

ADAM WALSH ACT
&
SEX OFFENDER REGISTRY FOR YOUTHS AND ADULTS

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Adam Walsh Child Protection and Safety Act of 2006

42 U.S.C. § 16902, Pub.L. 109-244, Title I, § 103, July 27, 2006, 120 Stat. 591

I. General Overview of Adam Walsh Act

A. Basics of the Legislation

Signed into law on July 27, 2006

Congress did not name a precise date on which the sex offender provisions are to be effective, other than to state a deadline for implementation by all jurisdictions: July 27, 2009.

Just in case you thought this piece of legislation – passed on voice votes and signed by the President in the runup to the 2006 elections – wasn't political theater, note that numerous parts of the Act are named after 17 specific individuals, almost all of whom were victims of homicide.

- Adam Walsh Act was signed on occasion of 25th anniversary of Adam Walsh's abduction and murder – his father, John Walsh, is the host of America's Most Wanted; his parents are formally recognized in § 2 of the Act.

State compliance with Adam Walsh Act requirements tied to further appropriations (10% of funds under Omnibus Crime Control and Safe Streets Act of 1968).

B. Areas the Act Affects

- sexual abuse
- sexual exploitation
- transportation
- new criminal offenses

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- expands federal jurisdiction over existing offenses
- increases statutory mandatory minimum sentences
- does away with statute of limitation for most sex crimes
- restricts discovery in child porn cases
- new bail conditions (*and not just in sex cases*)
- allows for searches of accused (pretrial) without probable cause
- expands government's ability to get DNA from those who have *NOT* been convicted of a crime; based solely on an arrest
- civil commitment as sexually violent person
- damages for victims of up to \$150,000
- national sex offender registry

II. Is There No Bad Idea That Wasn't Included? A More Detailed Look At Adam Walsh Act

A. *Newly Expanded Federal Criminal Offenses*

1. Felony child abuse and neglect
 - Adds this offense to the Major Crimes Act's list of offenses that are subject to federal prosecution when committed by an Indian in Indian Country
2. Kidnaping
 - Now means any kidnaping in which the defendant crossed state lines or used an instrumentality of interstate commerce during the commission of the offense or in furtherance, even if the offense is accomplished wholly intrastate.
 - Now, the use of internet or phone in furtherance of kidnaping makes it a federal criminal offense.

- And the act also establishes a new mandatory minimum sentence of 25 years for kidnaping a person under 18 years of age.
3. Obscenity statutes
 - government now does not have to prove that the defendant actually sold, transported, transferred obscene material.
- B. *New crimes*
1. Child exploitation enterprise
 - 20 year mandatory minimum
 - implements new scheme
 2. Internet based crimes
 - a. knowingly embeds words or digital images into source code of website with the intent to deceive a person into viewing obscene materials
 - Ten year mandatory minimum
 - b. If the intent is to deceive a minor into viewing material harmful to minors, the maximum penalty is 20 years.
 - c. Use of internet to distribute “date rape drug” with knowledge and reasonable cause to believe that the drug would be used to engage in “criminal sexual conduct” or that the person receiving the drug is not an “authorized purchaser.” Offense is subject to a 20 year maximum. *See* 18 USC § 841(g) listing three specific drugs designated as “date rape drugs”

3. Offenses based on record keeping requirements

- Expands § 2257's existing record keeping requirements
- adds to the information which is to be listed on every page of a website and addresses refusal to permit Attorney General to inspect records as grounds for criminal liability.
- Second offense relates to § 2257 requirement and criminal provisions to anyone who produces images of "simulated sexual conduct"
- provides for a five year maximum penalty of a defendant violations § 2257A's record keeping requirement in an effort to conceal a substantive offense involving child porn or trafficking.

4. Sex offender registry offenses

a. Failure to register as sex offender.

- 10 year maximum; 5 year consecutive sentence
- Consecutive 10 mandatory minimum for failure to register if required to do so and committing an enumerated felony offense.

C. *New penalties*

In addition to the previously mentioned penalties, the Act includes new and higher mandatory minimum penalties for more than 15 offenses.

