

Sex Crimes and Penalties in Wisconsin

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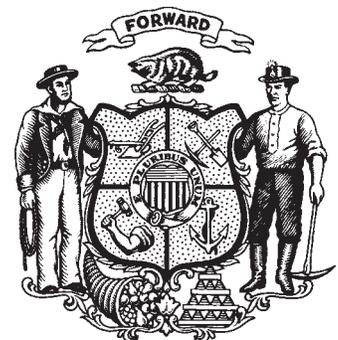


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SEX CRIMES AND PENALTIES IN WISCONSIN

SUMMARY

Significant research indicates that many persons who commit sex-related crimes may suffer from mental illness or be driven by difficult-to-control compulsive behavior. Furthermore, treatment programs seem to have limited success rates in the long run. Because sexual criminals, as a group, exhibit a high incidence of repeat offenses, those released from prison are given heightened scrutiny by law enforcement officers through the sex offender registration and community notification programs. In addition, some are judicially ordered to be retained in confinement at the expiration of their sentences, for continued treatment and for the protection of the public.

This bulletin reviews Wisconsin laws pertaining to sex crimes, incorporating laws enacted in the 2003-04 legislative session.

Section I summarizes laws enacted in the 2003-04 legislative session.

Section II describes the sex offender registration law.

Section III describes the community notification law.

Section IV describes the “Sexual Predator” law, which allows the involuntary civil commitment of sexually violent persons.

Section V describes the testing of sex offenders.

Appendix summarizes sex crimes defined by Wisconsin law and the penalties related to specific offenses.

I. LEGISLATION ENACTED IN 2003-04

The Wisconsin Legislature enacted eight laws relating to sex crimes during the 2003-04 session:

- 2003 Wisconsin Act 50 prohibits the invasion of privacy for the purpose of sexual arousal or gratification.
- Act 51 prohibits a person who works at a correctional facility, or a probation, parole, or extended supervision agent, from having sexual intercourse or contact with an inmate or person under supervision.
- Act 52 prohibits a registered sex offender from changing his or her name.
- Act 53 increases the penalties that apply in most cases to noncompliance

with sex offender registration requirements.

- Act 187 changes the standard for commitment of sexually violent persons (“sexual predators”) from “substantially probable” to “likely” that the person will engage in acts of sexual violence. It adds a new criteria for a court to refuse to release a sexually violent person to supervised release: that the person has not demonstrated significant progress in his or her treatment or has refused treatment. It also creates a committee to assist the state in determining the appropriate location of a transitional housing facility for sexual predators who will be placed on supervised release in Milwaukee County. The

committee's report is due December 31, 2004.

- Act 188 requires the Department of Corrections to provide easy Internet access to law enforcement agencies regarding registered sex offender changes of residence, employment, or place of school attendance.
- Act 224 limits the use of lie detector tests on sexual assault victims.
- Act 279 generally requires members of the clergy to report suspected child abuse, including sexual assault and sexual contact, to authorities. It also creates a civil cause of action for sexual exploitation by a member of the clergy, extends the statute of limitation for civil actions relating to sexual assault of a child to age 35, and extends the statute of limitation for criminal prosecution of sex crimes against children from age 31 to age 45.

II. REGISTRATION OF SEX OFFENDERS

Section 301.45, Wisconsin Statutes, requires that persons who have been convicted of certain serious sex crimes must register once each calendar year with the Wisconsin Department of Corrections (DOC) after release from custody or when they are placed on probation or parole or other supervised status. Also required to register are those adjudicated delinquent or found not guilty or not responsible by reason of mental disease or defect for applicable sex crimes. The requirement to register sex offenders was created by 1993 Wisconsin Act 98, and amended by 1995 Wisconsin Act 440 and other acts.

Offenses Requiring Registration. Crimes which mandate inclusion in the sex offender registry are:

- first, second, or third-degree sexual assault;
- incest;
- sexual exploitation by a therapist;
- first or second-degree sexual assault of a child;
- engaging in repeated acts of sexual assault of the same child;
- sexual exploitation of a child;
- forcing a child to view or listen to sexual activity;
- child enticement;
- soliciting a child for prostitution;
- sexual assault of a student by a school instructional staff person;
- exposing a child to harmful material or harmful descriptions or narrations;
- possession of child pornography;
- abduction of another's child;
- interference with custody by a parent or others if the victim was a minor and the person who committed the violation was not the victim's parent;
- a child sex offender working with children; and
- using a computer to facilitate a child sex crime.

Registration is also required for any person found to be a sexually violent person under Chapter 980. In addition, a court may order registration if a person has committed certain nonsexual offenses if the court finds that the offense was sexually motivated and that it is in the interest of public safety to require registration. Those convicted in other states or in a federal, military, or tribal court of any of the listed crimes or otherwise required to register with another state or

with the FBI must register if they live, work, or attend school in Wisconsin.

Information Required for Registry. The offender must provide the following information:

1. the offender's name, including any aliases;
2. personal information sufficient to identify the person, including date of birth, gender, race, height, weight, and hair and eye color;
3. detailed information about the offense the person committed, the disposition of the case, and the terms of probation, supervision, conditional transfer, or supervised release;
4. the address at which the person will be residing;
5. the supervising agency;
6. a description of any motor vehicle that the person owns or that is registered in the person's name; and
7. the name and location of the person's employer or the school the person will be attending.

In most cases, updated information must be provided to DOC within 10 days after a change occurs, but if the registrant is on parole or extended supervision, DOC must be notified of an imminent change of address before the registrant moves to a different residence. DOC may also require an offender to provide fingerprints and a recent photograph.

