4t), 304.06 (2m) (af), 304.06 (2s), 973.09
5 **(8)**, 980.08 (4) (b) 3., 980.08 (5) (a) 2. and 980.08 (5) (b) of the statutes; **relating**
6 **to:** the residence of certain sex offenders.

Current law restricts where certain sex offenders may live when being supervised in the community. First, persons who have been convicted of first-degree or second-degree sexual assault, first-degree or second-degree sexual assault of a child, repeated sexual assault of a child, incest with a child, or child enticement (a “serious sex offense”) generally may not be paroled to any county in which there is a correctional institution with a specialized sex offender treatment program. Second, if a person convicted of a serious sex offense is released to extended supervision, he or she must agree, as a condition of extended supervision, to live in a residence that the Department of Corrections (DOC) has approved. Third, if a court authorizes supervised release for a person committed to the custody of the Department of Health and Family Services (DHFS) as a sexually violent person, DHFS must make its best effort to place the person in the county in which he or she

resided at the time of the sexually violent offense that resulted in his or her commitment.

In addition, under current law, DOC may be required to provide a crime victim with notice of certain events that may occur during an offender's criminal sentence. Those requirements generally apply only when the victim has registered with DOC. Moreover, when a court orders DHFS to supervise a sexually violent person in the community, DHFS must notify any person who has registered with it of the person's release.

Under this substitute amendment, a person who has been convicted of a serious sex offense and who is being placed in the community under the supervision of DOC (through parole, extended supervision, or probation) may not establish or reestablish a residence or, if the person is being placed on probation, remain at his or her residence if it is within 0.5 miles of the residence of the victim of the serious sex offense. This requirement, however, only applies if the victim has registered with DOC. In addition, it does not apply to an offender who is reestablishing a residence if the victim moved to within 0.5 miles of that residence after the serious sex offense. The substitute amendment establishes a comparable restriction with the same exceptions for sexually violent persons being placed on supervised release. The substitute amendment also broadens the definition of "serious sex offense" so that the residency restrictions described above, including those contained in current law, apply to a person who has committed third-degree or fourth-degree sexual assault or violated the prohibition against sexual exploitation by a therapist.

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

1 **SECTION 1.** 46.10 (2) of the statutes is amended to read:

2 46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,
3 including but not limited to a person admitted, committed, or placed under s. 975.01,
4 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,
5 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12), and (13), 55.05, 55.06, 971.14
6 (2) and (5), 971.17 (1), 975.06, and 980.06, receiving care, maintenance, services, and
7 supplies provided by any institution in this state including University of Wisconsin
8 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
9 care, maintenance, services, and supplies, any person receiving care and services
10 from a county department established under s. 51.42 or 51.437 or from a facility

1 established under s. 49.73, and any person receiving treatment and services from a
2 public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4)
3 (e) or 980.08 (5) (c) and the person's property and estate, including the homestead,
4 and the spouse of the person, and the spouse's property and estate, including the
5 homestead, and, in the case of a minor child, the parents of the person, and their
6 property and estates, including their homestead, and, in the case of a foreign child
7 described in s. 48.839 (1) who became dependent on public funds for his or her
8 primary support before an order granting his or her adoption, the resident of this
9 state appointed guardian of the child by a foreign court who brought the child into
10 this state for the purpose of adoption, and his or her property and estate, including
11 his or her homestead, shall be liable for the cost of the care, maintenance, services,
12 and supplies in accordance with the fee schedule established by the department
13 under s. 46.03 (18). If a spouse, widow, or minor, or an incapacitated person may be
14 lawfully dependent upon the property for ~~their~~ his or her support, the court shall
15 release all or such part of the property and estate from the charges that may be
16 necessary to provide for ~~those persons~~ that person. The department shall make every
17 reasonable effort to notify the liable persons as soon as possible after the beginning
18 of the maintenance, but the notice or the receipt thereof is not a condition of liability.