1. New mandatory minimums & statutory maximums

- Crimes of violence against the person of an individual

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who has not attained 18 years of age.

- Murder carries a mandatory minimum life sentence for death eligible murder and 30 years otherwise.
 - Kidnaping and maiming carry a mandatory minimum of 25 years.
 - All other crimes of violence against a minor resulting in serious bodily injury or committed with a dangerous weapon (undefined) carry a mandatory minimum of 10 years.
- Sex trafficking accomplished through force is now a 15 year mandatory minimum.
 - Sex trafficking without force, fraud or coercion involving a person between 14 and 17 is a 10 year mandatory minimum. The statutory maximum is increased to life.
 - Aggravated sexual abuse where the victim is less than 12 years old, or where the victim is between 12 and 15 (and at least 4 years younger than the defendant) and the offense is accomplished by force, threat, rendering victim unconscious or impairing the victim's ability to appraise or control conduct is now a 30 year mandatory minimum.
 - Sexual abuse now has a statutory maximum penalty of life.
 - Sexually abusing a ward is now a 15 year mandatory minimum.
 - Sexual contact that would have violated 18 U.S.C. § 2241(c) had it been a sexual act now has a statutory

maximum of life.

- Coercing or transporting minor to engage in criminal sexual activity now has a mandatory minimum of 10 years and the statutory maximum is life.
- Child pornography related charges, if death results doubles the applicable mandatory minimum to 30 and 50 years, depending on the number of prior convictions.
- Using a misleading domain name on internet with intent to deceive a minor into viewing material harmful to minors now has a statutory maximum of 10 years.
- Use of minor outside of U.S. to produce sexually explicit depiction of a minor is a mandatory minimum of 15 years for a first offense, 25 mandatory minimum for a second offense and a mandatory minimum 35 years for a subsequent offense.
- Transporting, receiving, shipping, distributing, selling or possessing a sexually explicit depiction of a minor with the intent to import it into the U.S. is now a 5 year mandatory minimum for the first offense and a 15 year mandatory minimum for subsequent offenses.

D. *Statute of Limitations*

As a result of the Act, there is now no statute of limitation for any felony offense listed in the following chapters and sections of the U.S. Code:

- Chapter 109A (sexual abuse)
- Chapter 110 (Sexual exploitation and other abuse of children)

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[But Congress did retain the previous statute of limitation with respect to record keeping violations found in 18 U.S.C. §§ 2257, 2257A]

- Chapter 117 (transportation for illegal sexual activity and related crimes)
- 18 U.S.C. § 1201 (kidnaping of a minor)
- 18 U.S.C. § 1591 (sex trafficking).

E. *Bail (Federal Court)*

1. On motion of the government, the court must hold a hearing to determine whether there exist conditions for release that will reasonably assure the person's appearance and the safety of any person and the community if charged with

"Any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any dangerous weapon [not defined anywhere] or involves a failure to register [as a sex offender] under section 2250."

2. Court must now consider "whether the offense is a crime of violence, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device."
3. Those cases involving child pornography, sexual exploitation generally, a child victim or the failure to register as a sex offender now require electronic monitoring as a condition of release. No finding that such measures are necessary to assure the defendant's appearance or safety are required.

4. The Act did *NOT* create a warrant-less search as a condition of pretrial release. (Probation/Supervised Release is a different case.)

F. *DNA Collection*

1. A little noticed amendment contained in the January 2006 renewal of the Violence Against Women Act permits DNA collection from *anyone under criminal arrest by federal authorities* and also from illegal immigrants detained by federal agents.
2. The Act expanded the Attorney General's authority. The Act added language concerning those who are "facing charges" and those "convicted." This appears to mean those who are facing indictment, information or complaint, but who are not currently under arrest. (Previously only those convicted of violations of Chapter 109A or crimes of violence were subject to DNA collection.) The Act permits collections of those convicted of any crime so long as they are in "custody."
3. Failure to comply with DNA collection is a misdemeanor offense. 42 U.S.C. § 14135(a)(1)(A), (B), (a)(5), (d).

