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# MARK BORN

STATE REPRESENTATIVE • 39<sup>TH</sup> ASSEMBLY DISTRICT

**Testimony on AB 944/SB 874**  
**Assembly Committee on Criminal Justice and Public Safety**  
**February 1<sup>st</sup>, 2024**

Thank you Chairman Spiros and committee members for allowing me to provide testimony in support of Assembly Bill 944/Senate Bill 874.

I am proud to have worked with my legislative colleagues to author this important piece of legislation focused on protecting our communities.

In 2017 Attorney General Schimel issued an Attorney General Opinion (OAG-02-17), which stated that people who are convicted of multiple counts of a sex offense stemming from single event are “repeat offenders” and are therefore required to register as sex offenders for life. However, recently the Wisconsin State Supreme Court issued a ruling overturning this interpretation of state statute, and as a result, the Department of Corrections (DOC) has begun releasing certain sex offenders from lifetime GPS tracking.

This legislation codifies the opinion established in OAG-02-17 before the recent Wisconsin Supreme Court decision and ensures 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.

It is important to note this legislation is retroactive and DOC will have 60 days to identify persons who were released from the registry requirement, and notify these persons they must register as sex offenders. The offenders have 30 days after being notified to register or they are guilty of a Class H felony.

Sen. Wimberger and I drafted this legislation in consultation with the Department of Corrections and I appreciate their efforts to address this important issue.

Thank you again for allowing me to provide testimony in support of this legislation and for your consideration of AB 944/SB 874.



STATE SENATOR

**Eric Wimberger**

DISTRICT 30

**State Senator Eric Wimberger**

**Testimony before the Assembly Committee on Criminal Justice and Public Safety  
Re: counting convictions and findings for the purpose of the sex offender registry and  
notifications.**

Thank you Representative Spiros and committee members for holding a hearing today on Assembly Bill 944 which codifies that each conviction or finding of a sex offense is counted separately, even if they were part of the same proceeding, occurred on the same date, or were included in the same complaint.

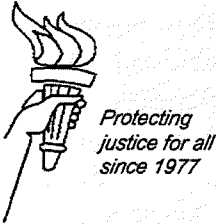
Until early last year, Wisconsin law operated under the guidance of a formal opinion from former Attorney General Schimel, which stated that people who were convicted of multiple counts of a sex offense stemming from a single event are “repeat offenders” and are therefore required to register as sex offenders for life. However, this changed when the Wisconsin State Supreme Court issued a ruling overturning this interpretation of state statute, and as a result, the Department of Corrections (DOC) has begun releasing certain sex offenders from lifetime GPS tracking.

This legislation aims to codify the practice established before the Supreme Court decision and ensure that 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.

Additionally, Assembly Bill 944 is retroactive and the Department of Corrections will have 60 days to identify persons who were released from the registry requirement, and notify these persons that they must register as sex offenders. The offenders will then have 60 days after being notified to register or they are guilty of a Class H felony.

I want to thank Rep. Born and the Department of Corrections on their efforts in helping draft this bill. It is vital that we work to address this oversight, and ensure that DOC continues to monitor those who should be under supervision in accordance with Wisconsin state law.

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Assembly Committee on Criminal Justice & Public Safety  
2023 Assembly Bill 944  
Thursday, February 1, 2024

Chairman Spiros and members,

Thank you for having a hearing on 2023 Assembly Bill (AB) 944. AB 944 seeks to codify an Attorney General's Opinion (OAG) which interpreted the current statute regarding the counting of convictions for the sex offender registry. The OAG interpretation was found by the Supreme Court of Wisconsin not to meet the plain language of the statute in *State v. Rector*. As the case largely rested on the language of the statute, it is within the purview of the legislature to consider changes to that statute. The State Public Defender (SPD), in *Rector*, filed a friend of the court brief arguing beyond the statutory interpretation that the policy of lifetime registration is best determined by a judge based on the individual facts of the case before them. While lifetime registration is currently mandated for more serious sex offenses, the court has discretionary authority with less serious sex offenses to determine whether 15 years or lifetime registration is appropriate based upon the individual facts and circumstances of a given case. AB 944 eliminates that discretion if a person has two convictions for non-mandatory lifetime registration sex offenses. The current statutory language, as clarified by *Rector*, focuses on repeat offenders—i.e., convicted on two or more separate occasions—whereas the proposed language focuses on the number of charges without consideration of whether the person engaged in repeat conduct. The question in the *Rector* case was “can we,” but with AB 944, the question becomes “should we.”