A registered sex offender may not change his or her name or identify himself or herself by a name other than one by which he or she is identified by DOC. The department is required to make a reasonable attempt to notify registered sex offenders of these prohibitions, but the failure to receive a notification is not a defense for an offender to violate the law. Violation is a Class H felony, unless it is a first violation and the

person was ordered to register as a sex offender based on committing a misdemeanor, in which case the penalty is a maximum fine of \$10,000 or maximum imprisonment of nine months, or both.

Duration of Registration Requirements. A person generally must continue to register as a sex offender for 15 years after the date of discharge from sentence, commitment, or other type of supervision. Lifetime registration is generally required for sexually violent persons ("sexual predators"), any person convicted of a sex offense on two or more separate occasions, and those placed by a court on lifetime supervision for the commission of certain serious sex offenses, including first, second, or third-degree sexual assault; or first or second-degree sexual assault of a child. A court may also order lifetime registration when a person has been convicted of a sexually motivated serious felony.

Exemption. If the court feels registration is not necessary for public protection, it may exempt an offender provided the individual was less than 19-years-old at the time of the violation and the victim was a child not more than four years younger or four years older than the perpetrator. This exemption typically relates to consensual sex between teenagers. It is not available if the sexual assault involved sexual intercourse with a child under the age of 12 or if it involved the use or threat of force or violence.

Penalties for Failure to Register. Intentional failure to comply with the registration or reporting requirements is a Class H felony. However, if the person was ordered to register as a sex offender based on committing a misdemeanor, a first violation is an unclassified misdemeanor punishable by a maximum fine of \$10,000 or a prison term of not more than nine months, or both.

Federal Mandates. The federal Violent Crime Control and Law Enforcement Act of 1994 generally mandated states to establish sex offender registration and community notification procedures by September 1997 or risk losing 10% of their federal law enforcement aid. Modifications to the registration law contained in 1999 Wisconsin Act 89 were made, in part, to conform with the federal law and preserve anticrime grant money.

III. COMMUNITY NOTIFICATION REGARDING SEX OFFENDERS

Sex offenders released from prison are typically placed in the community that was their last residence prior to committing the crime, often in a halfway house or other setting which facilitates monitoring and treatment efforts. This is the source of heated debates. The U.S. Constitution protects a person's right to live wherever he or she chooses, and this civil liberty extends to those who have served their sentences for committing even the most heinous crimes. On the other hand, residents of the community often are understandably concerned about having a convicted sex offender living in their neighborhood, especially if the individual has preyed upon children.

Faced with these conflicting interests, a consensus has emerged that public safety is best served if offenders register with the authorities and notification is provided to victims, police, certain groups, and the general public when sex criminals move into a community.

Wisconsin law provides for community notification by DOC or law enforcement agencies regarding registered sex offenders who move into a neighborhood. The notification law, contained in Section 301.46, Wisconsin Statutes, was modeled after 1994

New Jersey legislation known as "Megan's Law", which requires community notification when a convicted sex offender moves into a neighborhood. That law was named for Megan Kanka, a seven-year-old girl who was sexually assaulted and murdered by a man who had served a prison sentence for sexually molesting another child before taking up residence across the street from the Kanka house upon his release. On February 23, 1998, the U.S. Supreme Court declined to review a challenge, thus sustaining the law, which had been upheld as constitutional by the New Jersey Supreme Court and the U.S. Circuit Court of Appeals. A federal law (Public Law 104-145), passed in 1996, encouraged all states to require police agencies to alert a community's residents when a convicted sex offender moves into the area.

1993 Wisconsin Act 98 required DOC to share information regarding sex offenders with law enforcement agencies. 1995 Wisconsin Act 440 expanded access to certain individuals and groups, and 1997 Wisconsin Act 6 gave local law enforcement agencies the discretionary authority to provide any information to the community in any manner to promote public safety.

Bulletins to Police. The DOC or other agency responsible for supervising a sex offender provides notification to a local law enforcement agency if a registered sex offender will be residing, working, or attending school in the law enforcement agency's area of jurisdiction. The rule applies if an offender is being released from confinement or institutional care to a community placement (including electronic monitoring), to a community intensive sanctions program, or released outright. This notice, known as Special Bulletin Notification, is required if the person has two or more sex offense convictions or has been judicially determined to be a sexually

violent person. Notification of local law enforcement authorities is optional if the offender has been convicted of a sex offense on only one occasion and DOC or supervising agency considers notification necessary to protect the public.

Notification of the General Public. When a police chief or sheriff receives a special bulletin notification that a registered sex offender will be released in the area, the chief or sheriff may, using his or her discretion, provide any of the information to the public about the offender who will be living, working, or attending school in the jurisdiction if the chief or sheriff believes that notification is necessary for protection of the public. The law enforcement agency is responsible for determining, on a case-by-case basis, what form of community notification is appropriate for public safety. The DOC has formulated three suggested levels of community notification, based on the criminal history of the offender: Level 1, which is limited to members of law enforcement agencies; Level 2 “Targeted Notification”, includes specific groups or facilities in a geographic area related to the offender’s identified pattern of behavior, such as schools, neighbors, community groups, day care centers, parks, recreation areas, libraries, etc.; and Level 3, “Expanded Notification”, in which the general public is provided with publicity about the released offender through methods such as the electronic and print news media, community meetings, or door-to-door notification.

