



1997 SENATE BILL 382

December 17, 1997 - Introduced by Senators DARLING, ROESSLER, WELCH, FARROW and A. LASEE, cosponsored by Representatives SKINDRUD, PORTER, GREEN, SYKORA, PLALE, JENSEN, LADWIG, DOBYNS, URBAN, FREESE, F. LASEE, AINSWORTH, HUBER, KREIBICH, OTTE, MUSSER, KELSO, SCHAFFER, WALKER and HANDRICK. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT to amend** 301.08 (1) (b) 1. and 972.13 (6); and **to create** 20.410 (1) (gh),
2 301.03 (3b), 939.615, 971.17 (1j) and 973.125 of the statutes; **relating to:**
3 lifetime supervision for persons who commit certain sex offenses, granting
4 rule-making authority and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person convicted of committing a sex offense may be sentenced to a period of imprisonment in a jail or the state prisons or sentenced to pay a fine or both. A court may also place a person convicted of a sex offense on probation, except that in certain cases involving repeat offenders a court must impose a prison sentence and may not place the repeat offender on probation.

In addition, under current law, a person is not responsible for criminal conduct if, at the time of such conduct, the person was suffering from a mental disease or defect that resulted in the person lacking substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law. A person found by a judge or jury to be not responsible for his or her criminal conduct due to mental disease or defect is not guilty by reason of mental disease or defect and is committed for treatment to the department of health and family services (DHFS) for a period of time not exceeding two-thirds of the maximum term of imprisonment that could be imposed for the crime charged.

This bill provides that, if a person is convicted of certain serious sex offenses or is found not guilty of certain sex offenses by reason of mental disease or defect, the court may, in addition to sentencing the person, placing the person on probation or

SENATE BILL 382

committing the person to DHFS, order that the person be placed on lifetime supervision by the department of corrections (DOC) unless the person is already on lifetime supervision because of a prior offense. A court may place a person on lifetime supervision under the bill only if the court first determines that doing so is necessary to protect the public. The serious sex offenses covered by this requirement include sexual exploitation by a therapist, sexual assault (nonconsensual sexual contact or sexual intercourse), sexual assault of a 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, possession of child pornography, exposing a child to harmful materials and working with children after having been convicted of a serious child sex offense. In addition, the bill allows a court to place a person on lifetime supervision if he or she commits any crime against life, bodily security, children, sexual morality or property and the court determines that the crime was sexually motivated.

If a person is placed on lifetime supervision under the bill, the period of lifetime supervision begins when the person's sentence or period of probation ends or, if the person was found not guilty by reason of mental disease or defect, when the person's commitment to DHFS ends. A person placed on lifetime supervision may petition for the termination of lifetime supervision if he or she has been on lifetime supervision for at least 15 years and has not been convicted of a crime while on lifetime supervision.

Before conducting a hearing on a person's petition to terminate lifetime supervision, the person must be examined by a physician or psychologist, who must report on the examination to the court and provide an opinion as to whether the person is a danger to the public. In addition, DOC may submit a report to the court that includes 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. At a hearing on a person's petition to terminate lifetime supervision, the court must take evidence concerning the dangerousness of the person and the need to continue lifetime supervision. The court may grant the petition if it determines that lifetime supervision is no longer necessary to protect the public.

A person placed on lifetime supervision under the bill must abide by conditions established by the court and rules established by DOC. The bill provides that DOC may temporarily take a person on lifetime supervision into custody if DOC has reasonable grounds to believe that the person has violated a condition or regulation of lifetime supervision. The person may be kept in custody only as long as is reasonably necessary to investigate whether the person violated a condition or regulation of lifetime supervision and, if warranted, to refer the person to the appropriate prosecuting agency to be prosecuted for violating a condition or rule of lifetime supervision. If a person is convicted of knowingly violating a condition or rule of lifetime supervision, he or she may be fined not more than \$10,000 or imprisoned for not more than 9 months or both, except that if the conduct that constituted the violation also constitutes a felony offense the person may be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

SENATE BILL 382

1 correctional or penal institution, placed on probation or lifetime supervision to the
2 department by a court of record, or released from a state correctional or penal
3 institution. Services shall include, but are not limited to, diagnostic services,
4 evaluation, treatment, counseling, referral and information, day care, inpatient
5 hospitalization, transportation, recreation, special education, vocational training,
6 work adjustment, sheltered employment, special living arrangements and legal and
7 protective services.

