

State of Wisconsin



2007 Senate Bill 103

Date of enactment: **March 12, 2008**

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2007 WISCONSIN ACT 80

AN ACT *to renumber and amend* 939.616 (1), 948.21 (1) and 948.53 (2) (b); *to amend* 301.45 (1d) (b), 939.616 (2), 939.616 (3), 939.74 (2) (a), 948.025 (3), 948.03 (2) (a) and 948.08; *to repeal and recreate* 939.74 (2d) (c), 948.02 (1), 948.025 (1) and 948.025 (2); and *to create* 939.616 (1g), 939.74 (2d) (d), 948.21 (1) (b), (c) and (d), 948.53 (2) (b) 2., 3. and 4. and 972.15 (1m) of the statutes; **relating to:** crimes against children and providing penalties.

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

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

301.45 (1d) (b) "Sex offense" means a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07 (1) to (4), 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the person who committed the violation was not the victim's parent.

SECTION 5. 939.616 (1) of the statutes is renumbered 939.616 (1r) and amended to read:

939.616 (1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or 948.025 (1) (~~a~~) (b), the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of the bifurcated sentence shall be at least 25 years. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

SECTION 6. 939.616 (1g) of the statutes is created to read:

939.616 (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or 948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make an extended supervision eligibility date determination on a date that will occur before the person has served a 25-year term of confinement in prison.

SECTION 7. 939.616 (2) of the statutes is amended to read:

939.616 (2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025 (1) (~~ag~~) (c), the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of the bifurcated sentence shall be at least 5 years. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

SECTION 8. 939.616 (3) of the statutes is amended to read:

939.616 (3) This section does not apply if s. 939.62 (2m) (c) applies. The mandatory minimum sentences in this section do not apply to an offender who was under 18 years of age when the violation occurred.

SECTION 9. 939.74 (2) (a) of the statutes, as affected by 2005 Wisconsin Act 276, is amended to read:

* Section 991.11, WISCONSIN STATUTES 2005-06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

939.74 (2) (a) A prosecution under s. 940.01, 940.02, 940.03, 940.05, 948.02 (1), or 948.025 (1) (a), (b), (c), or (d) may be commenced at any time.

SECTION 10. 939.74 (2d) (c) of the statutes, as affected by 2005 Wisconsin Acts 60 and 276, is repealed and recreated to read:

939.74 (2d) (c) If before the time limitation under sub. (2) (c) expired, the state collected biological material that is evidence of the identity of the person who committed a violation of s. 948.02 (2) or 948.025 (1) (e), the state identified a deoxyribonucleic acid profile from the biological material, and comparisons of that deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did not result in a probable identification of the person who is the source of the biological material, the state may commence prosecution of the person who is the source of the biological material for the violation of s. 948.02 (2) or 948.025 (1) (e) or a crime that is related to the violation or both within 12 months after comparison of the deoxyribonucleic acid profile relating to the violation results in a probable identification of the person.

SECTION 11. 939.74 (2d) (d) of the statutes is created to read:

939.74 (2d) (d) If a crime is related to a violation of s. 948.02 (1) or 948.025 (1) (a), (b), (c), or (d) and if, before the time limitation for prosecution of that related crime expired, the state collected biological material that is evidence of the identity of the person who committed the violation of s. 948.02 (1) or 948.025 (1) (a), (b), (c), or (d), the state identified a deoxyribonucleic acid profile from the biological material, and comparisons of that deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did not result in a probable identification of the person who is the source of the biological material, the state may commence prosecution of the person who is the source of the biological material for the related crime within 12 months after comparison of that deoxyribonucleic acid profile results in a probable identification of the person.

SECTION 12. 948.02 (1) of the statutes, as affected by 2005 Wisconsin Acts 430 and 437, is repealed and recreated to read:

948.02 (1) **FIRST DEGREE SEXUAL ASSAULT.** (am) Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years and causes great bodily harm to the person is guilty of a Class A felony.

(b) Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony.

(c) Whoever has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony.