Under current law, an individual who has been convicted of a sex offense is subject to criminal penalties including prison, extended supervision, and inclusion on the sex offender registry. For the more serious sex offenses—notably first- or second-degree sexual assault of either an adult or a child—the statutes already mandate lifetime registration; the *Rector* decision didn't change that. But for some offenses judges have been provided with discretion: they can decide whether to place an individual defendant on the registry for either 15 years or for life. The registry is meant as a non-punitive measure for the protection of the public once that individual is no longer under the supervision of the Department of Corrections. And, in fact, a 15-year registry term doesn't start running until the person has completed any supervision, so in practice a 15-year term on the registry may run as much as 40 years after the original conviction. An individual on the registry, particularly those for lifetime, is often required to wear a GPS monitor.

In reality, while it may be considered a non-punitive measure in an effort to comply with case law, it is a significant collateral consequence of conviction. Most directly, failure to register, update the registry, or removal or tampering with the GPS device are all punishable as a felony penalty. Removing or tampering with a GPS device is as often as not a technology error as it is a willful attempt to avoid monitoring. Technology problems with the device and having a reliable connection to a cellular network, particularly in rural parts of the state, often lead to false reports of monitoring violations that, at best, require a local law enforcement response, and at worst result in criminal charges being filed. Even those whose GPS devices have simply malfunctioned often end up in jail while the situation is resolved. So though the individual may no longer be under the direct control of the Department of Corrections, lifetime registration is akin to perpetual quasi-supervision.

Beyond the exposure to criminal charges, there are documented negative impacts on housing, employment, and the physical well being of individuals who are on the registry and being monitored. In a survey by the United States Department of Justice, 83% of respondents said they had been excluded from residences due to their registration status. More than 150 Wisconsin municipalities have residency restrictions. In some cases, those restrictions exclude over 90% of the city from possible residency. Any residence that doesn't have adequate cell phone coverage is also practically excluded. And the monitors themselves are obtrusive, essentially the modern day visual and auditory equivalent of a scarlet letter.

The public safety benefit of the sex offender registry and GPS monitoring is fact specific on a case-by-case basis. First, the recidivism rates among sex offenders has declined since 1992 and are lower compared to the overall offender population. That drop pre-dates the 1995 law that created the sex offender registry. A 2015 report from the Department of Corrections also noted that 75% of sex offenders who re-offend do so within 5 years. In addition, the sex offender registry is based on preventing stranger-on-stranger sexual abuse. In fact, in 93% of sexual abuse cases against children and teens, the victim knows the perpetrator. Finally, available risk assessment tools for sex offenders, such as the Static 99R, find that the number of index offenses is unrelated to recidivism, but that prior sentences strongly correlates to reoffense.

There is also a multi-faceted cost to AB 944. The maintenance of the registry as well as passive and active GPS tracking has a significant workload impact on DOC. In addition, the response to violations is provided by local law enforcement agencies statewide. Not only does that place a workload demand on those agencies, but it creates a false sense of security when the response times could be 20-30 minutes or more, especially in rural areas. And while all of this has an impact in the current system, AB 944 is likely to cause the number of individuals on the registry and being monitored to grow exponentially as individuals increases and they stay on the list for decades. Finally, it is worth noting that a cost is assessed to the individual for the GPS monitor. It can be as much as hundreds of dollars per month.

While the bill itself is relatively straightforward, there is one provision of note. On page 4, line 18, if a person served a sentence in a Wisconsin prison, the special bulletin notification is provided to law enforcement for any county or jurisdiction in which the person will be residing, employed, or attending school. It is also required, as it is in current law, that notification be given to jurisdictions through which the person will be regularly traveling. This notification is not required if the individual moves to Wisconsin from another state (page 5, line 17).

While the traveling provision disparity is in current statute, the workload impact on law enforcement agencies will increase as the number of people on lifetime monitoring increases and exist for many years. Which ultimately also reduces the public safety benefit of registration and monitoring. If everyone is considered a risk to the point of lifetime monitoring, it dilutes the efficacy of tracking those that a court determined are of higher risk based on the individual facts of that case.

In addition to this testimony, there is an article from The Capital Times in April 2022<sup>1</sup> and the amicus brief filed by the State Public Defender<sup>2</sup> in *Rector* which provide additional context and information on the issues addressed in AB 944. These documents are good primary resources and provide additional links to other source material.

In summary, our concerns related to AB 944 are that it is not an effective change to benefit public safety and comes at a high literal cost for those enforcing it and an equally high figurative cost for those subject to it. Keeping in place the current scheme that allows judicial discretion is the best way to balance future potential risk and the chance for rehabilitation. Thank you for the opportunity to speak on AB 944.