19 **SECTION 2.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

20 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a
21 conditional release plan approved by a court for a person who is a county resident and
22 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised
23 release plan approved by a court under s. 980.06 (2) (c), 1997 stats., or s. 980.08 (5)
24 (d). If the county department provides treatment and services under this
25 subdivision, the department of health and family services shall, from the

1 appropriation under s. 20.435 (2) (bj), pay the county department for the costs of the
2 treatment and services.

3 **SECTION 3.** 302.11 (1) of the statutes is amended to read:

4 302.11 (1) The warden or superintendent shall keep a record of the conduct of
5 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),
6 (1m), (1q), (1z), (4m) (b), (7), and (10), each inmate is entitled to mandatory release
7 on parole by the department. The mandatory release date is established at
8 two-thirds of the sentence. Any calculations under this subsection or sub. (1q) (b)
9 or (2) (b) resulting in fractions of a day shall be rounded in the inmate's favor to a
10 whole day.

11 **SECTION 4.** 302.11 (1g) (b) 3. of the statutes is created to read:

12 302.11 (1g) (b) 3. Refusal by the inmate, if the inmate is a sex offender, as
13 defined in s. 302.116 (1) (b), to comply with s. 304.06 (2s).

14 **SECTION 5.** 302.11 (4m) of the statutes is renumbered 302.11 (4m) (a).

15 **SECTION 6.** 302.11 (4m) (b) of the statutes is created to read:

16 302.11 (4m) (b) A sex offender, as defined in s. 302.116 (1) (b), is not entitled
17 to mandatory release on parole under this section unless he or she agrees, as a
18 condition of parole, to comply with s. 304.06 (2s).

19 **SECTION 7.** 302.116 (1) (a) of the statutes is amended to read:

20 302.116 (1) (a) “Serious sex offense” means a violation of s. 940.22 (2), 940.225
21 ~~(1) or (2)~~, 948.02 (1) or (2), 948.025, 948.06, or 948.07 or a solicitation, conspiracy, or
22 attempt to commit a violation of s. 940.22 (2), 940.225 ~~(1) or (2)~~, 948.02 (1) or (2),
23 948.025, 948.06, or 948.07.

24 **SECTION 8.** 302.116 (2) of the statutes is renumbered 302.116 (2) (a).

25 **SECTION 9.** 302.116 (2) (b) of the statutes is created to read:

1 302.116 (2) (b) The department may not approve a residence that a sex offender
2 is establishing or reestablishing if, on the day on which it is established or
3 reestablished, the residence is within 0.5 miles of the residence of the victim of the
4 serious sex offense for which the sex offender is serving a sentence. This paragraph
5 does not apply if any of the following applies:

6 1. The sex offender is reestablishing the residence that he or she had on the day
7 of the offense and the victim resided more than 0.5 miles from that residence on that
8 day.

9 2. The victim is not registered with the department's office of victim services
10 to receive information regarding the sex offender.

11 **SECTION 10.** 304.02 (4t) of the statutes is created to read:

12 304.02 (4t) Notwithstanding subs. (1) to (3), a sex offender, as defined in s.
13 302.116 (1) (b), may not be paroled under this section unless he or she agrees, as a
14 condition of parole, to comply with s. 304.06 (2s).

15 **SECTION 11.** 304.06 (2m) (a) of the statutes is amended to read:

16 304.06 (2m) (a) In this subsection, "serious sex offense" means a violation of
17 s. 940.22 (2), 940.225 (1) ~~or (2)~~, 948.02 (1) or (2), 948.025, 948.06, or 948.07 or a
18 solicitation, conspiracy, or attempt to commit a violation of s. 940.22 (2), 940.225 (1)
19 ~~or (2)~~, 948.02 (1) or (2), 948.025, 948.06, or 948.07.

20 **SECTION 12.** 304.06 (2m) (af) of the statutes is created to read:

21 304.06 (2m) (af) Neither the parole commission nor the department may parole
22 a prisoner serving a sentence for a serious sex offense unless he or she agrees, as a
23 condition of parole, comply with s. 304.06 (2s).

