



2011 ASSEMBLY BILL 243

September 7, 2011 – Introduced by Representatives SINICKI, BERCEAU, BERNARD
SCHABER and TURNER. Referred to Committee on Education.

1 **AN ACT to amend** 6.47 (1) (b), 48.685 (5) (bm) 3., 48.685 (5) (br) 3., 51.20 (13) (ct)
2 2m., 115.31 (3) (a) 1., 301.45 (1d) (b), 440.312 (2), 440.982 (2), 460.05 (1) (h) 1.,
3 460.14 (2m) (a), 893.587, 901.04 (3) (c), 901.08 (1) (b), 938.34 (15m) (bm), 939.62
4 (2m) (a) 2m. b., 939.74 (2) (c), 949.03 (1) (b), 968.38 (2) (intro.), 970.03 (4) (a),
5 971.17 (1m) (b) 2m., 971.31 (11), 971.37 (1) (intro.), 972.11 (2) (b) (intro.), 972.11
6 (2) (d) 1. (intro.), 973.015 (1) (c) 1., 973.048 (2m) and 973.135 (2); and **to create**
7 48.981 (1) (ad), 48.981 (1) (ar), 343.12 (7) (c) 7m. and 940.223 of the statutes;
8 **relating to:** sexual assault of a student by a member of a school staff and
9 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person who is a member of a school staff may not have sexual contact or sexual intercourse with a child who is over the age of 16 but under the age of 18 and who is enrolled in the person's school or school district. A person who does so is guilty of a Class H felony and subject to a fine up to \$10,000, imprisonment up to six years, or both. In addition, a person who is convicted of this crime must register as a sex offender and is ineligible for early release from incarceration and for certain types of employment or licensing. Current law also

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places restrictions on the type of evidence that is admissible when a person is prosecuted for the crime, allows a court to restrict spectators at the trial, and requires school administrators to report a person who is charged with this crime to the state superintendent of public instruction.

This bill makes it a crime for a person who is or was a member of a school staff to have sexual contact or sexual intercourse with a person who is, or who was within one year of the contact or intercourse, a student at a school where the person is or was a member of the school staff. Under the bill, a person who does so is guilty of a Class H felony and is subject to the same penalties, sex offender registry requirements, and restrictions as a member of a school staff who is convicted of having sexual contact or sexual intercourse with a child who is over the age of 16 and who is enrolled in the person's school or school district.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 6.47 (1) (b) of the statutes is amended to read:

2 6.47 (1) (b) "Offense relating to domestic abuse, sexual assault, or stalking"
3 means an offense specified in s. 940.19, 940.20 (1m), 940.201, 940.22, 940.223,
4 940.225, 940.32, 947.013, 948.02, 948.025, 948.06, 948.085, 948.09, or 948.095.

5 **SECTION 2.** 48.685 (5) (bm) 3. of the statutes is amended to read:

6 48.685 (5) (bm) 3. A violation of s. 943.23 (1m) or (1r), 1999 stats., or of s. 940.01,
7 940.02, 940.03, 940.05, 940.06, 940.21, 940.223, 940.225 (1), (2) or (3), 940.23,
8 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.10 (2), 943.23 (1g) or 943.32 (2).

9 **SECTION 3.** 48.685 (5) (br) 3. of the statutes is amended to read:

10 48.685 (5) (br) 3. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21,
11 940.223, 940.225 (1), (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21,
12 943.10 (2), or 943.32 (2).

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1 **SECTION 4.** 48.981 (1) (ad) of the statutes is created to read:

2 48.981 (1) (ad) “Abuse” includes sexual contact or sexual intercourse under s.
3 940.223.

4 **SECTION 5.** 48.981 (1) (ar) of the statutes is created to read:

5 48.981 (1) (ar) “Child” includes a person who is or is suspected to be a victim
6 under s. 940.223.