8 **SECTION 5.** 939.615 of the statutes is created to read:

9 **939.615 Lifetime supervision of serious sex offenders. (1) DEFINITIONS.**

10 In this section:

11 (a) "Department" means the department of corrections.

12 (b) "Serious sex offense" means any of the following:

13 1. A violation, or the solicitation, conspiracy or attempt to commit a violation,
14 of s. 940.22 (2), 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025 (1), 948.05 (1), 948.055
15 (1), 948.06, 948.07, 948.08, 948.11 (2) (a), 948.12 or 948.13.

16 2. A violation, or the solicitation, conspiracy or attempt to commit a violation,
17 under ch. 940, 943, 944 or 948 other than a violation specified in subd. 1., if the court
18 determines that one of the purposes for the conduct constituting the violation was
19 for the actor's sexual arousal or gratification.

20 **(2) WHEN LIFETIME SUPERVISION MAY BE ORDERED.** (a) Except as provided in par.
21 (b), if a person is convicted of a serious sex offense or found not guilty of a serious sex
22 offense by reason of mental disease or defect, the court may, in addition to sentencing
23 the person, placing the person on probation or, if applicable, committing the person
24 under s. 971.17, place the person on lifetime supervision by the department if notice
25 concerning lifetime supervision was given to the person under s. 973.125 and if the

SENATE BILL 382

1 court determines that lifetime supervision of the person is necessary to protect the
2 public.

3 (b) A court may not place a person on lifetime supervision under this section
4 if the person was previously placed on lifetime supervision under this section for a
5 prior conviction for a serious sex offense or a prior finding of not guilty of a serious
6 sex offense by reason of mental disease or defect and that previous placement on
7 lifetime supervision has not been terminated under sub. (6).

8 (c) If the prosecutor is seeking lifetime supervision for a person who is charged
9 with committing a serious sex offense specified in sub. (1) (b) 2., the court shall direct
10 that the trier of fact find a special verdict as to whether the conduct constituting the
11 offense was for the actor's sexual arousal or gratification.

12 **(3) WHEN LIFETIME SUPERVISION BEGINS.** Subject to sub. (4), the period of lifetime
13 supervision on which a person is placed under this section shall begin at whichever
14 of the following times is applicable:

15 (a) If the person is placed on probation for the serious sex offense, upon his or
16 her discharge from probation.

17 (b) If the person is sentenced to prison for the serious sex offense, upon his or
18 her discharge from parole.

19 (c) If the person is sentenced to prison for the serious sex offense and is being
20 released from prison because he or she has reached the expiration date of his or her
21 sentence, upon his or her release from prison.

22 (d) If the person has been committed to the department of health and family
23 services under s. 971.17 for the serious sex offense, upon the termination of his or her
24 commitment under s. 971.17 (5) or his or her discharge from the commitment under
25 s. 971.17 (6), whichever is applicable.

SENATE BILL 382

1 (e) If par. (a), (b), (c) or (d) does not apply, upon the person being sentenced for
2 the serious sex offense.

3 (4) ONLY ONE PERIOD OF LIFETIME SUPERVISION MAY BE IMPOSED. If a person is being
4 sentenced for more than one conviction for a serious sex offense, the court may place
5 the person on one period of lifetime supervision only. A period of lifetime supervision
6 ordered for a person sentenced for more than one conviction begins at whichever of
7 the times specified in sub. (3) is the latest.

