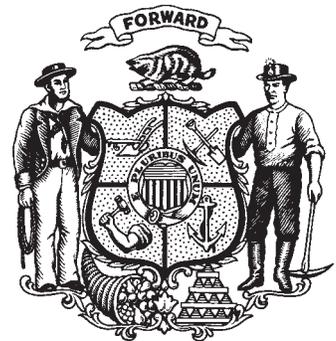


# Sex Crime Legislation

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## Table of Contents

SUMMARY .....	1
I. LEGISLATION ENACTED IN 2005-06 .....	1
II. REGISTRATION OF SEX OFFENDERS .....	2
III. COMMUNITY NOTIFICATION AND PLACEMENT OF REGISTERED SEX OFFENDERS .....	4
IV. INVOLUNTARY CIVIL COMMITMENT OF SEXUALLY VIOLENT PERSONS – THE “SEXUAL PREDATOR” LAW .....	7
V. TESTING SEX OFFENDERS .....	9
APPENDIX – A SUMMARY OF SEX CRIMES AND PENALTIES .....	10

# SEX CRIME LEGISLATION

## SUMMARY

Significant research indicates that many individuals 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.

In a continuing response to these concerns, the legislature adopted a number of laws during the 2005-06 session which pertain to subjects ranging from GPS tracking of certain sex offenders, to making alcohol qualify as a possible “date rape” drug, and to creating a mandatory minimum prison sentence (25 years) for sexual intercourse with children.

This bulletin reviews Wisconsin laws pertaining to sex crimes and summarizes the 14 laws relating to sex crimes enacted in the 2005-06 legislative session. Sex crimes relating to adults are located in Chapter 940 of the Wisconsin Statutes, and sex crimes concerning children are in Chapter 948. An appendix provides summaries of Wisconsin’s sex crime laws and lists the associated penalties.

## I. LEGISLATION ENACTED IN 2005-06

The Wisconsin Legislature enacted 14 laws relating to sex crimes during the 2005-06 session:

- 2005 Wisconsin Act 5 authorizes local law enforcement officers or the Wisconsin Department of Corrections to provide previously restricted information from the sex offender registry to the public regarding a child who is in the registry or concerning a delinquency case in which the registrant was involved.
- Act 271 provides a maximum penalty of life imprisonment without the possibility of parole or extended supervision if a person has one or more prior convictions for first degree sexual assault, and is subsequently convicted of this crime.
- Act 273 expands the definition of “sexual contact” so that it includes cases in which the person causes someone else to ejaculate or emit urine or feces on any part of the person’s body, whether clothed or unclothed, for the purpose of sexual humiliation, degradation, arousal, or gratification.
- Act 274 prohibits a person who is at least 21 years of age from having sexual contact or sexual intercourse with a 16- or 17-year-old with whom the person works or interacts through an occupation or volunteer position (other than through a school).
- Act 276 eliminates the statute of limitation for first degree sexual assault of a child. In addition, it provides that in cases of first degree sexual assault (of an adult), a prosecution may be started at any time after the analysis of DNA evidence identifies a probable perpetrator.
- Act 277 creates the crime of sexual assault of a child placed in substitute care. A

foster parent or a person who works or volunteers at a shelter care facility, group home, or residential care center may not have sexual contact or sexual intercourse with a child who is under the person's foster care or who is placed in one of the facilities. The act also classifies as incest a stepparent having sexual contact or sexual intercourse with his or her stepchild.

- Act 430 changes the criteria, definitions, and penalties for first degree sexual assault of a child, including a mandatory minimum sentence of 25 years in prison for sexual intercourse involving the use or threat of force or violence with a child less than 16 years old. ("Jessica's Law," prompted by the case of a Florida girl who was kidnapped and killed by a registered sex offender living next door.)
- Act 431 provides for Global Positioning System tracking of certain sex offenders, modifies the rules regarding residential placement of released sex offenders, and expands the information that must be made available on the Sex Offender Registry Internet Web site.
- Act 432 generally prohibits a registered sex offender from photographing a child.
- Act 433 increases the penalties and creates presumptive minimum sentences for violations of sexual exploitation of a child, using a computer to facilitate a child sex crime, or possession of child pornography. The act also creates a \$500 child pornography surcharge.
- Act 434 changes the definition of "sexually violent person" ("sexual predator"), including adding third degree sexual assault to the list of covered sexually violent offenses, and makes changes to the commitment, periodic reexamination, supervised release, and discharge of sexually violent persons.