If any person requests information about a specific registered sex offender, and a police chief or sheriff believes that providing the information is necessary to protect the public, he or she may provide the date and location of the offender’s conviction, and any other information that the police chief or sheriff determines is appropriate.

Notification of Neighborhood Watch Organizations. If requested by a neighborhood watch organization, DOC must provide the organization with the names of and certain other information regarding all registered sex offenders who reside, are employed, or attend school in the entity’s community or geographical area of activity.

Internet Access to the Sex Offender Registry. 1999 Wisconsin Act 89 required DOC to provide to the general public Internet access to information concerning registered sex offenders. DOC may also inform the public by any other means that the department determines is appropriate. The Internet site must be organized in a manner that allows a person using it to obtain the information the department is required to provide and other information the department determines is necessary to protect the public. DOC must also provide, by Internet access, the means for a law enforcement agency to easily identify changes that have occurred in the residence, employment, or place of school attendance of a person registered as a sex offender.

The Wisconsin Department of Corrections Sex Offender Registry, which allows a person to search for information by name or location, is at <http://offender.doc.state.wi.us/public>. For further information about the registry call DOC at (608) 240-5830.

IV. INVOLUNTARY CIVIL COMMITMENT OF SEXUALLY VIOLENT PERSONS – THE “SEXUAL PREDATOR” LAW

Wisconsin’s involuntary civil commitment law for sexual offenders, created by 1993 Wisconsin Act 479, is similar to a law that provides custodial treatment for certain mentally ill persons who present an immediate danger of physical harm to

themselves or others. The law, commonly known as the “Sexual Predator Law”, is in Chapter 980, Wisconsin Statutes, titled “Sexually Violent Person Commitments”.

Commitment Procedure. When a sex offender nears the end of the initial period of confinement, the law permits involuntary civil commitment to a secure mental institution or other supervised care if the court determines the person is dangerous to others because the person’s mental disorder makes it likely that he or she will engage in acts of sexual violence. This civil commitment, which can only be imposed after a probable cause hearing and a trial in circuit court, is designed to protect the public while offering the sex offender treatment for the mental disorder. Control, care, and treatment must be provided in the least restrictive manner consistent with the person’s requirements and the court’s commitment order. The person’s status must be reviewed periodically, and, once it is determined that protection of the public no longer requires the offender to be kept in institutional care, he or she becomes eligible for release. If the offender is discharged or released to a halfway house or other supervised community living arrangement, the Department of Health and Family Services must notify DOC, as well as the crime victim or family of the victim. A person released to community placement is subject to the conditions set by the court and to the rules of the Department of Health and Family Services.

After 18 months in custody, a person may petition the court for supervised release from civil commitment. The court must release the petitioner unless the state proves by clear and convincing evidence either that: 1) it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; or 2) that the person has not demonstrated significant

progress in his or her treatment or has refused treatment.

The sexually violent persons law is sometimes known as the “Gerald Turner Law” after the man who was convicted in 1973 for the sexual assault and murder of a Fond du Lac girl, who disappeared while Halloween trick-or-treating. The legislature passed the law in response to controversy surrounding Turner’s impending release from prison after he had served less than half of his 38-year sentence.

Predator Law Upheld by Supreme Court. Opponents of the law have asserted that it is primarily punitive in nature and violates the constitutional ban on “double jeopardy” by imposing additional punishment on persons who have served their original sentences. They argue that sex criminals are singled out for special detention while other violent offenders are released. They also express concern that the law must provide sufficient due process protection before a person is indefinitely consigned to a mental health institution. Defense attorneys contend the law is unconstitutional because persons do not receive the appropriate level of treatment, or are confined unnecessarily due to a lack of halfway houses or because the public opposes having sex criminals reside in the community.

On December 8, 1995, the Wisconsin Supreme Court upheld the “sexual predator” law as constitutional. In simultaneously deciding two separate cases by identical 6-1 margins, the court ruled that the primary purpose of the law was not punitive. The court determined that the objective of the law is to provide treatment while protecting the public from future sex crimes. It concluded the law did not violate the constitutional prohibitions against double jeopardy and *ex post facto* laws. Prior to the Supreme Court’s decision, about half of the 35 cases challenging the law had

resulted in lower court rulings that the law was unconstitutional.

The Wisconsin Supreme Court had stated that the previous “substantially probable” criteria for committing or retaining a sexually violent person in commitment means that the person is highly likely to engage in acts of sexual violence. 2003 Wisconsin Act 187 changed the standard to “likely” that the person will engage in acts of sexual violence if the person is not continued in institutional care. In addition, the act allows the state to retain the person in custody if the person has not demonstrated significant progress in his or her treatment or has refused treatment.

Legislative Council Study. The Joint Legislative Council created a special committee on sexually violent persons commitment in June 2004. The special committee will report to the Joint Legislative Council in 2005. It will examine current law relating to the commitment, reexamination, supervised release, and discharge of sexually violent persons. For more information about this committee, go to: <http://www.legis.state.wi.us/lc/2004studies/SVPC/index.htm>.

V. TESTING SEX OFFENDERS

DNA Testing. Persons convicted or judicially determined to have committed any felony, including sexual assault must provide a biological sample to the state crime laboratories for inclusion in the state’s DNA database. In addition, the court may order DNA sampling if a person is placed on probation for most sex crime convictions.

