



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4217/3

CMH:emw

2023 SENATE BILL 874

January 5, 2024 - Introduced by Senators WIMBERGER, FELZKOWSKI, JACQUE, JAMES, NASS and TOMCZYK, cosponsored by Representatives BORN, BEHNKE, BINSFELD, DALLMAN, DITTRICH, DONOVAN, DUCHOW, GOEBEN, GUNDRUM, GUSTAFSON, HURD, MAXEY, MICHALSKI, MOSES, MURPHY, MURSAU, NEDWESKI, O'CONNOR, RETTINGER, SCHMIDT, SUMMERFIELD, VANDERMEER, SHANKLAND and MELOTIK. Referred to Committee on Judiciary and Public Safety.

AN ACT *to amend* 301.45 (5) (b) 1., 301.45 (5m) (b) 3. and 301.46 (2m) (am) 1.

and 2. of the statutes; **relating to:** counting convictions and findings for the purpose of the sex offender registry and notifications.

Analysis by the Legislative Reference Bureau

This bill codifies the attorney general opinion, OAG-02-17, regarding the interpretation of the statutory phrase “two or more separate occasions” as it relates to the sex offender registry and notification requirements.

Under current law, a person must register with the Department of Corrections as a sex offender if he or she has been convicted of certain sex offenses or found not guilty of certain sex offenses by reason of mental disease or defect. The length of time that the person must register varies depending on the offense or the number of convictions or findings. A person generally must register until he or she dies if the person has on two or more separate occasions been convicted of a sex offense or found not guilty of a sex offense by reason of mental disease or defect.

Under current law, if a person committed a sex offense in another state and is required to register in Wisconsin due to moving here, working here, or going to school here, the person must register in Wisconsin for as long as he or she lives, works, or attends school in Wisconsin if the person has on two or more separate occasions been convicted of a sex offense or found not guilty of a sex offense by reason of mental disease or defect.

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Under current law, when a person who is required to register as a sex offender is released into the community from confinement or other care, DOC or the Department of Health Services, whichever agency has authority over the registrant, must notify the police chief of the community, and the sheriff of the county, in which the registrant will be residing, employed, or attending school or through which the registrant will be traveling if the registrant has been, on two or more separate occasions, convicted of a sex offense or found not guilty of a sex offense by reason of mental disease or defect. A person who is the subject of such a notification is subject to lifetime global positioning system tracking.

The phrase “on two or more separate occasions” is not defined in current law. In OAG-02-17, the attorney general concluded that the phrase referred to multiple convictions, regardless of whether they were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint. This bill codifies the attorney general opinion and also applies it to findings of not guilty by reason of mental disease or defect. Under the bill, when counting convictions or such findings for the purposes described above, each conviction or finding is counted separately even if they were part of the same proceeding, occurred on the same date, or were included in the same complaint.

The bill is retroactive. Under the bill, DOC must identify persons who were released from the registry requirement or were not subject to the lifetime tracking requirement before the bill took effect but who would have been subject to the pertinent requirement had the bill been in effect. No later than 60 days after the bill takes effect, DOC must notify these persons that they must register as sex offenders or be subject to lifetime tracking. Under the bill, persons who are notified that they must register have 30 days after being notified to register or they are guilty of a Class H felony.

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

SECTION 1. 301.45 (5) (b) 1. of the statutes is amended to read:

301.45 (5) (b) 1. The person has, ~~on 2 or more separate occasions,~~ been convicted ~~or 2 or more times, including convictions that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint, for a sex offense or for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of a federal law, military law, tribal law, or law of any state that is comparable to a sex offense; has been~~ found 2 or more times, including

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findings that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint, not guilty or not responsible by reason of mental disease or defect for a sex offense, or for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of a federal law, a military law, a tribal law, or a law of any state that is comparable to a sex offense; or has been convicted one time for a sex offense or for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of a federal law, military law, tribal law, or law of any state that is comparable to a sex offense and has been found one time not guilty or not responsible by reason of mental disease or defect for a sex offense, or for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of a federal law, a military law, a tribal law, or a law of any state that is comparable to a sex offense. A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside, or vacated is not a conviction or finding for purposes of ~~determining~~ counting the number of convictions or findings under this subdivision ~~whether a person has been convicted on 2 or more separate occasions.~~

SECTION 2. 301.45 (5m) (b) 3. of the statutes is amended to read:

301.45 **(5m)** (b) 3. The person has, ~~on 2 or more separate occasions,~~ been convicted ~~on 2 or more times,~~ including convictions that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint, for a sex offense or for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of a federal law, military law, tribal law, or law of any state that is comparable to a sex offense; has been found 2 or more times, including