- Act 435 changes the definition of "sexual contact" to specify that sexual contact includes conduct involving a victim and a third person if it is undertaken at the defendant's instruction.
- Act 436 changes the criteria for sexual assault of a person under the influence of an intoxicant, which is a form of second degree sexual assault, and specifies that alcohol beverages alone are sufficient to render a person incapable of giving consent to sexual activity. Previously, alcohol must have been used in combination with a controlled substance, or drugs alone, or a combination thereof.
- Act 437 increases the penalties if first degree sexual assault of a child results in great bodily harm to the victim.

**Previous Bulletins.** Previous editions of this publication are available at the Legislative Reference Bureau's Web site:

- Informational Bulletin 04-3, September 2004:  
<http://www.legis.state.wi.us/lrb/pubs/ib/04ib3.pdf>.
- Informational Bulletin 01-1, January 2001:  
<http://www.legis.state.wi.us/lrb/pubs/ib/01ib1.pdf>.

## II. REGISTRATION OF SEX OFFENDERS

In general, 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) while in prison, after release from custody, or when they are placed extended supervision, probation, 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. As of June 2005, there were

approximately 18,400 registered sex offenders in Wisconsin.

**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 is a minor and the person who committed the violation is not the victim's parent.
- A child sex offender working with children.
- Using a computer to facilitate a child sex crime.

Registration is also required for any person found to be a sexually violent person ("sexual predator") 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:

- Name, including any aliases used.
- Personal identification information, including date of birth, gender, race, height, weight, and hair and eye color.
- Detailed information about the offense committed, the disposition of the case, and the terms and conditions of probation, supervision, conditional transfer, or supervised release.
- Residence address.
- Supervising agency.
- Description of any owned or registered motor vehicle.
- Name and location of person's employer or school he or she 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 the 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, 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 encouraged states to establish sex offender registration and community notification procedures by September 1997 or risk losing 10% of their federal law enforcement aid. Wisconsin legislation was

motivated, in part, by the desire to preserve federal anticrime grant money.

### **III. COMMUNITY NOTIFICATION AND PLACEMENT OF REGISTERED SEX OFFENDERS**

Information from DOC's sex offender registry is made available to police chiefs and sheriffs, who may provide that information on their own initiative to certain organizations (including schools, day care providers, and certain government agencies), individuals, or the general public if they determine that doing so is in the public interest. In addition, organizations may request information regarding specific registrants from DOC, and individuals may request such information from either DOC or local law enforcement agencies. Also, information about sex offenders and where they live is available on DOC's Web site.

**Placement of Sex Offenders.** The issue of the placement of sex offenders 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.

Sex offenders released from prison are typically placed in or near 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. Section

301.03 requires DOC to minimize, to the greatest extent possible, the residential population density of sex offenders who are on probation, parole, or extended supervision or placed on supervised release. 2005 Wisconsin Act 431 generally provides that registered sex offenders, upon release to parole or extended supervision, will be placed in one of the following locations:

- The county in which the person resided on the date of committing the sex offense. If the person resided in Milwaukee County, he or she must generally be placed in a residential facility or dwelling in the person's city, village, or town of residence.
- The county in which the person was convicted of the sex offense.
- A sex offender treatment facility. (However, a parolee may not be placed in any county where there is a correctional institution that has a specialized sex offender treatment program, unless that county is also the person's county of residence.)

**GPS Tracking of Certain Sex Offenders.** 2005 Wisconsin Act 431 requires DOC to arrange for lifetime Global Positioning System (GPS) tracking of someone released into the community if he or she has committed a serious child sex offense or has been adjudicated as a sexually violent person. DOC may also have a person tracked if he or she is placed on probation, extended supervision, or parole for other sex crimes. Lifetime tracking due to sexual assault of a child is covered if any of the following apply:

- The perpetrator had sexual intercourse with a person less than 12 years old.
- The perpetrator had sexual intercourse with a person less than 16 years old by use or threat of force or violence.
- The perpetrator had sexual contact with a person less than 16 years old by use or

threat of force or violence and the perpetrator is at least 18 years old.