G. *Discovery*

1. The Act effectively nullifies FED R. CRIM. P. 16 in child pornography cases.
2. Any material that constitutes child pornography must "remain in the care, custody, and control of either the government of the court."
3. These materials may not be copied, photographed, duplicated or otherwise reproduced for defense counsel, so long as the government provides "ample opportunity for inspection, viewing and examination."

H. *Probation & Supervised Release*

1. If a defendant is required to register it is now a discretionary condition of probation or supervised release that he submit his person, property, house, residence, vehicle, papers, computer, electronic communications or data storage devices or media and effects to search at any time, with or without warrant by any law enforcement officer or probation officer with reasonable suspicion concerning a violation fo a condition of probation or supervised release or unlawful conduct.

I. *Sex Offender Management and Treatment Programs*

1. Bureau of Prisons (“BOP”) is now to make available “appropriate treatment to sex offenders who are in need of and suitable for treatment.”
2. Sex offender management programs monitor the defendant’s mail, phone calls and behavior for things that BOP deems inappropriate for someone convicted of a sex crime.
3. Such management does not include treatment or counseling. No effect on security classification or protection within the institution.
4. Management is NOT “treatment in the most effective manner.”
See 18 U.S.C. § 3553(a)(2)(D).
5. BOP has only one treatment program with 112 beds.

J. *Civil Commitment*

1. “Sexually dangerous person” meaning that the defendant engaged or attempted to engage in sexually violent conduct or child molestation and that he suffers from a serious mental illness, abnormality or disorder resulting in serious difficulty

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refraining from sexually violent conduct or child molestation if released.

2. The Act does not set for any standards upon which the Attorney General or the Director of BOP must base their certification beyond the aforementioned definition.
3. If charges against a defendant who has been committed to a facility as a sexually dangerous person are dismissed for reasons not related to his mental condition and the director of th facility certifies that the defendant is sexually dangerous, the state in which the person was domiciled or was tried has 10 days to initiate state civil commitment proceedings.

K. *Victim Rights*

1. Permits civil actions brought by minor victims of sex crimes regardless whether the person suffered an injury while he/she was a minor and provides for statutory damages of \$150,000.
2. Victim rights in state habeas corpus proceedings are providing certain rights, including the rights not to be excluded, to be reasonably heard, proceedings free from unreasonable delay, and to be treated with fairness and respect.

L. *Forfeiture*

1. Property subject to forfeiture includes obscene or pornographic material, any property constituting or traceable to gross profits from the offense and any property constituting or traceable to the means for committing or promoting the offense.

M. *Rules of evidence*

1. Directs the Rules Committee to study the “necessity and desirability” of amending the Federal Rules of Evidence to

remove confidential marital communications privilege and the adverse spousal privilege in any case in which the spouse is charged with a crime against a child of either spouse or any child under the custody and control of either spouse.

III. But What Does The Adam Walsh Act Really Mean For My State Court Practice?

A. *Highlights*

1. National sex offender registry – SORNA
2. Limited discovery in cases involving allegations of child pornography prosecutions (WIS. STAT. §§ 948.05 and 948.12.); state prosecutors will cite to Adam Walsh Act when refusing to turn over forensic copies of client’s computer hard drives

B. *Discovery*

1. The Adam Walsh Act effectively nullifies FED R. CRIM. P. 16 – the federal analog to WIS. STAT. § 971.23(1)(g) – in child pornography cases.
 - *United States v. Knellinger*, 471 F.Supp. 2d 640 (E.D. Va 2007)(restrictions imposed by Adam Walsh Act do not unduly burden defendant’s Fifth and Sixth Amendment rights to due process and fair trial, but government’s failure to provide defendant with “ample opportunity” to examine hard drive required providing copy to defendant).
 - *United States v. Renshaw*, 2007 WL 710239 (S.D. Ohio)(rejecting challenge to constitutionality of statute); *United States v. Battaglia*, 2007 WL 1831108 (N.D. Ohio)(same).

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- See Ian Friedman and Kristina Walters, *How the Adam Walsh Act Restricts Access to Evidence*, THE CHAMPION (January/February 2007)(available at www.nacdl.org)

C. *SORNA – Sex Offender Registration & Notification Act*

Effective date is no later than July 27, 2009.