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<sup>1</sup> Nicholas Garton & Jessie Opoient, *Sex Offenders Placed on Lifetime GPS Tracking Fight Reinterpretation of Wisconsin Law*, The Capital Times (Apr. 20, 2022), [https://captimes.com/news/sex-offenders-placed-on-lifetime-gps-tracking-fight-reinterpretation-of-wisconsin-law/article\\_48187b6c-1b40-5a2c-91f7-d3e20a66c69d.html](https://captimes.com/news/sex-offenders-placed-on-lifetime-gps-tracking-fight-reinterpretation-of-wisconsin-law/article_48187b6c-1b40-5a2c-91f7-d3e20a66c69d.html)

<sup>2</sup> <https://acefiling.wicourts.gov/document/eFiled/2020AP001213/535849>



# WISCONSIN DEPARTMENT OF CORRECTIONS

Governor Tony Evers / Secretary Kevin A. Carr

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To: Chairman Spiros, Assembly Committee on Criminal Justice and Public Safety

From: Anna Neal, Legislative Advisor, Wisconsin Department of Corrections

Date: February 1, 2024

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RE: Testimony in Support of Assembly Bill 944 Relating to: counting convictions and findings for the purpose of the sex offender registry and notifications.

The Department of Corrections (DOC) appreciates the opportunity to testify in support of Assembly Bill 944.

As you know, the DOC administers the Sex Offender Registry under Wisconsin State Statute s. 301.45 and GPS tracking of certain individuals under Wisconsin State Statute 301.48. This includes providing notification to law enforcement of certain individuals who meet the criteria under Wisconsin State Statute s. 301.46 (2m) commonly referred to as a Special Bulletin Notification (SBN). In addition, Wisconsin State Statute s. 301.48 requires the Department of Corrections to place certain sex offenders on lifetime Global Positioning System (GPS) tracking.

The current statutory language utilized to determine if an individual is required to comply with lifetime registration includes the criterion that "the person has, on 2 or more separate occasions, been convicted of or found 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." We commonly refer to this language as "Two Strikes." Similar statutory language requiring convictions on "2 or more separate occasions" is also used to determine whether the Department is required to send local law enforcement a Special Bulletin Notification upon an individual's release, which in turn may require the person to be placed on lifetime GPS tracking.

In the judicial system, the term "counts" refers to separate charges or allegations within a single criminal complaint. Each count represents a different criminal offense or violation of the law that took place, and each is counted as an independent charge. A person can be convicted or acquitted of each count separately.

In an effort to obtain clarification on the term "2 or more separate occasions", the Department relied on the 2017 Attorney General opinion, which interpreted "on 2 or more separate occasions" as two or more convictions, regardless of whether the convictions arose from multiple counts filed within the same criminal case or whether the convictions occurred at the same hearing.

In May of 2023, the Wisconsin Supreme Court issued a decision in *State v. Rector*. Under *Rector*, the Wisconsin Supreme Court has held that a person convicted of multiple sex offenses, that were charged in the same case and convicted at the same hearing, was not convicted “on 2 or more separate occasions.”

While the *Rector* decision itself was aimed at providing clarification for a registrant’s length of registration on the sex offender registry, the same “2 or more separate occasions” language interpreted by the court will now apply to the mandatory law enforcement notification statute for sex offender registrants, known as Special Bulletin Notifications. Wisconsin State Statute s. 301.46(2m) provides for mandatory notifications to local law enforcement when certain individuals that have been convicted, or found not guilty by reason of mental disease or defect, of a sex offense “on 2 or more separate occasions” reside, are employed, or attend school, and regularly travel through their communities. In addition, under current law, those that are subject to mandatory law enforcement notifications, are also subject to lifetime GPS tracking.

The *Rector* decision may limit or reduce the notifications law enforcement agencies receive from the Department regarding the release of individuals who have been convicted of multiple counts and the Department’s ability to require GPS tracking of these individuals. Our agency is concerned the change in interpretation is not reflective of communities’ and law enforcement’s expectations regarding notice and monitoring of sex offender registrants. While our agency has moved forward with the implementation of *Rector*, we continue to utilize our discretionary authority, when applicable, to do appropriate notifications to law enforcement and continue to monitor individuals through GPS tracking, in the interest of public safety.

AB 944 would codify the attorney general opinion, OAG-02-17, and clarify the statutory phrase “2 or more separate occasions” in context of the sex offender registry and notification requirements. The bill would make clear that each conviction or finding is to be counted separately, even if they were a part of the same court proceeding, occurred on the same date, or were included in the same complaint.

Thank you.