(d) Whoever has sexual contact with a person who has not attained the age of 16 years by use or threat of

force or violence is guilty of a Class B felony if the actor is at least 18 years of age when the sexual contact occurs.

(e) Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony.

SECTION 13. 948.025 (1) of the statutes, as affected by 2005 Wisconsin Acts 430 and 437, is repealed and recreated to read:

948.025 (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of:

(a) A Class A felony if at least 3 of the violations were violations of s. 948.02 (1) (am).

(b) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am), (b), or (c).

(c) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am), (b), (c), or (d).

(d) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1).

(e) A Class C felony if at least 3 of the violations were violations of s. 948.02 (1) or (2).

SECTION 14. 948.025 (2) of the statutes, as affected by 2005 Wisconsin Acts 430 and 437, is repealed and recreated to read:

948.025 (2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

(b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am), (b), or (c) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) (am), (b), or (c).

(c) If an action under sub. (1) (c) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am), (b), (c), or (d) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), or (d).

(d) If an action under sub. (1) (d) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

(e) If an action under sub. (1) (e) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) or (2) occurred within the specified period of

time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) or (2).

SECTION 15. 948.025 (3) of the statutes is amended to read:

948.025 (3) The state may not charge in the same action a defendant with a violation of this section and with ~~a felony violation involving the same child under ch. 944 or a violation involving the same child under s. 948.02, 948.05, 948.06, 948.07, 948.075, 948.08, or 948.10, 948.11, or 948.12,~~ unless the other violation occurred outside of the time period applicable under sub. (1). This subsection does not prohibit a conviction for an included crime under s. 939.66 when the defendant is charged with a violation of this section.

SECTION 16. 948.03 (2) (a) of the statutes is amended to read:

948.03 (2) (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class ~~E~~ C felony.

SECTION 17. 948.08 of the statutes is amended to read:

948.08 Soliciting a child for prostitution. Whoever intentionally solicits or causes any child to ~~practice~~ engage in an act of prostitution or establishes any child in a place of prostitution is guilty of a Class D felony.

SECTION 18. 948.21 (1) of the statutes is renumbered 948.21 (1) (intro.) and amended to read:

948.21 (1) (intro.) Any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of ~~a~~ one of the following:

(a) ~~A Class A misdemeanor or, if death is a consequence, a Class D felony.~~

SECTION 19. 948.21 (1) (b), (c) and (d) of the statutes are created to read:

948.21 (1) (b) A Class H felony if bodily harm is a consequence.

(c) A Class F felony if great bodily harm is a consequence.

(d) A Class D felony if death is a consequence.

SECTION 20. 948.53 (2) (b) of the statutes is renumbered 948.53 (2) (b) (intro.) and amended to read:

948.53 (2) (b) (intro.) Any person who violates par. (a) is guilty of ~~a~~ one of the following:

1. A Class A misdemeanor or, if death is a consequence, a Class G felony.

SECTION 21. 948.53 (2) (b) 2., 3. and 4. of the statutes are created to read:

948.53 (2) (b) 2. A Class I felony if bodily harm is a consequence.

3. A Class H felony if great bodily harm is a consequence.

4. A Class G felony if death is a consequence.

SECTION 22. 972.15 (1m) of the statutes is created to read:

972.15 (1m) **SEX OFFENSES AGAINST MINORS.** If a person is convicted for a felony that requires him or her to register under s. 301.45 and if the victim was under 18 years of age at the time of the offense, the court may order the department to conduct a presentence investigation report to assess whether the person is at risk for committing another sex offense, as defined in s. 301.45 (1d) (b).

SECTION 23. Initial applicability.

(1) The treatment of section 939.74 (2) (a) and (2d) (c) and (d) of the statutes first applies to offenses the prosecution of which is not barred before the effective date of this subsection.

SECTION 24. Effective dates. This act takes effect on the day after publication, except as follows:

(2c) The treatment of section 972.15 (1m) of the statutes takes effect on the first day of the 13th month beginning after publication.