Many details delegated to Attorney General to work out.

1. Who's it apply to?

Applies to those who've been convicted of certain offenses prior to July 27, 2006.

- Qualifying offenses: 42 U.S. Code § 16911(1)

Any state, local, tribal, military or foreign criminal offense, including attempt or conspiracy that

- has an "element involving a sexual act or sexual contact with another" 42 U.S.C. § 16911(5)(A)(I)
- is a "specified offense against a minor," which is an offense against a minor (i.e., under 18). 42 U.S.C. § 16911(5)(A)(ii), (14):
 - involving kidnaping (unless committed by a parent or guardian)
 - involving false imprisonment (unless committed by a parent or guardian)
 - solicitation to engage in sexual conduct
 - use in a sexual performance

- solicitation to practice prostitution
- video voyeurism as described in 18 U.S.C. § 1801
- possession, production or distribution of child pornography
- criminal sexual conduct involving a minor
- use of internet to facilitate or attempt criminal sexual conduct involving a minor
- “[a]ny conduct that by its nature is a sex offense against a minor”
- is a Federal offense under 18 U.S.C. §§ 1152, 1153, 1591 or chapters 109A (sexual abuse), 110 (sexual exploitation of children, with certain exceptions) or 117 (transportation for illegal sexual activity and related crimes).

3. Exceptions to qualifying offenses

- Juvenile delinquency adjudications do not qualify
 - ***BUT ONLY IF*** the juvenile was at least 14 years old at the time of the offense ***AND*** the offense was comparable to or more severe than aggravated sexual abuse (18 U.S.C. § 2241) or attempt or conspiracy to commit aggravated sexual abuse. 42 U.S.C. § 16911(8).

- Consensual sexual conduct
 - But not if:
 - the victim was an adult and not under the offender’s “custodial authority” or
 - the victim was at least 13 years old and the offender was not more than 4 years older. 42 U.S.C. § 16911(5)(C).
- Interpretation of qualifying offenses
 - See Amy Baron-Evans and Sara F. Noonan, ADAM WALSH ACT - PART II (Sex Offender Registration and Notification Act)(November 20, 2006) available at http://www.fd.org/odstb_AdamWalsh.htm

4. Tier Classification

Sex offenders are classified as Tier I, II or III. Each category has increasingly onerous requirements and consequences.

Tier system used to classify offenses and determine length of registration requirements. Also tiers correlate to punishment for failure to register or update information.

- Tier III
 - Sex offense which is punishable by a term of imprisonment of more than one year and
 - is comparable to or more severe than the following or an attempt or conspiracy to commit such an offense:

aggravated sexual abuse (18 U.S.C. § 2241), sexual abuse (18 U.S.C. § 2242) whether against an adult or minor, abusive sexual contact (18 U.S.C. § 2242) against a minor under the age of 13, or involves “kidnaping of a minor” (unless committed by a parent or guardian), or

occurred after she/he became a Tier II sex offender.

- Tier III offender must keep registration current and remain posted on local and national websites for 15 years. Length may be reduced by 5 years if individual maintains a “clean record” for 10 years.
- “Clean record” means (1) no conviction for an offense punishable by more than one year; (2) no conviction for any “sex offense” as defined by 42 U.S.C. § 16911(5) – (8); (3) successful completion of “any periods” of supervised release, probation and parole; and (4) successful completion of “an appropriate sex offender treatment program” certified by a jurisdiction or the Attorney General. *See* 42 U.S.C. § 16915

- Tier II

A sex offender, other than a Tier III “sex offender” whose offense.

The offense is punishable by imprisonment of more than one year and

- is comparable to or more severe than the following or an attempt or conspiracy to commit such an

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offense:

sex trafficking (18 U.S.C. § 1591)

coercion and enticement (18 U.S.C. § 2422(b))

transportation with intent to engage in criminal sexual activity (18 U.S.C. § 2423(a))

abusive sexual contact (18 U.S.C. § 2244) or

“involves”

use of a minor in a sexual performance

solicitation of a minor to practice prostitution

production or distribution of child pornography, or

occurred after she/he became a Tier I sex offender

- Tier II offender must keep registration current and remain posted on local and national websites for 25 years. No relief for “clean record.”