7 **SECTION 6.** 51.20 (13) (ct) 2m. of the statutes is amended to read:

8 51.20 (13) (ct) 2m. If the subject individual is before the court on a petition filed
9 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a
10 violation, or to have solicited, conspired, or attempted to commit a violation, of s.
11 940.22 (2), 940.223, 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05,
12 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or
13 (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or
14 of s. 940.30 or 940.31 if the victim was a minor and the subject individual was not
15 the victim’s parent, the court shall require the individual to comply with the
16 reporting requirements under s. 301.45 unless the court determines, after a hearing
17 on a motion made by the individual, that the individual is not required to comply
18 under s. 301.45 (1m).

19 **SECTION 7.** 115.31 (3) (a) 1. of the statutes is amended to read:

20 115.31 (3) (a) 1. The person is charged with a crime under s. 940.223 or under
21 ch. 948, including a crime specified under s. 948.015, a felony with a maximum term
22 of imprisonment of at least 5 years or a crime in which the victim was a child.

23 **SECTION 8.** 301.45 (1d) (b) of the statutes is amended to read:

24 301.45 (1d) (b) “Sex offense” means a violation, or the solicitation, conspiracy,
25 or attempt to commit a violation, of s. 940.22 (2), 940.223, 940.225 (1), (2) or (3),

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1 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4),
2 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30,
3 of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim
4 was a minor and the person who committed the violation was not the victim's parent.

5 **SECTION 9.** 343.12 (7) (c) 7m. of the statutes is created to read:

6 343.12 (7) (c) 7m. Sexual assault of a student by a member of a school staff
7 under s. 940.223.

8 **SECTION 10.** 440.312 (2) of the statutes is amended to read:

9 440.312 (2) The department may not grant a license under this subchapter to
10 any person who has been convicted of an offense under s. 940.22, 940.223, 940.225,
11 940.302 (2) (a) 1. b., 944.06, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34,
12 948.02, 948.025, 948.051, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10,
13 948.11, or 948.12.

14 **SECTION 11.** 440.982 (2) of the statutes is amended to read:

15 440.982 (2) The department may not grant a license under this subchapter to
16 any person who has been convicted of an offense under s. 940.22, 940.223, 940.225,
17 944.06, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025,
18 948.051, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, or 948.12
19 or under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

20 **SECTION 12.** 460.05 (1) (h) 1. of the statutes is amended to read:

21 460.05 (1) (h) 1. An offense under s. 940.22, 940.223, 940.225, 944.15, 944.17,
22 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09,
23 948.095, or 948.10.

24 **SECTION 13.** 460.14 (2m) (a) of the statutes is amended to read:

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1 460.14 **(2m)** (a) An offense under s. 940.22, 940.223, 940.225, 944.15, 944.17,
2 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09,
3 948.095, or 948.10.

4 **SECTION 14.** 893.587 of the statutes is amended to read:

5 **893.587 Sexual assault of a child; limitation.** An action to recover damages
6 for injury caused by an act that would constitute a violation of s. 940.223, 948.02,
7 948.025, 948.06, 948.085, or 948.095 or would create a cause of action under s.
8 895.442 shall be commenced before the injured party reaches the age of 35 years or
9 be barred.

10 **SECTION 15.** 901.04 (3) (c) of the statutes is amended to read:

11 901.04 **(3)** (c) In actions under s. 940.223, 940.225, 948.02, 948.025, 948.051,
12 948.085, or 948.095, or under s. 940.302 (2), if the court determines that the offense
13 was sexually motivated, as defined in s. 980.01 (5), admissibility of the prior sexual
14 conduct or reputation of a complaining witness.

15 **SECTION 16.** 901.08 (1) (b) of the statutes is amended to read:

16 901.08 **(1)** (b) "Sexual misconduct" includes a violation of s. 940.22 (2), 940.223,
17 940.225 (1), (2), or (3), 940.32, 942.08, 942.09, 948.02, 948.025, 948.05 (1) or (1m),
18 948.055 (1), 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, or 948.11 (2)
19 and includes sexual harassment, as defined in s. 111.32 (13).