HIV Testing. If someone has been convicted of sexual assault (or been found not guilty by reason of mental disease or

defect), and the victim (or the victim’s parent or guardian, if the victim is a minor) requests it, the district attorney (DA) must apply for a court order for the perpetrator to be tested for sexually transmitted diseases and the HIV virus associated with AIDS. If the court finds there is probable cause to believe that the victim has been significantly exposed, the court will order that the offender be tested and the results disclosed.

Prior to conviction, if the alleged victim requests testing, and the DA has probable cause to believe that the defendant has significantly exposed the alleged victim, the DA must apply for a court to order testing. If the court agrees there is probable cause, it will order that the defendant be tested.

Lie Detector Testing of Offenders. The DOC or the Department of Health and Family Services may require a sex offender to submit to a lie detector test while in confinement or as a condition of probation, parole, or extended supervision.

Lie Detector Testing of Sexual Assault Victims. A law enforcement officer, in the course of taking a report from a person who is reporting that he or she was the victim of second-degree sexual assault of an adult, sexual assault of a child, or sexual exploitation by a therapist, may not order, request, or suggest that the person submit to a test using a lie detector. The officer may not provide the victim with information regarding lie detector tests unless the person requests such information. In addition, a district attorney may not order a sexual assault victim to submit to a lie detector test, and may not suggest or request that the person submit to a test without first providing the person with notice and explanation of his or her right not to submit to such a test.

APPENDIX – A SUMMARY OF SEX CRIMES AND PENALTIES

In the early days of statehood, sexual activity was considered legal only within the confines of married, heterosexual relationships. The codes of sexual conduct were often strictly enforced and violations severely punished. In recent years, laws relating to sexual activity have been modified so that most types of private sexual conduct between consenting adults are not prohibited and many other types of behavior that are nominally illegal, such as adultery, are generally not prosecuted by law enforcement authorities. Nevertheless, certain reprehensible sex crimes remain subject to stringent penalties and vigorous enforcement, and the official public policy of the state, as expressed in Section 944.01, Wisconsin Statutes, is to promote only “good” sexual behavior:

The state recognizes that it has a duty to encourage high moral standards. Although the state does not regulate the private sexual activity of consenting adults, the state does not condone or encourage any form of sexual conduct outside the institution of marriage. Marriage is the foundation of family and society. Its stability is basic to morality and civilization, and of vital interest to society and this state.

Through the years, both the terminology and substance of the laws relating to sexual activity have been extensively modified. Major alterations include: the revision of the criminal code instituted by Chapter 696, Laws of 1955; the change from the term “rape” to “sexual assault” in Chapter 184, Laws of 1975; and 1983 Wisconsin Act 17, which decriminalized most types of private (that which is not conducted “in public”) sexual activity between consenting adults, including homosexual activity.

KEY DEFINITIONS

Important statutory terminology relating to sex crimes is summarized below and the related section of the Wisconsin Statutes is cited:

Intimate Parts – “the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being” – Section 939.22 (19).

Sexual Contact – “the intentional touching of the clothed or unclothed intimate parts of another person with any part of the body clothed or unclothed or with any object or device, or the intentional touching of any part of the body clothed or unclothed of another person with the intimate parts of the body clothed or unclothed, or the intentional penile ejaculation of ejaculate or intentional emission of urine or feces upon any part of the body clothed or unclothed of another person, if that intentional touching, ejaculation or emission is for the purpose of sexual humiliation, sexual degradation, sexual arousal or gratification” – Section 939.22 (34).

Sexual Intercourse – “vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal opening either by the defendant or upon the defendant’s instruction. The emission of semen is not required.” – Section 948.01 (5).

Sexually Explicit Conduct – “actual or simulated sexual intercourse, meaning vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal opening either by a person or upon the person’s instruction. The emission of semen is not required; bestiality; masturbation; sexual sadism or sexual

masochistic abuse including, but not limited to, flagellation, torture or bondage; or lewd exhibition intimate parts.” – Section 948.01 (7).

Consent – “words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact.” Minors, persons suffering from mental illness or defect, and sleeping or unconscious persons are presumed unable to give consent. Failure to resist does not indicate consent. – Section 940.225 (4).

SEX CRIMES AGAINST ADULTS

See the final section for the penalties prescribed for a particular class of crime. Citations are to the Wisconsin Statutes.

First-degree Sexual Assault. Section 940.225 (1) prohibits sexual contact or sexual intercourse without consent in any of the following situations: 1) the assault causes pregnancy or great bodily harm; 2) the assault involves the use or threat of use of a dangerous weapon, or what appears to be one; 3) the perpetrator is aided or abetted by one or more other persons and the assault involves the use or threat of use of force or violence. Marriage is not a bar to prosecution in any case of sexual assault. This constitutes a Class B felony.

Second-degree Sexual Assault. Section 940.225 (2), prohibits sexual contact or sexual intercourse without consent in situations involving: 1) use of or threat of force or violence; 2) causing an injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim; 3) assault upon a victim who suffers from a mental illness or deficiency that renders the person temporarily or permanently incapable of appraising the victim’s conduct, and the perpetrator knows of such

condition; 4) assault upon a person who the perpetrator knows is unconscious; 5) the assault is abetted by one or more other persons; 6) assault upon a patient or resident of a health or treatment facility or program by an employee of that facility or program; 7) or assault upon a person that the perpetrator knows is under the influence of intoxicants to a degree which renders the person incapable of appraising his or her conduct (Class C felony).

If a sexual assault in the context of a social or romantic situation involves one party being under the influence of alcohol or other drugs, it may be an example of so-called “date rape” and be a second-degree sexual assault. If such an assault occurs and intoxicants were not involved, then the “date rape” incident may be a third-degree sexual assault.