- Tier I

A Tier I “sex offender” is a sex offender other than a Tier II or III “sex offender.”

Tier I offender must keep registration current and remain posted on local and national websites for life or 25 years if individual maintains a “clean record” for that period and the offense was a juvenile delinquency adjudication.

D. *Dru Sjodin National Sex Offender Registry*

Requires the Attorney General to maintain a website which shall include relevant information for each sex offender and other person listed on a jurisdiction's Internet site.

The website is supposed to allow the public "to obtain relevant information for each sex offender by a single query for any given zip code or geographical radius set by the user in a form and with such limitations as may be established by the Attorney General ..."

E. *Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program*

Requires states to notify federal program "immediately after a sex offender registers or updates a registration about that offender."

The information is provided to (1) National Sex Offender Registry; (2) appropriate law enforcement agencies; (3) school and public housing in which the individual resides or is an employee; (4) any agency responsible for conducting employment related background checks; (5) social service agencies responsible for protecting minors in the child welfare system; volunteer organizations in which contact with minors or vulnerable individuals might occur; (6) anyone who requests notification.

IV. Strategies for Dealing With Sex Offender Registration

A. *Sex Offender Registration (Currently) Under State Law*

1. The applicable statutes

- WIS. STAT. § 301.45 (Sex offender registration)
- WIS. STAT. § 301.46 (Access to information concerning sex offenders (“Amy’s law”))
- WIS. STAT. § 973.048 (Sex offender reporting requirements)

State v. Martel, 2003 WI 70, 262 Wis. 2d 483, 664 N.W.2d 69 (where defendant charged with an offense enumerated in the sex offender registration statutes, but the offense of conviction was not, defendant could not be made to register under WIS. STAT. § 973.048)

- WIS. STAT. § 938.34(15m)(Sex offender reporting requirement for juveniles)

B. *Sex Offender Registration in Juvenile Cases*

In most juvenile cases, the destructive impact of the “sex offender” label runs counter to the rehabilitative purpose of the Juvenile Justice Code.

Generally, the observed recidivism rates among juveniles are lower than those commonly reported in the literature on studies of adult sex offender samples. See Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Re-offense Risk*, 7 CHILD MALTREATMENT 291, 292 (November 2002) (The author notes that 25 studies that followed a representative group of juvenile sex offenders and reported sexual re-offense statistics often came to conflicting results). “These studies often suggest that developing actuarial risk measures for juvenile sexual re-offense may require a different perspective and approach than that which has proven successful with

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adult sexual offenders. More important, the assumptions that underlie statutes that juvenile sex offenders as a group require extended supervision and/or commitment to control their risk are unproven." *Id.* Caldwell notes that "[u]nfortunately, many states have passed laws to manage the assumed risk juvenile sex offenders impose without waiting for these issues to be illuminated through research. Mandatory registration laws may inhibit affected juveniles from entering into college and other conventional institutions that may provide a transition to a more conventional lifestyle for the young offender. Although the primary purpose of these laws is to enhance public safety, the public safety benefit of those laws has been questioned (Association for Treatment of Sexual Abusers, 2000)." *Id.* at 301.

Already, under 2005 Wis. Act 5 ("Amy's Law"), the fact of the adjudication and registration as a sex offender may become publicly available from a law enforcement officer. *See* WIS. STAT. § 301.46(2m)(c) (allowing a police chief or sheriff to release information regarding a juvenile's adjudication to *any* person requesting the information, including the general public).

Placement on a sexual offender registry creates a permanent and public label due to adolescent behavior. This is particularly problematic considering research indicating that the majority of juvenile sexual offenders will not re-offend. This label of "sexual offender" does not accurately apply to the vast majority of juvenile sexual offenders. And risk is unlikely to be reduced by placement on the sexual offender registry.