A person may petition the court to have his or her lifetime GPS tracking terminated after 20 years. After holding a hearing, the court may grant the petition if it determines that lifetime tracking is no longer necessary for public protection. DOC may petition the court to end tracking if a person becomes permanently physically incapacitated.

If necessary for public safety, DOC must create individualized exclusion and inclusion zones for a person who is subject to GPS tracking. An "exclusion zone" is an area the person is prohibited from entering except for the purposes of traveling through it on the way to a destination. An "inclusion zone" is an area the person is prohibited from leaving. In creating exclusion zones, DOC is to focus on areas where children congregate, with perimeters of 100 to 250 feet, and on areas where the person has been prohibited from going as a condition of probation, extended supervision, parole, conditional release, or supervised release.

**Community Notification.** Wisconsin law provides for community notification by DOC or law enforcement agencies regarding registered sex offenders who move into a neighborhood. Section 301.46, Wisconsin Statutes, was modeled after New Jersey's 1994 community notification law ("Megan's Law"), which 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 her house upon his release. In 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.

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.** DOC, or another agency responsible for supervising a sex offender, notifies the 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), 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 the 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 to the public any information about the offender who will be living, working, or attending school in the area if he or she believes that notification is necessary for public protection. The law enforcement agency is responsible for determining, on a case-by-case basis, what form of community notification is appropriate for public safety. DOC has formulated three levels of community notification, based on the criminal history of the offender: Level 1 is limited to members (officers or deputies) 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, civic groups, day care centers, recreational facilities, 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.

2005 Wisconsin Act 5 authorized a police chief or sheriff to provide information from the sex offender registry concerning a registrant who is a child or concerning a delinquency case in which the registrant was involved to an organization, an individual, or the general public if necessary to protect the public. DOC may also do so in response to a request for information regarding a specific registrant in the interest of public safety. Previously, information regarding juvenile registrants was not releasable.

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

**Notification of Neighborhood Watch Organizations.** If requested by a neighborhood watch organization, DOC must provide the names of and certain other information regarding all registered sex offenders who reside, are employed, or attend school in the organization'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.

2005 Wisconsin Act 431 expanded the information that must be made available on the registry, to include:

- A notice, in red letters, that the person is a sexually violent person ("sexual predator"), when applicable.
- A current color photograph of the person, if available, and physical description including sex, race, height, weight, eye and hair color.
- The person's name and home address.
- Whether the person has responded to the last contact letter from DOC.
- The crime committed for which the person must register.
- Any conditions of the person's supervised release, except for any condition that may reveal the identity of the crime victim.
- The date, time, and place of any scheduled hearings for supervised release or discharge.
- The name and court of the judge who authorized supervised release or discharge.
- The most recent date on which the information was updated.

The DOC Sex Offender Registry, which allows a person to search for information by name or location, is at <http://offender.doc.state.wi.us/public>. To report information concerning the whereabouts of

noncompliant registrants, call the SAFE Tip Line toll-free at (877) 234-0085. 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 one or more acts of sexual violence. Included among the offenses which makes a person eligible for consideration as a sexually violent person are: first, second, or third degree sexual assault; first or second degree sexual assault of a child, incest with a child, and child enticement.

This civil commitment, which can be imposed only 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 12 months in custody, a person may petition the court for supervised release from civil commitment. The court may not authorize supervised release unless it finds that: the person has made significant progress in treatment and the progress can be sustained while on supervised release; it is substantially probable that the person will not engage in an act of sexual violence while on supervised release; needed treatment and providers are reasonably available; the person can be reasonably expected to comply with all of the conditions or rules of supervised release; and a reasonable level of resources are available to provide the level of residential placement, supervision, and ongoing treatment needs required for the safe management of the person while on supervised release. Subsequent petitions may be submitted 12 months after each denial.

A person may petition for discharge from commitment at any time. If the state does not meet the burden of proving to the court or the jury by clear and convincing evidence that the person continues to meet the criteria for commitment as a sexually violent person, the person is discharged.