Third-degree Sexual Assault. Section 940.225 (3) prohibits sexual intercourse without consent. It also prohibits nonconsensual sexual contact involving intentional ejaculation or emission of urine or feces if such conduct is either for the purposes of sexual degradation or humiliation or sexual arousal or gratification (Class G felony).

Fourth-degree Sexual Assault. Section 940.225 (3m) prohibits nonconsensual sexual contact involving the intentional touching of clothed or unclothed intimate body parts (Class A misdemeanor).

Correctional Officers Having Sexual Activity with Inmates. Sections 940.225 (2) (h) and (i) prohibit a person who works at a correctional facility, such as a state prison, county or municipal jail or house of corrections, Huber facility, juvenile detention facility, etc., from having sexual intercourse or sexual contact with a person who is confined in the correctional institution. A probation, parole, or extended supervision agent may also generally not

have sexual intercourse or contact with someone on probation, parole, or extended supervision (Second-degree sexual assault – Class C felony).

SEX CRIMES AGAINST CHILDREN

First-degree Sexual Assault of a Child.

Section 948.02 (1) prohibits sexual contact or sexual intercourse with a child under 13 years of age (Class B felony).

Second-degree Sexual Assault of a Child. Section 948.02 (2) prohibits sexual contact or sexual intercourse with a child who is under 16 years of age (Class C felony).

Sexual Assault of a Child – Failure to Act. Section 948.02 (3) generally provides that a person responsible for the welfare of a child under 16 years of age must take action to stop or prevent sexual intercourse or sexual contact if the caretaker knows such an assault has occurred or is likely to occur (Class F felony).

Sexual Intercourse with a Child Age 16 or Older. Section 948.09 prohibits sexual intercourse with a child who is at least 16 but less than 18 years of age and who is not the defendant’s spouse (Class A misdemeanor).

Sexual Assault of a Student by a School Instructional Staff Member. Section 948.095 prohibits sexual contact or sexual intercourse by a member of the instructional staff of a school district with a child enrolled in the school who is 16 years of age or older (Class H felony).

Sexual Exploitation of a Child (Child Pornography). Section 948.05 prohibits knowingly employing, using, persuading, inducing, enticing, or coercing any child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of the conduct, or displaying the conduct in any way. It also prohibits the production, sale,

distribution, or display of child pornography and holds liable a person who is responsible for the child’s welfare for knowingly permitting or encouraging the activity. The prosecution has the burden of proving that the defendant knew or had reason to know that the child is under the age of 18 (Class F felony).

Forced Viewing of or Listening to Sexual Activity. Section 948.055 prohibits intentionally causing a child to view or listen to sexually explicit conduct for the purpose of sexually arousing or gratifying the violator or for humiliating or degrading the child (Class F felony if the child is under 13 years of age; Class H felony if the child is at least 13 but less than 18 years of age).

Incest with a Child. Section 948.06 prohibits marriage or sexual intercourse or sexual contact with a child related by blood or adoption in a degree of kinship closer than second cousin. A person responsible for the child’s welfare who knows of the incest must take action to prevent such incest (Class C felony).

Child Enticement. Section 948.07 prohibits causing or enticing a child into any vehicle, building, room, or secluded place with the intent to: commit an act of first or second-degree sexual assault; cause the child to engage in prostitution; expose a sex organ to the child or cause the child to expose a sex organ; or take pictures or make audio recordings of the child engaging in sexually explicit conduct (Class D felony).

Soliciting a Child for Prostitution. Section 948.08 prohibits intentionally soliciting or causing any child to practice prostitution or establishing a child in a place of prostitution (Class D felony).

Exposing Genitals or Pubic Area. Section 948.10 prohibits a person from causing a child to expose genitals or pubic area or the person’s exposing genitals or pubic area to a child for purposes of sexual

arousal or sexual gratification, except in cases where the child is the person's spouse (Class A misdemeanor).

Exposing a Child to Harmful Material, Descriptions or Narrations. Section 948.11 prohibits knowingly selling, renting, exhibiting, transferring, or loaning to a child any material of a sexual nature that is harmful to a child. It also prohibits exposing a child, through verbal or any other means, to a harmful description or narrative account (Class I felony). Face-to-face contact is required for a violation to occur.

"Harmful material" includes any picture, photograph, drawing, sculpture, book, pamphlet, magazine, printed matter however reproduced, sound recording, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture, or brutality that is harmful to children. "Harmful description or narrative account" is defined as any explicit and detailed description or narrative account or sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture, or brutality that, if taken as a whole, is harmful to children. A material, description, or narration is considered harmful if three elements are present: 1) it predominantly appeals to the prurient, shameful, or morbid interest of children; 2) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for children; and 3) it lacks serious literary, artistic, political, scientific, or educational value for children, when taken as a whole.

Possession of harmful material with intent to sell, rent, exhibit, transfer, or loan them to a child is a Class A misdemeanor.

An affirmative defense exists if the child presents apparently official documentation

of legal age. Libraries and educational institutions are exempted from liability.

Section 134.46 prohibits exhibition of explicit sexual material harmful to minors at an outdoor theater if the material is visible from a public street, sidewalk, thoroughfare, or other public place or from private property where it may be observed by minors and provides a forfeiture not to exceed \$1,000.

Possession of Child Pornography. Section 948.12 prohibits intentional possession of any audio recording, photograph, motion picture, videotape, film, negative, or other pictorial reproduction of a child engaged in sexually explicit conduct (Class I felony).