20 **SECTION 17.** 938.34 (15m) (bm) of the statutes is amended to read:

21 938.34 **(15m)** (bm) If the juvenile is adjudicated delinquent on the basis of a
22 violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22
23 (2), 940.223, 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051,
24 948.055, 948.06, 948.07, 948.075, 948.08, or 948.085 (2), 948.095, 948.11 (2) (a) or
25 (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or

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1 of s. 940.30 or 940.31 if the victim was a minor and the juvenile was not the victim's
2 parent, the court shall require the juvenile to comply with the reporting
3 requirements under s. 301.45 unless the court determines, after a hearing on a
4 motion made by the juvenile, that the juvenile is not required to comply under s.
5 301.45 (1m).

6 **SECTION 18.** 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

7 939.62 (2m) (a) 2m. b. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m)
8 or (1r), 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., or s.
9 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.16, 940.19 (5), 940.195 (5), 940.21,
10 940.223, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2),
11 943.23 (1g), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c),
12 948.05, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.30 (2).

13 **SECTION 19.** 939.74 (2) (c) of the statutes is amended to read:

14 939.74 (2) (c) A prosecution for violation of s. 940.223, 948.02 (2), 948.025 (1)
15 (b), 948.03 (2) (a), 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085,
16 or 948.095 shall be commenced before the victim reaches the age of 45 years or be
17 barred, except as provided in sub. (2d).

18 **SECTION 20.** 940.223 of the statutes is created to read:

19 **940.223 Sexual assault of a student by a member of a school staff. (1)**

20 In this section:

21 (a) "School" means a public or private elementary or secondary school, or a
22 tribal school, as defined in s. 115.001 (15m).

23 (b) "School staff" means any person, who is not a student at a school, who is an
24 employee of a school or a school board or who provides services to a school or a school
25 board under a contract.

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1 (c) "Sexual contact" has the meaning given in s. 948.01 (5).

2 (d) "Sexual intercourse" has the meaning given in s. 948.01 (6).

3 (e) "Victim" means the person with whom the defendant is alleged to have had
4 sexual contact or sexual intercourse contrary to this section.

5 **(2)** Whoever has sexual contact or sexual intercourse with a person who is not
6 the defendant's spouse is guilty of a class H felony if the victim is or was enrolled as
7 a student in a school at the same time the defendant is or was a member of the school
8 staff.

9 **(3)** Subsection (2) does not apply if, at least one year before the alleged sexual
10 contact or sexual intercourse occurred, the victim graduated from or completed high
11 school.

12 **SECTION 21.** 949.03 (1) (b) of the statutes is amended to read:

13 949.03 **(1)** (b) The commission or the attempt to commit any crime specified in
14 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
15 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.223, 940.225, 940.23,
16 940.24, 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32,
17 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86,
18 943.87, 948.02, 948.025, 948.03, 948.04, 948.051, 948.07, 948.085, 948.095, 948.20,
19 948.30 or 948.51.

20 **SECTION 22.** 968.38 (2) (intro.) of the statutes is amended to read:

21 968.38 **(2)** (intro.) In a criminal action under s. 940.223, 940.225, 948.02,
22 948.025, 948.05, 948.06, 948.085, or 948.095, if all of the following apply, the district
23 attorney shall apply to the circuit court for his or her county to order the defendant
24 to submit to an HIV test and to a test or a series of tests to detect the presence of a
25 sexually transmitted disease, each of which tests shall be administered by a health

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1 care professional, and to disclose the results of the test or tests as specified in sub.
2 (4) (a) to (c):

3 **SECTION 23.** 970.03 (4) (a) of the statutes is amended to read:

4 970.03 (4) (a) If the defendant is accused of a crime under s. 940.223, 940.225,
5 948.02, 948.025, 948.05, 948.051, 948.06, 948.085, or 948.095, or under s. 940.302 (2),
6 if the court finds that the crime was sexually motivated, as defined in s. 980.01 (5),
7 the court may exclude from the hearing all persons who are not officers of the court,
8 members of the complainant's or defendant's families or others considered by the
9 court to be supportive of the complainant or defendant, the service representative,
10 as defined in s. 895.45 (1) (c), or other persons required to attend, if the court finds
11 that the state or the defendant has established a compelling interest that would
12 likely be prejudiced if the persons were not excluded. The court may consider as a
13 compelling interest, among others, the need to protect a complainant from undue
14 embarrassment and emotional trauma.