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 sentences. They argue that sex criminals are singled out for special detention while other violent offenders are released, and express concern that the law must provide sufficient due process protection before a person is indefinitely consigned to a mental health institution. Defense attorneys also 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 just because the public opposes having sex criminals reside in their 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.

## 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.** 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

### HISTORY

In the early days of statehood, sexual activity was considered legally acceptable 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 liberalized 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

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 by the defendant or, upon the defendant’s instruction, by a third person 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 by the defendant or, upon the defendant’s instruction, by a third person 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 by the defendant or, upon the defendant’s instruction, by a third person 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 Contact (Crimes Against Children)** – means any of the following:

- Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant’s or defendant’s intimate parts if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant. – Section 948.01 (5) (a).
- Intentional penile ejaculation of ejaculate or intentional emission of urine or feces

by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant. – Section 948.01 (5) (b).

**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 (6).

**Sexual Intercourse** – (First Degree Sexual Assault of a Child) – “vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of any inanimate 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 948.02 (1) (a).

**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 of 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 sexual assault case. (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; or 7) assault upon a person that the perpetrator knows is under the influence of an intoxicant (any alcohol beverage, a controlled substance or other drug, or any combination thereof) to a degree which renders the

person incapable of giving consent, and the defendant knows this (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 sexual nonconsensual contact or intercourse occurs, and intoxicants were not involved, then the “date rape” incident may be a first, second, or third degree sexual assault, depending upon factors such as the threat or use of force or violence or whether the assault resulted in an injury to the victim.

**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). The violation applies whether a person performs one of the acts or intentionally causes another person to perform one of the acts on the first person, whether clothed or unclothed.

**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 jail, Huber facility, juvenile detention facility, etc., from having sexual intercourse or sexual contact with a person who is confined in the institution. A probation, parole, or extended supervision agent may also generally not have sexual intercourse or contact with someone over whom he or she has supervision on probation, parole, or

extended supervision (Second degree sexual assault – Class C felony).

**Employees of Health or Treatment Facilities Having Sexual Activity With Patients or Residents.** Section 940.225 (2) (g) prohibits an employee of an adult family home, a community-based residential facility, an inpatient health care facility, or a state treatment facility from having sexual contact or sexual intercourse with an adult or a child who is a patient or resident of that facility. (Second degree sexual assault – Class C felony)

## SEX CRIMES AGAINST CHILDREN

**First Degree Sexual Assault of a Child.** Section 948.02 (1) classifies the following acts as first degree sexual assault of a child (Class B felony, with the first two subject to a mandatory minimum term of confinement in prison of 25 years and the third subject to a mandatory minimum term of 5 years):

- Sexual intercourse with a person who has not attained the age of 12 years.
- Sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence.
- Sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence if the actor is at least 18 years of age when the contact occurs.
- Sexual contact with a person who has not attained the age of 13 years.

2005 Wisconsin Act 437 provides that first degree sexual assault of a child is classified as a Class A felony if the sexual contact or sexual intercourse with a person who is less than 13 years old resulted in great bodily harm to the victim.

**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 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).

**Engaging in Repeated Acts of Sexual Assault of the Same Child.** Section 948.025 relates to committing three or more violations of first or second degree sexual assault against the same child within a specified period of time. It is a Class A felony if a defendant committed at least three violations of sexual contact or sexual intercourse with a child less than 13 years of age that resulted in great bodily harm to the person. It is a Class B felony if fewer than three of the first degree sexual assaults of the child resulted in great bodily harm. It is a Class C felony if fewer than three of the offenses were violations of first degree sexual assault of a child. Section 936.616 provides for a mandatory term of confinement in prison of at least 25 years for violation of Section 948.025 and a mandatory sentence of life imprisonment without the possibility of parole or extended supervision for a second conviction.

**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 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 Assault of a 16- or 17-Year-Old by a Person Who Works or Volunteers With Children.** Section 948.095 prohibits sexual

contact or sexual intercourse with a 16- or 17-year-old by a person who engages in an occupation or participates in a volunteer position that requires working or interacting directly with children other than through a school (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. The penalty was raised from a Class F to a Class C felony by 2005 Wisconsin Act 433. It remains a Class F felony if the defendant was less than 18 years old when the crime was committed.