8 (5) STATUS OF PERSON PLACED ON LIFETIME SUPERVISION; POWERS AND DUTIES OF
9 DEPARTMENT. (a) A person placed on lifetime supervision under this section is subject
10 to the control of the department under conditions set by the court and regulations
11 established by the department that are necessary to protect the public and promote
12 the rehabilitation of the person placed on lifetime supervision.

13 (am) The department may temporarily take a person on lifetime supervision
14 into custody if the department has reasonable grounds to believe that the person has
15 violated a condition or regulation of lifetime supervision. Custody under this
16 paragraph may last only as long as is reasonably necessary to investigate whether
17 the person violated a condition or regulation of lifetime supervision and, if
18 warranted, to refer the person to the appropriate prosecuting agency for
19 commencement of prosecution under sub. (7).

20 (b) The department shall charge a fee to a person placed on lifetime supervision
21 to partially reimburse the department for the costs of providing supervision and
22 services. The department shall set varying rates for persons placed on lifetime
23 supervision based on ability to pay and with the goal of receiving at least \$1 per day,
24 if appropriate, from each person placed on lifetime supervision. The department
25 may decide not to charge a fee while a person placed on lifetime supervision is exempt

SENATE BILL 382

1 as provided under par. (c). The department shall collect moneys for the fees charged
2 under this paragraph and credit those moneys to the appropriation account under
3 s. 20.410 (1) (gh).

4 (c) The department may decide not to charge a fee under par. (b) to any person
5 placed on lifetime supervision while he or she meets any of the following conditions:

- 6 1. Is unemployed.
- 7 2. Is pursuing a full-time course of instruction approved by the department.
- 8 3. Is undergoing treatment approved by the department and is unable to work.
- 9 4. Has a statement from a physician certifying to the department that the
10 person should be excused from working for medical reasons.

11 **(6) PETITION FOR TERMINATION OF LIFETIME SUPERVISION.** (a) Subject to par. (b),
12 a person placed on lifetime supervision under this section may file a petition
13 requesting that lifetime supervision be terminated. A person shall file a petition
14 requesting termination of lifetime supervision with the court that ordered the
15 lifetime supervision.

16 (b) 1. A person may not file a petition requesting termination of lifetime
17 supervision if he or she has been convicted of a crime that was committed during the
18 period of lifetime supervision.

19 2. A person may not file a petition requesting termination of lifetime
20 supervision earlier than 15 years after the date on which the period of lifetime
21 supervision began. If a person files a petition requesting termination of lifetime
22 supervision at any time earlier than 15 years after the date on which the period of
23 lifetime supervision began, the court shall deny the petition without a hearing.

24 (c) Upon receiving a petition requesting termination of lifetime supervision,
25 the court shall send a copy of the petition to the district attorney responsible for

SENATE BILL 382

1 prosecuting the serious sex offense that was the basis for the order of lifetime
2 supervision. Upon receiving a copy of a petition sent to him or her under this
3 paragraph, a district attorney shall conduct a criminal history record search to
4 determine whether the person has been convicted of a criminal offense that was
5 committed during the period of lifetime supervision. No later than 30 days after the
6 date on which he or she receives the copy of the petition, the district attorney shall
7 report the results of the criminal history record search to the court and may provide
8 a written response to the petition.

9 (d) After reviewing the report of the district attorney submitted under par. (c)
10 concerning the results of a criminal history record search, the court shall do
11 whichever of the following is applicable:

12 1. If the report of the district attorney indicates that the person filing the
13 petition has been convicted of a criminal offense that was committed during the
14 period of lifetime supervision, the court shall deny the person's petition without a
15 hearing.

16 2. If the report of the district attorney indicates that the person filing the
17 petition has not been convicted of a criminal offense that was committed during the
18 period of lifetime supervision, the court shall order the person to be examined under
19 par. (e), shall notify the department that it may submit a report under par. (em) and
20 shall schedule a hearing on the petition to be conducted as provided under par. (f).