15 **SECTION 24.** 971.17 (1m) (b) 2m. of the statutes is amended to read:

16 971.17 (1m) (b) 2m. If the defendant under sub. (1) is found not guilty by reason
17 of mental disease or defect for a violation, or for the solicitation, conspiracy, or
18 attempt to commit a violation, of s. 940.22 (2), 940.223, 940.225 (1), (2), or (3), 944.06,
19 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08,
20 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2)
21 if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and
22 the defendant was not the victim's parent, the court shall require the defendant to
23 comply with the reporting requirements under s. 301.45 unless the court determines,
24 after a hearing on a motion made by the defendant, that the defendant is not required
25 to comply under s. 301.45 (1m).

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1 **SECTION 25.** 971.31 (11) of the statutes is amended to read:

2 971.31 **(11)** In actions under s. 940.223, 940.225, 948.02, 948.025, 948.051,
3 948.085, or 948.095, or under s. 940.302 (2), if the court finds that the crime was
4 sexually motivated, as defined in s. 980.01 (5), evidence which is admissible under
5 s. 972.11 (2) must be determined by the court upon pretrial motion to be material to
6 a fact at issue in the case and of sufficient probative value to outweigh its
7 inflammatory and prejudicial nature before it may be introduced at trial.

8 **SECTION 26.** 971.37 (1) (intro.) of the statutes is amended to read:

9 971.37 **(1)** (intro.) In this section, “child sexual abuse” means an alleged
10 violation of s. 940.223, 940.225, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095
11 if the alleged victim is a minor and the person accused of, or charged with, the
12 violation:

13 **SECTION 27.** 972.11 (2) (b) (intro.) of the statutes is amended to read:

14 972.11 **(2)** (b) (intro.) If the defendant is accused of a crime under s. 940.223,
15 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.085, or 948.095, or under s.
16 940.302 (2), if the court finds that the crime was sexually motivated, as defined in
17 s. 980.01 (5), any evidence concerning the complaining witness’s prior sexual conduct
18 or opinions of the witness’s prior sexual conduct and reputation as to prior sexual
19 conduct shall not be admitted into evidence during the course of the hearing or trial,
20 nor shall any reference to such conduct be made in the presence of the jury, except
21 the following, subject to s. 971.31 (11):

22 **SECTION 28.** 972.11 (2) (d) 1. (intro.) of the statutes is amended to read:

23 972.11 **(2)** (d) 1. (intro.) If the defendant is accused of a crime under s. 940.223,
24 940.225, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095, evidence of the
25 manner of dress of the complaining witness at the time when the crime occurred is

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1 admissible only if it is relevant to a contested issue at trial and its probative value
2 substantially outweighs all of the following:

3 **SECTION 29.** 973.015 (1) (c) 1. of the statutes is amended to read:

4 973.015 (1) (c) 1. A Class H felony, if the person has, in his or her lifetime, been
5 convicted of a prior felony offense, or if the felony is a violent offense, as defined in
6 s. 301.048 (2) (bm), or is a violation of s. 940.223, 940.32, 948.03 (2) or (3), or 948.095.

7 **SECTION 30.** 973.048 (2m) of the statutes is amended to read:

8 973.048 (2m) If a court imposes a sentence or places a person on probation for
9 a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s.
10 940.22 (2), 940.223, 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05,
11 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or
12 (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or
13 of s. 940.30 or 940.31 if the victim was a minor and the person was not the victim's
14 parent, the court shall require the person to comply with the reporting requirements
15 under s. 301.45 unless the court determines, after a hearing on a motion made by the
16 person, that the person is not required to comply under s. 301.45 (1m).

17 **SECTION 31.** 973.135 (2) of the statutes is amended to read:

18 973.135 (2) If a court determines that a person convicted under s. 940.223 or
19 of a crime specified in ch. 948, including a crime specified in s. 948.015, a felony for
20 which the maximum term of imprisonment is at least 5 years, 4th degree sexual
21 assault under s. 940.225 (3m) or a crime in which the victim was a child, is employed
22 by an educational agency, the clerk of the court in which such conviction occurred
23 shall promptly forward to the state superintendent the record of conviction.

24

(END)