**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. Also prohibited is a child's stepparent having sexual contact or sexual intercourse with the child (Class C felony).

**Sexual Assault of a Child Placed in Substitute Care.** Section 948.085 provides that a foster parent may not have sexual contact or sexual intercourse with a child in his or her care. In addition, an employee or volunteer who works at a shelter care facility, group home, or residential care center may not have sexual contact or sexual intercourse with a child placed in one of the facilities (Class C felony).

**Child Enticement.** Section 948.07 prohibits 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 of the items listed above (except nudity) 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. The penalty was raised from a Class I to a Class D felony by 2005

Wisconsin Act 433. The crime remains a Class I felony if the perpetrator was less than 18 years of age at the time the crime was committed (Class D 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.

**Registered Sex Offender Photographing a Child.** Section 948.14 prohibits a registered sex offender from intentionally capturing a representation of a minor without the written consent of the minor's parent, legal custodian, or guardian. The person seeking the consent must state that he or she is required to register as a sex offender with DOC. The law does not apply if the sex offender making the image is the child's parent, legal custodian, or guardian (Class I felony).

**Tampering with a GPS Tracking Device.** Section 946.465 prohibits anyone from intentionally tampering with a GPS tracking device issued by DOC to track a sex offender (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 (i.e., the Internet) to communicate with an individual who the person believes or has reason to believe is less than 16 years old 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 him or her (Class C felony, raised from a Class D felony by 2005 Wisconsin Act 433).

### 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," defined as a place where or in a manner such

that the person knows or has reason to know that the 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 public or private sexual acts with animals (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 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 shared in the prostitute's earnings).

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

**Invasion of Privacy Offenses – Observance of Nudity.** Section 942.08 (2) 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, 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 exploitation of a child, incest with a child, child enticement if related to sexual activity, use of a computer to facilitate a child sex crime, 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.

2001 Wisconsin Act 16 extended the deadline for commencing a prosecution in a first degree or second degree sexual assault case or a sexual assault of a child case if, before the statutory deadline, the state collects DNA evidence that theoretically enables it to identify the perpetrator of the

offense. The state may then begin a prosecution within 12 months after an analysis of the DNA evidence results in a probable identification of a perpetrator. 2005 Wisconsin Act 276 eliminates the statute of limitation for first degree sexual assault of a child (sexual contact or sexual intercourse with a child less than 13 years old) or engaging in repeated acts of sexual assault against the same child. In addition, Act 276 provides that in cases of first degree sexual assault (of an adult), a prosecution may be started at any time after the analysis of DNA evidence identifies a probable perpetrator (Section 939.74).

**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**

**Mandatory Minimum Sentences and Penalty Enhancements.** Section 939.616 provides for a term of confinement in the prison portion of a bifurcated sentence of at least 25 years for committing sexual assault of a child or engaging in repeated acts of first degree sexual assault of a child (three or more acts).

Section 939.617 requires a prison term of at least five years for conviction of sexual exploitation of a child or use of a computer to facilitate a child sex crime, and at least three years in confinement for possession of child pornography. The court has the discretion to impose a shorter term of confinement, but only if it finds that the best interests of the community will be served, and if it places its reasons on the record. These presumptive minimum sentences do not apply if the offender was less than 18

years of age at the time the crime was committed.

Section 939.618 provides for a minimum term of confinement in prison of at least three years and six months if a person has one or more prior convictions for a “serious sex crime” (first or second degree sexual assault) and subsequently commits a serious sex crime. If a person has one or more prior convictions for first degree sexual assault and is subsequently convicted of the same crime, the maximum term of imprisonment is life imprisonment without the possibility of parole or extended supervision.

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.” This so-called “two strikes” law, which was originally created by 1997 Wisconsin Act 326, was ruled constitutional in 2003 by the Wisconsin Supreme Court. Classed as a “serious child sex offense” under this law are: 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; causing a child to view or listen to sexual activity; incest with a child; child enticement; soliciting a child for prostitution; sexual assault of a child placed in substitute care; sexual assault of a student by a school instructional staff person; abduction of another’s child; or, if the victim was a minor and the convicted person was not the victim’s parent, interference with custody by parent or others.