21 (e) A person filing a petition requesting termination of lifetime supervision who
22 is entitled to a hearing under par. (d) 2. shall be examined by a person who is either
23 a physician or a psychologist licensed under ch. 455 and who is approved by the court.
24 The physician or psychologist who conducts an examination under this paragraph
25 shall prepare a report of his or her examination that includes his or her opinion of

SENATE BILL 382

1 whether the person petitioning for termination of lifetime supervision is a danger to
2 public. The physician or psychologist shall file the report of his or her examination
3 with the court within 60 days after completing the examination, and the court shall
4 provide copies of the report to the person filing the petition and the district attorney
5 who received a copy of the person's petition under par. (c). The contents of the report
6 shall be confidential until the physician or psychologist testifies at a hearing under
7 par. (f). The person petitioning for termination of lifetime supervision shall pay the
8 cost of an examination required under this paragraph.

9 (em) After it receives notification from the court under par. (d) 2., the
10 department may prepare and submit to the court a report concerning a person who
11 has filed a petition requesting termination of lifetime supervision. If the department
12 prepares and submits a report under this paragraph, the report shall include
13 information concerning the person's conduct while on lifetime supervision and an
14 opinion as to whether lifetime supervision of the person is still necessary to protect
15 the public. When a report prepared under this paragraph has been received by the
16 court, the court shall, before the hearing under par. (f), disclose the contents of the
17 report to the attorney for the person who filed the petition and to the district attorney.
18 When the person who filed the petition is not represented by an attorney, the
19 contents shall be disclosed to the person.

20 (f) A hearing on a petition requesting termination of lifetime supervision may
21 not be conducted until the person filing the petition has been examined and a report
22 of the examination has been filed as provided under par. (e). At the hearing, the court
23 shall take evidence it considers relevant to determining whether lifetime supervision
24 should be continued because the person who filed the petition is a danger to the
25 public. The person who filed the petition and the district attorney who received the

SENATE BILL 382

1 petition under par. (c) may offer evidence relevant to the issue of the person's
2 dangerousness and the continued need for lifetime supervision.

3 (g) The court may grant a petition requesting termination of lifetime
4 supervision if it determines after a hearing under par. (f) that lifetime supervision
5 is no longer necessary to protect the public.

6 (h) If a petition requesting termination of lifetime supervision is denied after
7 a hearing under par. (f), the person may not file a subsequent petition requesting
8 termination of lifetime supervision until at least 3 years have elapsed since the most
9 recent petition was denied.

10 **(7) PENALTY FOR VIOLATION OF A CONDITION OF LIFETIME SUPERVISION.** (a) No
11 person placed on lifetime supervision under this section may knowingly violate a
12 condition or regulation of lifetime supervision established by the court or by the
13 department.

14 (b) 1. Except as provided in subd. 2., whoever violates par. (a) is guilty of a Class
15 A misdemeanor.

16 2. Whoever violates par. (a) is guilty of a Class E felony if the same conduct that
17 violates par. (a) also constitutes a crime that is a felony.

18 (c) If a person is convicted of violating par. (a) for the same conduct that resulted
19 in the person being convicted of another crime, the sentence imposed for the violation
20 of par. (a) shall be consecutive to any sentence imposed for the other crime.

21 **SECTION 6.** 971.17 (1j) of the statutes is created to read:

22 971.17 **(1j) SEXUAL ASSAULT; LIFETIME SUPERVISION.** (a) In this subsection,
23 "serious sex offense" has the meaning given in s. 939.615 (1) (b).

24 (b) If a person is found not guilty by reason of mental disease or defect of a
25 serious sex offense, the court may, in addition to committing the person to the

SENATE BILL 382

1 department of health and family services under sub. (1), place the person on lifetime
2 supervision under s. 939.615 if notice concerning lifetime supervision was given to
3 the person under s. 973.125 and if the court determines that lifetime supervision of
4 the person is necessary to protect the public.

5 **SECTION 7.** 972.13 (6) of the statutes is amended to read:

6 972.13 (6) The following forms may be used for judgments:

7 STATE OF WISCONSIN

8 County

9 In.... Court

10 The State of Wisconsin

11 vs.