Reporting of Child Sexual Assault by Clergy, Physicians, Teachers, Etc. Section 48.981 (2) requires certain persons to report to the authorities any reasonable suspicion that a child seen by the person in the course of professional duties has been abused or neglected, has been threatened with abuse or neglect, or that abuse or neglect is likely to occur. Abuse is defined as physical injury or emotional damage, and also includes sexual intercourse or contact; sexual exploitation of a child; permitting or encouraging a child to engage in prostitution; causing a child to view or listen to sexual activity; or exposing genitals or pubic area to a child. Failure to report as required may be penalized by a fine of not more than \$1,000 or imprisonment of not more than six months, or both.

Among the persons required to report child abuse or neglect are: physicians, nurses, and other health care providers; social workers; marriage and family therapists, alcohol or other drug abuse counselors and other professional counselors; school teachers, administrators, and counselors; child-care workers and day care providers; police and law enforcement officers, emergency medical technicians and

first responders; physical or occupational therapists; audiologists and speech-language pathologists; public assistance workers; and members of the clergy. Clergy members must report suspected abuse by other members of the clergy, but need not report child abuse information received solely through confidential communications made privately or in a confessional setting. A person may not be discharged from employment for making a required report. An exception to the reporting requirement is for health care workers who provide to a child certain family planning services, such as contraception, pregnancy testing, and diagnosis and treatment for a sexually transmitted disease. These workers are not required to report suspected sexual intercourse or sexual contact involving a child as abuse, unless there is reason to suspect that: the intercourse or contact occurred or is likely to occur with a caregiver; that the child, because of age or immaturity, was or is incapable of understanding the nature or consequences of the sexual activity; that another participant in the activity was or is exploiting the child; or there is reason to suspect reasonable doubt as to the voluntariness of the child's participation in the sexual activity.

Use of a Computer to Facilitate a Child Sex Crime. Section 948.075 prohibits the use of a computerized communication system to communicate with an individual who the person believes or has reason to believe has not attained the age of 16 years with intent to have sexual contact or sexual intercourse with the individual. In order to prove the person's intent to have sexual intercourse or contact with the individual he or she believes to be a child, the person must have performed another act, such as traveling, in addition to using the computer to

communicate with the individual (Class D felony).

CRIMES AGAINST SEXUAL MORALITY AND OTHER SEX CRIMES

Adultery. Section 944.16 prohibits a married person from having sexual intercourse with a person other than his or her spouse or a person having sexual intercourse with a person who is married to another (Class I felony).

Incest. Section 944.06 prohibits nonmarital sexual intercourse with a blood relative related in a degree within which the marriage of the parties is prohibited (generally a kinship of first cousins or closer) (Class F felony).

Public Fornication. Section 944.15 prohibits sexual intercourse in public. "In public" means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual intercourse (Class A misdemeanor).

Sexual Gratification. Section 944.17 (2) prohibits acts of sexual gratification in public involving the sex organ of one person and the mouth or anus of another. It also prohibits any sexual acts with animals, whether in public or private (Class A misdemeanor).

Lewd and Lascivious Behavior. Section 944.20 prohibits acts of indecent sexual gratification with another with knowledge that they are in the presence of others or publicly and indecently exposing genitals or pubic area (Class A misdemeanor).

Obscene Material or Performance (Pornography). Section 944.21 prohibits the importation, printing, selling, or possession with the intent to sell, publish, exhibit, or

transfer any obscene material. The section also prohibits producing or performing in any obscene performance or exhibiting or transferring obscene material to a child. Libraries and educational institutions are exempt, as well as contract printers lacking editorial control over the material. In keeping with the “free speech” provisions of the First Amendment to the U.S. Constitution and Article I, Section 3, of the Wisconsin Constitution, as well as the compelling state interest in protecting the free flow of ideas, the law is intended to combat commercial obscenity and not for censorship purposes (Class A forfeiture.) (The penalty may be upgraded to Class A misdemeanor or Class H felony depending upon the number of prior convictions.)

The definition of “obscene material” includes a written narrative or picture, photograph, drawing, sculpture, book, pamphlet, magazine, printed matter however reproduced, sound recording, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality which the average person, applying contemporary community standards, would find appeals to the prurient interest, describes or shows sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, educational, or scientific value, if taken as a whole. This definition is based on the U.S. Supreme Court’s decision in *Miller v. California*, 413 U.S. 15 (1973).

Making Lewd, Obscene or Indecent Drawings. Section 944.23 prohibits making lewd, obscene, or indecent drawings or writing in public (Class C misdemeanor).

Prostitution. Section 944.30 prohibits having, offering, or requesting nonmarital sexual intercourse, sexual gratification,

sexual contact, or masturbation for anything of value. It also prohibits being an inmate of a place of prostitution (Class A misdemeanor).

Patronizing Prostitutes. Section 944.31 prohibits entering or remaining in a place of prostitution with the intent to commit a sexual act with a prostitute or engaging in a sexual act with a prostitute (Class A misdemeanor).

Soliciting Prostitutes. Section 944.32 prohibits a person from soliciting another person to engage in an act of prostitution either with the first person or with a third party. It also prohibits establishing any person in a place of prostitution (Class H felony).

Pandering. Section 944.33 prohibits a person from proposing that another person patronize a prostitute and prohibits the first person from either directing or transporting another person to a place of prostitution or directing or transporting a prostitute to the person (Class A misdemeanor; Class F felony if the panderer received compensation from the earnings of the prostitute).