**Child Pornography Surcharge.** If a person is convicted of sexual exploitation of a child or possession of child pornography, the court must impose a child pornography surcharge of \$500 for each image or each copy of an image associated with the crime, with the number to be determined by the judge. 2005 Wisconsin Act 433, which created the surcharge, provides that the

proceeds will be distributed as follows: 50% to DOC for operation of its institutions and to provide field and administrative services, 30% to DOJ for investigating the offenses of child enticement and possession of child pornography, and 20% to the Office of Justice Assistance for grants to nonprofit organizations that provide services to victims of sexual assault.

**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.

**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 penalty classifications provided by the Wisconsin Statutes are listed below. Except for Class A and B felonies, both a fine and a bifurcated sentence may be imposed for felonies and misdemeanors. (A bifurcated sentence consists of a period of confinement in prison followed by a period of extended supervision, which must be at least 25% of the total sentence.)

<b>Class</b>	<b>Fine</b>	<b>Sentence Length</b>
<b>Felonies – Section 939.50</b>		
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.
<b>Misdemeanors – Section 939.51</b>		
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
<b>Forfeitures – Section 939.52</b>		
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	

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## Research Bulletins

- RB-04-1 Wisconsin Legislative District Almanac. April 2004
- RB-04-2 Summary of the 2003-2004 Wisconsin Legislative Session, 2003 Wisconsin Acts 1 to 319. September 2004
- RB-06-1 Summary of the 2005-2006 Wisconsin Legislative Session, 2005 Wisconsin Acts 1 to 491. July 2006

## Informational Bulletins

- 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
- IB-05-1 A Study Guide to the *2005-2006 Wisconsin Blue Book*. October 2005
- IB-05-1 Inside the *2005-2006 Wisconsin Blue Book*. October 2005
- IB-06-1 2005 Legislative Session Fiscal Estimate Manual. January 2006
- IB-06-2 Oversight of the Wisconsin Retirement System. February 2006
- IB-06-3 Sex Crime Legislation. September 2006

## Wisconsin Briefs

- Brief 05-1 Brief Biographies 2005 Wisconsin Officers. Updated February 2006
- Brief 05-2 Compensation of Wisconsin Legislators. January 2005
- Brief 05-3 Profile of the 2005 Wisconsin Legislature, January 3, 2005. January 2005
- Brief 05-4 Constitutional Amendments given "First Consideration" Approval by the 2003 Wisconsin Legislature. January 2005
- Brief 05-5 Wisconsin Women Legislators – A Historical List. January 2005
- Brief 05-6 Executive Budget Bills Enacted by the Wisconsin Legislature, 1931-2003. January 2005
- Brief 05-7 Childhood Obesity. March 2005
- Brief 05-8 Executive Partial Veto of 2005 Assembly Bill 100: Executive Budget Bill Passed by the 2005 Wisconsin Legislature (2005 Wisconsin Act 25). September 2005
- Brief 05-9 SeniorCare. September 2005
- Brief 06-1 Eminent Domain: Public or Private Purposes? January 2006
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- Brief 06-3 State Incentives for the Film Industry. February 2006
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- Brief 06-10 Researching Legislative History in Wisconsin. July 2006
- Brief 06-11 Candidates: Primary Election, September 12, 2006. August 2006

## Budget Briefs

- Brief 05-1 Mentoring Grants For Initial Educators. August 2005
- Brief 05-2 Veterans Educational, Tax, and Housing Benefits. August 2005
- Brief 05-3 County Program Grants for Nonviolent Offenders. August 2005
- Brief 05-4 Tax Changes in 2005 Wisconsin Act 25. August 2005

## Legislative Briefs

- Brief 06-1 County Board Size Reduction. January 2006
- Brief 06-2 Repeal of Motor Fuel Tax Indexing. January 2006
- Brief 06-3 Licensing of Midwives. May 2006
- Brief 06-4 Gender-Based Education. May 2006
- Brief 06-5 New Eminent Domain Restrictions and Zoning Notice Laws. May 2006
- Brief 06-6 Identification Requirements for Immigrants. June 2006
- Brief 06-7 Energy Efficiency and Renewable Sources. June 2006
- Brief 06-8 Service Animals. June 2006
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- Brief 06-13 Human Microchip Implantation. June 2006
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