12(Name of defendant)

13 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

14 IT IS ADJUDGED That the defendant has been convicted upon the defendant's
15 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)
16 (no contest) on the.... day of..., 19.., of the crime of.... in violation of s.....; and the
17 court having asked the defendant whether the defendant has anything to state why
18 sentence should not be pronounced, and no sufficient grounds to the contrary being
19 shown or appearing to the court.

20 *IT IS ADJUDGED That the defendant is guilty as convicted.

21 *IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin
22 state prisons (county jail of.... county) for an indeterminate term of not more than....

23 *IT IS ADJUDGED That the defendant is placed in the intensive sanctions
24 program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes
25 and the following conditions:....

SENATE BILL 382

1 *IT IS ADJUDGED That the defendant is hereby committed to detention in
2 (the defendant's place of residence or place designated by judge) for a term of not
3 more than....

4 *IT IS ADJUDGED That the defendant is placed on lifetime supervision by the
5 department of corrections under section 939.615 of the Wisconsin Statutes.

6 *IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the
7 costs of this action).

8 *IT IS ADJUDGED That the defendant pay restitution to....

9 *IT IS ADJUDGED That the defendant is restricted in his or her use of
10 computers as follows:....

11 *The.... at.... is designated as the Reception Center to which the defendant
12 shall be delivered by the sheriff.

13 *IT IS ORDERED That the clerk deliver a duplicate original of this judgment
14 to the sheriff who shall forthwith execute the same and deliver it to the warden.

15 Dated this.... day of...., 19...

16 BY THE COURT...

17 Date of Offense....,

18 District Attorney....,

19 Defense Attorney....

20 *Strike inapplicable paragraphs.

21 STATE OF WISCONSIN

22 County

23 In.... Court

24 The State of Wisconsin

25 vs.

SENATE BILL 382

1(Name of defendant)

2 On the.... day of...., 19.., the district attorney appeared for the state and the
3 defendant appeared in person and by... the defendant's attorney.

4 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

5 IT IS ADJUDGED That the defendant has been found not guilty by the verdict
6 of the jury (by the court) and is therefore ordered discharged forthwith.

7 Dated this.... day of...., 19...

8 BY THE COURT....

9 **SECTION 8.** 973.125 of the statutes is created to read:

10 **973.125 Notice of lifetime supervision for serious sex offenders. (1)**

11 Whenever a prosecutor decides to seek lifetime supervision under s. 939.615 of a
12 person charged with a serious sex offense specified in s. 939.615 (1) (b) 1., the
13 prosecutor shall, at any time before or at arraignment and before acceptance of any
14 plea, state in the complaint, indictment or information or amendments to the
15 complaint, indictment or information that the prosecution will seek to have the
16 person placed on lifetime supervision under s. 939.615.

17 **(2)** Whenever a prosecutor decides to seek lifetime supervision under s.
18 939.615 of a person charged with a serious sex offense specified in s. 939.615 (1) (b)
19 2., the prosecutor shall, at any time before or at arraignment and before acceptance
20 of any plea, do all of the following:

21 (a) State in the complaint, indictment or information or amendments to the
22 complaint, indictment or information that the prosecution will seek to have the
23 person placed on lifetime supervision under s. 939.615.

24 (b) Allege in the complaint that the violation with which the person is charged
25 is a serious sex offense under s. 939.615 (1) (b) because one of the purposes for the

SENATE BILL 382

1 conduct constituting the violation was for the person's sexual arousal or
2 gratification.

3 (3) Before accepting a plea, the court may, upon motion of the district attorney,
4 grant a reasonable time to investigate whether lifetime supervision may be
5 necessary for a defendant or whether one of the purposes for the conduct constituting
6 a violation with which a defendant is charged was for the defendant's sexual arousal
7 or gratification.

8 **SECTION 9. Initial applicability.**

9 (1) This act applies to offenses committed on or after the effective date of this
10 subsection.

11 (END)