24 **SECTION 13.** 304.06 (2s) of the statutes is created to read:

1 304.06 **(2s)** As a condition of parole, a person serving a sentence for a serious
2 sex offense may not establish or reestablish a residence if, on the day on which it is
3 established or reestablished, the residence is within 0.5 miles of the residence of the
4 victim of that serious sex offense. This subsection does not apply if any of the
5 following applies:

6 (a) The person is reestablishing the residence that he or she had on the day of
7 the offense and the victim resided more than 0.5 miles from that residence on that
8 day.

9 (b) The victim is not registered with the department's office of victim services
10 to receive information regarding the person.

11 **SECTION 14.** 973.09 **(8)** of the statutes is created to read:

12 973.09 **(8)** If the court places a person on probation for a serious sex offense,
13 as defined in s. 302.116 (1) (a), the court shall impose the following conditions of
14 probation, which shall apply only if the victim of that offense is registered with the
15 department's office of victim services to receive information regarding that person:

16 (a) The person may not move to a residence that is within 0.5 miles of the
17 residence of the victim.

18 (b) If, immediately before being placed on probation, the person resided within
19 0.5 miles of the residence of the victim, the person shall move to a residence that is
20 at least 0.5 miles from the residence of the victim.

21 **SECTION 15.** 980.08 (4) (b) 3. of the statutes is created to read:

22 980.08 **(4)** (b) 3. That the person who is the subject of the petition refuses to
23 comply with sub. (5) (a) 2.

24 **SECTION 16.** 980.08 (4) (c) of the statutes is amended to read:

1 980.08 (4) (c) In making a decision under par. (b) 1. or 2., the court may consider,
2 without limitation because of enumeration, the nature and circumstances of the
3 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),
4 the person's mental history and present mental condition, where the person will live,
5 how the person will support himself or herself, and what arrangements are available
6 to ensure that the person has access to and will participate in necessary treatment,
7 including pharmacological treatment using an antiandrogen or the chemical
8 equivalent of an antiandrogen if the person is a serious child sex offender. A decision
9 under par. (b) 1. or 2. on a petition filed by a person who is a serious child sex offender
10 may not be made based on the fact that the person is a proper subject for
11 pharmacological treatment using an antiandrogen or the chemical equivalent of an
12 antiandrogen or on the fact that the person is willing to participate in
13 pharmacological treatment using an antiandrogen or the chemical equivalent of an
14 antiandrogen.

15 **SECTION 17.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) 1. and
16 amended to read:

17 980.08 (5) (a) 1. If the court finds that the person is appropriate for supervised
18 release, the court shall notify the department. The Subject to subd. 2., the
19 department shall make its best effort to arrange for placement of the person in a
20 residential facility or dwelling that is in the person's county of residence, as
21 determined by the department under s. 980.105. ~~The department and the county~~
22 ~~department under s. 51.42 in the county of residence of the person shall prepare a~~
23 ~~plan that identifies the treatment and services, if any, that the person will receive~~
24 ~~in the community. The plan shall address the person's need, if any, for supervision,~~
25 ~~counseling, medication, community support services, residential services, vocational~~

1 ~~services, and alcohol or other drug abuse treatment.~~ In developing a plan for where
2 the person may reside while on supervised release, the department shall consider the
3 proximity of any potential placement to the residence of other persons on supervised
4 release and to the residence of persons who are in the custody of the department of
5 corrections and regarding whom a sex offender notification bulletin has been issued
6 to law enforcement agencies under s. 301.46 (2m) (a) or (am).

7 (c) The plan prepared under par. (b) shall address the person's need, if any, for
8 supervision, counseling, medication, community support services, residential
9 services, vocational services, and alcohol or other drug abuse treatment. If the
10 person is a serious child sex offender, the plan shall address the person's need for
11 pharmacological treatment using an antiandrogen or the chemical equivalent of an
12 antiandrogen. The department may contract with a county department, under s.
13 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide
14 the treatment and services identified in the plan. The plan shall specify who will be
15 responsible for providing the treatment and services identified in the plan.