Intervention such as placement on the registry can cause harm. Placement on the registry can stigmatize the juvenile and make it difficult for him\her to establish a positive adult lifestyle. Research on sexual offender registration has not indicated a reduced risk of re-offending, but for some offenders, this has resulted in housing and employment difficulties, serious violence directed toward the registrant, and other difficulties establishing a positive community adjustment. In addition, their family members are also often stigmatized due to the registry list. In many cases, the juvenile's risk to re-offend will be the lowest if he\she is able to establish and maintain a positive adult lifestyle.

The legal framework for when a juvenile adjudicated of a violation of Wisconsin law may be required to register as a sex offender is found in WIS. STAT.

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CH. 301 and 938. WIS. STAT. § 938.34(15m)(am) sets forth when the Court has greater latitude in determining whether a juvenile must register as a sex offender under WIS. STAT. § 301.45. Any violation of WIS. STAT. CH. 948 falls within this section.

Whether registration is in the public's interest is based on evaluation of six factors set forth in WIS. STAT. § 938.34(15m)(c), which include

1. The ages, at the time of the violation, of the juvenile and the victim of the violation.
2. The relationship between the juvenile and the victim of the violation.
3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.
4. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
5. The probability that the juvenile will commit other violations in the future.
6. Any other factor that the court determines may be relevant to the particular case.

WIS. STAT. § 938.34 (15m)(bm) addresses those cases when a juvenile shall register as a sex offender. Similar to the previous subsection, which affords the Court greater latitude, this subsection also includes offenses under WIS. STAT. CH. 948.

If the juvenile is adjudicated delinquent on the basis of a violation ... of ... 948.02(1) ... if the victim was a minor and

the juvenile was not the victim's parent, the court shall require the juvenile to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under s. 301.45(1m).

In the case of a delinquency adjudication based on a violation of WIS. STAT. § 948.02(1), the Court is directed to WIS. STAT. § 301.45(1m), which contains the test for whether the juvenile is exempted from the reporting requirement. [Note that the general rule of statutory construction in Wisconsin is that where two statutes relate to the same subject matter, the specific statute controls the general statute. *Kramer v. City of Hayward*, 57 Wis. 2d 302, 311, 203 N.W.2d 871, 876 (1973); *Lindsey v. Lindsey*, 142 Wis. 2d 684, 693, 412 N.W.2d 132 (Ct. App. 1987).]

WIS. STAT. § 301.45(1m)(e) sets forth the factors to examine when a juvenile seeks exemption from the registration requirement and the offense conduct did not involve sexual intercourse by use of threat of force or violence and registration may not be necessary in the interest of public protection for the juvenile to register.

(a) A person is not required to comply with the reporting requirements under this section if all of the following apply:

1. The person meets the criteria under sub. (1g)(a) to (dd) based on any violation ... of s. 948.02(1) ...
- 1g. The violation ... of s. 948.02(1) ... did not involve sexual intercourse, as defined in s. 948.01(6), either by the use or threat of force or violence or with a victim under the age of 12 years.
2. At the time of the violation ... of s. 948.02(1)... the person had not attained the age of 19 years and was not more than 4 years older or not more than 4 years younger than the child.

3. It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements under this section

(bm) A court shall hold a hearing on a motion made by a person under par. (b) or ... 938.34 (15m) (bm) ... requesting a determination of whether the person is required to comply with the reporting requirements under this section. ...

[...]

(e) At the hearing held under par. (bm), the person who filed the motion under par. (b) or s. ... 938.34 (15m) (bm) ... has the burden of proving by clear and convincing evidence that he or she satisfies the criteria specified in par. (a). In deciding whether the person has satisfied the criterion specified in par. (a) 3., the court may consider any of the following:

1. The ages, at the time of the violation, of the person and of the child with whom the person had sexual contact or sexual intercourse.

2. The relationship between the person and the child with whom the person had sexual contact or sexual intercourse.

3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the child with whom the person had sexual contact or sexual intercourse.

4. Whether the child with whom the person had sexual contact or sexual intercourse suffered from a

mental illness or mental deficiency that rendered the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the person will commit other violations in the future.