Keeping Place of Prostitution. Section 944.34 prohibits intentionally keeping a place of prostitution or granting the continued use of such a place (Class H felony).

Invasion of Privacy Offenses – Observance of Nudity. Section 942.08 (2), Wisconsin Statutes, makes it a Class A misdemeanor for a person to look into a private place that is, or is part of, a public accommodation, for the purpose of sexual arousal or gratification, if a person may reasonably be expected to be nude or partially nude. It is a crime whether or not a person is actually present in the facility, such as a beach changing house, in which a person may reasonably expect to be safe from being observed without his or her

knowledge or consent. Knowingly installing or using a surveillance device in a private place with the intent to observe a nude or partially nude person without consent is prohibited. It is also illegal to enter another person's private property without consent and look into a dwelling unit for the purpose of sexual arousal or gratification and with the intent to intrude upon or interfere with the individual's privacy if an individual is present, the observed individual has a reasonable expectation of privacy, and the individual does not consent to the actor looking into that part of the residence. A court may order a person convicted of this crime to register as a sex offender.

Representations Depicting Nudity.

Section 942.09 prohibits a person from capturing, reproducing, possessing, distributing, or exhibiting a representation (such as a photograph, motion picture, or videotape, or other visual image) that depicts nudity without the consent of the person depicted if the person has a reasonable expectation of privacy (Class I felony).

Sexual Exploitation by a Therapist.

Section 940.22 (2) prohibits intentional sexual contact by any person who is or who holds himself or herself out to be a therapist with a patient or client during any ongoing therapist-patient or therapist-client relationship, regardless of whether it is or is not consensual and whether it occurs during any treatment, consultation, interview, or examination. "Therapist" is defined in Section 940.22 (1) (i) as "a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy" (Class F felony). In

addition, a person who suffers, directly or indirectly, a physical, mental, or emotional injury caused by, resulting from, or arising out of sexual contact with a therapist has a civil cause of action against the therapist for all damages related to that sexual contact, including punitive damages.

As provided by Section 940.22 (3), a therapist who suspects that a patient or client has been sexually exploited by another therapist must ask the patient or client if the therapist may report the abuse to law enforcement authorities. With written consent of the patient or client, the therapist will report the sexual contact to the appropriate regulating body or the district attorney. The patient or client may keep their identity out of the report. Failure of a therapist to follow reporting requirements is a Class A misdemeanor.

Sexual Exploitation by a Member of the Clergy.

As described above, Section 940.22 (2) prohibits a member of the clergy from having sexual contact with any person in connection with the clergy member's religious or pastoral duties (Class F felony). 2003 Wisconsin Act 279 created a civil cause of action for a child who suffers a physical, mental, or emotional injury due to sexual contact with a member of the clergy. Such an action, which must be commenced before the injured party reaches 35 years of age, may also be brought against a supervisor if he or she knew or should have known that the member of the clergy under his or her supervision had previously had sexual contact with a person under the age of 18 and had failed to report it to authorities and had failed to exercise adequate care to prevent similar incidents from occurring. Reports may keep the name of the victim confidential until an action is commenced in open court, and any agreement to settle a claim may not limit or eliminate the right of the victim to disclose the sexual contact to

religious authorities, a therapist, or to a district attorney.

STATUTES OF LIMITATIONS

Criminal Prosecutions. Generally, under Wisconsin law, prosecution of felonies must be commenced within six years of the commission of the crime, and prosecution of misdemeanors and adultery must be begun within three years. However, for certain sex crimes against children, charges may be brought until the time the victim reaches age 45, raised from age 31 by 2003 Wisconsin Act 279. These include sexual assault of a child or engaging in repeated acts of sexual assault of the same child, sexual exploitation of a child, incest with a child, child enticement if related to sexual activity, soliciting a child for prostitution, and sexual assault of a student by a school instructional staff person. In computing the limitation for sexual exploitation by a therapist, the law makes exception for any time during which the victim is unable to pursue a complaint due to the effects of the prohibited sexual contact or due to threats, instructions, or statements from the therapist.

Civil Cases. Civil actions for monetary damages to compensate a child for the physical, mental, or emotional harm resulting from sexual assault of a child or sexual exploitation of a child by a member of the clergy may be brought until the victim reaches the age of 35 years.

PENALTIES FOR SEX CRIME VIOLATIONS

Penalty Enhancers. Section 939.623 prescribes a minimum sentence of not less than three years and six months confinement in prison for convicts who have been previously convicted of one or more

serious sex crimes, defined as first or second-degree sexual assault. The court may not place the defendant on probation.

Section 939.62 (2m) mandates a sentence of life imprisonment without the possibility of parole or extended supervision if the person is convicted as a “persistent repeater” for a second serious child sex offense (the so-called “two strikes” law).

Lifetime Supervision of Serious Sex Offenders. Section 939.615 authorizes the court to require, in addition to other penalties, that persons convicted of certain serious sex crimes be subject to lifetime supervision by DOC. The person may petition to be released from monitoring after 15 years if he or she has not been convicted of any crime during that period. Violating the conditions of lifetime supervision is a Class A misdemeanor, unless the conduct that violates the supervision is a felony, in which case the violation is a Class I felony.