16 (d) The plan prepared under par. (b) shall be presented to the court for its
17 approval within 60 days after the court finding that the person is appropriate for
18 supervised release, unless the department, county department, and person to be
19 released request additional time to develop the plan. If the county department of the
20 person's county of residence declines to prepare a plan, the department may arrange
21 for another county to prepare the plan if that county agrees to prepare the plan and
22 if the person will be living in that county. If the department is unable to arrange for
23 another county to prepare a plan, the court shall designate a county department to
24 prepare the plan, order the county department to prepare the plan and place the
25 person on supervised release in that county, except that the court may not so

1 ~~designate the county department in any county where there is a facility in which~~
2 ~~persons committed to institutional care under this chapter are placed unless that~~
3 ~~county is also the person's county of residence.~~

4 **SECTION 18.** 980.08 (5) (a) 2. of the statutes is created to read:

5 980.08 (5) (a) 2. A person committed under s. 980.06 may not, as a condition
6 of supervised release, establish or reestablish a residence if, on the day on which it
7 is established or reestablished, the residence is within 0.5 miles of the residence of
8 the victim of any sexually violent offense committed by the person. This subdivision
9 does not apply if any of the following applies:

10 a. The person is reestablishing the residence that he or she had at the time of
11 the sexually violent offense and the victim resided more than 0.5 miles from that
12 residence on that day.

13 b. The victim has not submitted a card to the department under s. 980.11 (4).

14 **SECTION 19.** 980.08 (5) (b) of the statutes is created to read:

15 980.08 (5) (b) If the person will be living in his or her county of residence, the
16 department and the county department under s. 51.42 in that county shall prepare
17 a plan that identifies the treatment and services, if any, that the person will receive
18 in the community. If the county department of the person's county of residence
19 declines to prepare a plan, the department may arrange for another county to
20 prepare the plan if that county agrees to prepare the plan and if the person will be
21 living in that county. If the department is unable to arrange for another county to
22 prepare a plan, the court shall designate a county department to prepare the plan,
23 order the county department to prepare the plan, and place the person on supervised
24 release in that county, except that the court may not so designate the county
25 department in any county where there is a facility in which persons committed to

1 institutional care under this chapter are placed unless that county is also the
2 person's county of residence.

3 **SECTION 20.** 980.08 (6m) of the statutes is amended to read:

4 980.08 **(6m)** An order for supervised release places the person in the custody
5 and control of the department. The department shall arrange for control, care, and
6 treatment of the person in the least restrictive manner consistent with the
7 requirements of the person and in accordance with the plan for supervised release
8 approved by the court under sub. (5) (d). A person on supervised release is subject
9 to the conditions set by the court and to the rules of the department. Before a person
10 is placed on supervised release by the court under this section, the court shall so
11 notify the municipal police department and county sheriff for the municipality and
12 county in which the person will be residing. The notification requirement under this
13 subsection does not apply if a municipal police department or county sheriff submits
14 to the court a written statement waiving the right to be notified. If the department
15 alleges that a released person has violated any condition or rule, or that the safety
16 of others requires that supervised release be revoked, he or she may be taken into
17 custody under the rules of the department. The department shall submit a
18 statement showing probable cause of the detention and a petition to revoke the order
19 for supervised release to the committing court and the regional office of the state
20 public defender responsible for handling cases in the county where the committing
21 court is located within 72 hours after the detention, excluding Saturdays, Sundays,
22 and legal holidays. The court shall hear the petition within 30 days, unless the
23 hearing or time deadline is waived by the detained person. Pending the revocation
24 hearing, the department may detain the person in a jail or in a hospital, center, or
25 facility specified by s. 51.15 (2). The state has the burden of proving by clear and

1 convincing evidence that any rule or condition of release has been violated, or that
2 the safety of others requires that supervised release be revoked. If the court
3 determines after hearing that any rule or condition of release has been violated, or
4 that the safety of others requires that supervised release be revoked, it may revoke
5 the order for supervised release and order that the released person be placed in an
6 appropriate institution until the person is discharged from the commitment under
7 s. 980.09 or until again placed on supervised release under this section.

8

(END)