6. The report of the examination conducted under par. (d).

7. Any other factor that the court determines may be relevant to the particular case.

_____The requirements of WIS. STAT. § 301.45 are to be imposed on a juvenile who is adjudicated delinquent where the particular facts of the case and concerns for public safety dictate such registration. *In the Interest of Cesar G.*, 2004 WI 61, ¶ 37, 272 Wis. 2d 22, 682 N.W.2d 1, citing *In the Interest of Hezzie R.*, 219 Wis. 2d 848, 881, 580 N.W.2d 660, 672 (1998).

Sex offender registration under WIS. STAT. §§ 301.45 and 938.34(15m)(bm) is a component of a dispositional order; it is not a condition of the disposition. *Cesar G.*, 2004 WI 61, ¶ 25. As such, the registration requirement may be stayed. *Id.*

Whether to stay a dispositional order requiring a delinquent juvenile to register as a sex offender pursuant to WIS. STAT. § 938.34(16) is a factual determination left to the discretion of the Court. *In the Interest of Cesar G.*, 2004 WI 61, ¶ 2, 272 Wis. 2d 22, 682 N.W.2d 1; *see also In the Interest of Jeremy P.*, 2005 WI App 13, 278 Wis. 2d 366, 692 N.W.2d 311. In determining whether such a stay ought be ordered, the Court should consider the seriousness of the offense and the factors enumerated in WIS. STAT. §§ 301.45(1m)(e) and 938.34(15m)(c). *Cesar G.*, 2004 WI 61, ¶ 3.

WIS. STAT. § 938.34(16) provides

Stay of order. After ordering a disposition under this section, enter an additional order staying the execution of

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the dispositional order contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court. If the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile shall notify the court and the court shall hold a hearing within 30 days after the filing of the notice to determine whether the original dispositional order should be imposed, unless the juvenile signs a written waiver of any objections to imposing the original dispositional order and the court approves the waiver . If a hearing is held, the court shall notify the parent, juvenile, guardian and legal custodian, all parties bound by the original dispositional order and the district attorney or corporation counsel in the county in which the dispositional order was entered of the time and place of the hearing at least 3 days before the hearing. If all parties consent, the court may proceed immediately with the hearing. The court may not impose the original dispositional order unless the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order.

The authority for imposing such a stay with respect to the registration requirement derives from the purposes of the Juvenile Justice Code, which directs the Court to “utilize the most effective dispositional plan” in order to “respond to a juvenile offender’s needs for care and treatment, consistent with the prevention of delinquency, each juvenile’s best interest and the protection of the public.” *Cesar G.*, 2004 WI 61, ¶ 32, 272 Wis. 2d at 37 (internal citation omitted). *See also In the Interest of Hezzie R.*, 220 Wis. 2d 360, 580 N.W.2d 660, 669 (1998).

Based on the facts of a given case, allowing a stay of that part of the dispositional order requiring sex offender registration may be consistent with the delinquent’s needs, the prevention of delinquency, the protection of the public and the juvenile’s best interest. *Id.*, 2004 WI 61, ¶ 33. The supreme court further noted that

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If the stay applies to the registration requirement, then when a circuit court enters an order mandating registration and also enters an order staying registration, the stayed registration requirement never goes into effect if the juvenile successfully completes the dispositional order. If the juvenile violates the dispositional order, the mandatory registration requirement goes into effect. This result is consistent with the rehabilitative purposes of the Juvenile Justice Code.

Id., ¶ 34.

The factors to be considered by the Court in determining whether the sex offender registration requirement ought be stayed are the same as where the Court determines whether the interest of public protection requires registration, along with the seriousness of the offense. *Id.*, ¶ 49- 50. See WIS. STAT. §§ 301.45(1m)(e) and 938.34(15m)(c). These six factors include (1) the ages, at the time of the violation, of the person and of the child with whom the person had sexual contact or sexual intercourse; (2) the relationship between the person and the child with whom the person had sexual contact or sexual intercourse; (3) whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the child with whom the person had sexual contact or sexual intercourse; (4) whether the child with whom the person had sexual contact or sexual intercourse suffered from a mental illness or mental deficiency that rendered the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions; (5) the probability that the person will commit other violations in the future; and (6) any other factor that the court determines may be relevant to the particular case.

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