Child Sex Offender Prohibited from Working with Children. Section 948.13 prohibits a person who has been convicted of certain serious sex crimes against children from subsequently working or volunteering in a position that involves interacting primarily with children under the age of 16. Crimes triggering the prohibition are first-degree sexual assault of a child, engaging in repeated acts of sexual assault of the same child, sexual exploitation of a child, incest with a child, child enticement, and if the victim is under 18, sexual contact by a therapist and second-degree sexual assault upon a person who suffers from a mental illness or assault if the victim is under the influence of intoxicants. Occupations specifically banned to this group of convicts are teaching children, child care, youth counseling, youth organization, coaching children, parks or playground recreation, and school bus driving. Violation of this restriction is a Class F felony.

Pharmacological Treatment For Serious Child Sex Offenders. Section 304.06 (1q) provides for “chemical castration” of certain sexual offenders as a condition of parole. A person sentenced to prison for sexual assault of a child under the age of 13 may be denied parole unless the person consents to participate in pharmacological treatment using an “antiandrogen drug”, a substance that inhibits the effects of male hormones, such as testosterone. The court may also, when deciding whether to place an offender on

supervised release, consider the person’s possible participation in pharmacological treatment if the person was found to be a sexually violent person (“sexual predator”) on the basis of conviction for sexual assault of a child under the age of 13.

Penalties. The categories of penalties imposed by the Wisconsin Statutes for sex crime violations are listed below. Except for Class A and B felonies, both a fine and prison time may be imposed for felonies and misdemeanors.

Class	Fine	Sentence Length*
Felonies – Section 939.50		
Class A	None provided	Life imprisonment
Class B	None provided	Not to exceed 60 years.
Class C	Not to exceed \$100,000	Not to exceed 40 years.
Class D	Not to exceed \$100,000	Not to exceed 25 years.
Class E	Not to exceed \$50,000	Not to exceed 15 years.
Class F	Not to exceed \$25,000	Not to exceed 12 years and 6 months.
Class G	Not to exceed \$25,000	Not to exceed 10 years.
Class H	Not to exceed \$10,000	Not to exceed 6 years.
Class I	Not to exceed \$10,000	Not to exceed 3 years and 6 months.
Misdemeanors – Section 939.51		
Class A	Not to exceed \$10,000	Not to exceed 9 months.
Class B	Not to exceed \$1,000	Not to exceed 90 days.
Class C	Not to exceed \$500	Not to exceed 30 days.
Forfeitures – Section 939.52		
Class A	Not to exceed \$10,000.	
Class B	Not to exceed \$1,000.	
Class C	Not to exceed \$500.	
Class D	Not to exceed \$200.	
Class E	Not to exceed \$25.	

*Bifurcated sentences include a period of incarceration followed by a period of extended supervision outside of prison. The judge must set the length of the period of extended supervision to be at least 25% of the total sentence.

Selected Legislative Reference Bureau Publications

These and other LRB publications are available at www.legis.state.wi.us/lrb/pubs

Research Bulletins

- RB-00-1 The Evolution of Legalized Gambling in Wisconsin. May 2000
- RB-01-2 Summary of the 2001-2002 Wisconsin Legislative Session, 2001 Wisconsin Acts 1 to 109. September 2002
- RB-04-1 Wisconsin Legislative District Almanac. April 2004

Informational Bulletins

- IB-00-2 Ask the LRB. December 2000
- IB-02-2 2003 Legislative Session Fiscal Estimate Manual. November 2002
- IB-03-1 Inside the 2003-2004 Wisconsin Blue Book. November 2003
- IB-03-2 A Study Guide to the 2003-2004 Wisconsin Blue Book. November 2003
- IB-04-1 The Partial Veto in Wisconsin. January 2004
- IB-04-2 Wisconsin's Role in Electing the President. February 2004
- IB-04-3 Sex Crimes and Penalties in Wisconsin. September 2004

Wisconsin Briefs

- Brief 03-4 Executive Vetoes of Bills Passed by the 2003 Wisconsin Legislature from November 13, 2003 through December 20, 2003. December 2003 (De3 Supplement)
- Brief 03-5 Constitutional Amendment to be Considered by Wisconsin Voters, April 1, 2003. March 2003
- Brief 03-6 Wisconsin Women Legislators – A Historical List. March 2003
- Brief 03-7 Executive Partial Veto of 2003 Senate Bill 44: Executive Budget Bill Passed by the 2003 Wisconsin Legislature (2003 Wisconsin Act 33). August 2003
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- Brief 04-15 Voice Over Internet Protocol: New Telephone Service Poses Regulatory Challenges. August 2004

Budget Briefs

- Brief 01-10 The Pledge of Allegiance and the National Anthem in Wisconsin Schools. October 2001
- Brief 01-12 Budget Stabilization and Appropriation Limits. November 2001
- Brief 01-13 PECFA. November 2001
- Brief 01-14 Brownfields. November 2001
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- Brief 02-2 Domestic Abuse and Stalking. September 2002
- Brief 02-3 Bioterrorism and Public Health Emergencies. October 2002
- Brief 04-1 Earned Release Program. April 2004
- Brief 04-2 Enforcement of Tavern Video Gambling Laws. April 2004

Legislative Briefs

- Brief 02-1 Fighting Chronic Wasting Disease in Deer. June 2002
- Brief 02-2 Second-Chance Homes for Teenage Mothers. August 2002
- Brief 02-3 Constitutional Amendment Given "First Consideration" Approval by the 2001 Wisconsin Legislature. September 2002
- Brief 03-1 Revised Penalty for Homicide by Intoxicated Use of a Vehicle. January 2003
- Brief 04-1 "Puppy Mills": State Licensing of Pet Breeders and Dealers. February 2004
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