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findings that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint, not guilty or not responsible by reason of mental disease or defect for a sex offense or for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of a federal law, military law, tribal law, or law of any state that is comparable to a sex offense;or has been convicted one time for a sex offense or for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of a federal law, military law, tribal law, or law of any state that is comparable to a sex offense and has been found one time not guilty or not responsible by reason of mental disease or defect for a sex offense, or for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of a federal law, military law, tribal law, or law of any state that is comparable to a sex offense. A conviction or finding of not guilty or not responsible by reason of mental disease or defect that has been reversed, set aside, or vacated is not a conviction or finding for purposes of ~~determining~~ counting the number of convictions or findings under this subdivision ~~whether a person has been convicted on 2 or more separate occasions.~~

SECTION 3. 301.46 (2m) (am) 1. and 2. of the statutes are amended to read:

301.46 **(2m)** (am) 1. If an agency with jurisdiction confines a person under s. 301.046, provides a person entering the intensive sanctions program under s. 301.048 with a sanction other than a placement in a Type 1 prison or a jail, or releases a person from confinement in a state correctional institution or institutional care, ~~and~~ the agency with jurisdiction shall notify the police chief of any community and the sheriff of any county in which the person will be residing, employed, or attending school and through or to which the person will be regularly

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traveling if the person has been found to be a sexually violent person under ch. 980 or has, ~~on 2 or more separate occasions,~~ been convicted ~~or 2 or more times, including~~ convictions that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint, for a sex offense or for a violation of a law of this state that is comparable to a sex offense; has been found 2 or more times, including findings that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint, not guilty or not responsible by reason of mental disease or defect for a sex offense or for a violation of a law of this state that is comparable to a sex offense, ~~the agency with jurisdiction shall notify the police chief of any community and the sheriff of any county in which the person will be residing, employed, or attending school and through or to which the person will be regularly traveling;~~ or has been convicted one time for a sex offense or for a violation of a law of this state that is comparable to a sex offense and has been found one time not guilty or not responsible by reason of mental disease or defect for a sex offense or for a violation of a law of this state that is comparable to a sex offense. Notification under this subdivision is in addition to providing access to information under sub. (2) and to any other notification that an agency with jurisdiction is authorized to provide.

2. If a person described under s. 301.45 (1g) (dh), (dj), (f), or (g) becomes a resident of this state from another state under s. 304.16, becomes a student in this state, becomes employed or begins carrying on a vocation in this state, or becomes subject to a sanction in this state other than a placement in a Type 1 prison or a jail, ~~and the department shall notify the police chief of any community and the sheriff of~~

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any county in which the person will be residing, employed, carrying on a vocation, or attending school if the person has, on 2 or more separate occasions, been convicted on 2 or more times, including convictions that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint, for a violation of the law of another jurisdiction that is comparable to a sex offense; has been found 2 or more times, including findings that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint, not guilty or not responsible by reason of mental disease or defect for a violation of the law of another jurisdiction that is comparable to a sex offense, the department shall notify the police chief of any community and the sheriff of any county in which the person will be residing, employed or carrying on a vocation, or attending school; or has been one time convicted for a violation of the law of another jurisdiction that is comparable to a sex offense and has been found one time not guilty or not responsible by reason of mental disease or defect for a violation of the law of another jurisdiction that is comparable to a sex offense. Notification under this subdivision is in addition to providing access to information under sub. (2) or to any other notification that the department is authorized to provide.

SECTION 4. Nonstatutory provisions.

(1) The department of corrections shall identify persons who were released from the requirement to register under s. 301.45 but who would not have been released if the treatment of s. 301.45 (5) (b) 1. or (5m) (b) 3. by this act had been in effect. No later than 60 days after the effective date of this subsection, the department of corrections shall notify those persons that they are subject to the

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registration requirements under s. 301.45. Notwithstanding s. 301.45 (6) (a), a person notified under this subsection must register no later than 30 days after receiving notice to comply with the registration requirement.

(2) The department of corrections shall identify persons who, on the effective date of this subsection, are not subject to the requirement under s. 301.48 (2) (a) 7. but who would have been if the treatment of s. 301.46 (2m) (am) 1. and 2. by this act had been in effect. No later than 60 days after the effective date of this subsection, the department of corrections shall notify those persons that they are subject to the requirement under s. 301.48 (2) (a) 7.

SECTION 5. Initial applicability.

(1) The treatment of ss. 301.45 (5) (b) 1. and (5m) (b) 3. and 301.46 (2m) (am) 1. and 2. first applies to the counting of convictions or findings that occurred prior to the effective date of this subsection for the purposes of determining if a person has been convicted or found not guilty on 2 or more separate occasions.

(END)