



2011 SENATE BILL 536

March 1, 2012 - Introduced by Senators WANGGAARD and LASSA, cosponsored by Representatives LOUDENBECK, BALLWEG, BERCEAU, ENDSLEY and A. OTT, by request of Attorney General J.B. Van Hollen. Referred to Committee on Labor, Public Safety, and Urban Affairs.

1 **AN ACT to repeal** 939.74 (2) (d); **to amend** 48.415 (9m) (title), 939.74 (2) (c),
2 939.74 (2d) (c), 948.12 (1m), 949.03 (1) (b), 968.28 and 972.11 (2) (b) (intro.); and
3 **to create** 48.415 (9m) (am) of the statutes; **relating to:** prosecution time limits
4 for the offense of trafficking a child, possession of child pornography,
5 termination of parental rights after committing the offense of trafficking a
6 child, criminal procedure, crime victim compensation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, with exceptions, a prosecution for a felony must be commenced within six years of the commission of the felony. Exceptions include prosecutions for second-degree sexual assault of a child, physical abuse of a child that results in great bodily harm, sexual exploitation of a child, incest with a child, certain child enticement offenses, use of a computer to facilitate a child sex crime, and soliciting a child for prostitution. In general, prosecution for these crimes must be commenced before the victim reaches the age of 45 years. Another exception generally requires a prosecution for trafficking of a child to be commenced before the victim reaches the age of 24. Under this bill, a prosecution for trafficking of a child must be commenced before the victim reaches the age of 45 years.

Under current law, whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct is guilty of a felony. This bill adds that a person who knowingly accesses such material is guilty of a felony.

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Under current law, the parental rights of a parent to his or her child may be terminated involuntarily on various grounds, including if the person commits a serious felony against one of his or her children. Under this bill, a parent's parental rights may be terminated involuntarily if the parent commits against any child the offense of trafficking of a child.

Under current law, in a criminal trial, if a person is accused of certain sex crimes, with certain exceptions the person may not introduce evidence concerning the complaining witness's prior sexual conduct or opinions of the witness's prior sexual conduct and reputation as to prior sexual conduct. This bill adds to the list of sex crimes that invoke this prohibition the following offenses: child enticement, soliciting a child for prostitution, and sexual intercourse with a child who is age 16 or older.

Under current law, a chief judge may authorize or approve an interception of wire, electronic, or oral communications by investigative or law enforcement officers if the interception may provide or has provided evidence of the commission of certain offenses including homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances, or certain computer crimes, or any conspiracy to commit any of the foregoing offenses. This bill adds to the list the following offenses: sexual exploitation of a child, trafficking of a child, child enticement, use of a computer to facilitate a child sex crime, and soliciting a child for prostitution.

Under current law, the Department of Justice provides compensation to victims of certain crimes. This bill adds to the list of crimes for which the victim may be compensated the following offenses: sexual exploitation of a child, incest with a child, use of a computer to facilitate a child sex crime, soliciting a child for prostitution, and sexual intercourse with a child who is age 16 or older.

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.** 48.415 (9m) (title) of the statutes is amended to read:
- 2 48.415 (**9m**) (title) COMMISSION OF A SERIOUS FELONY AGAINST ONE OF THE PERSON'S
- 3 CHILDREN A CHILD.
- 4 **SECTION 2.** 48.415 (9m) (am) of the statutes is created to read:

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1 48.415 **(9m)** (am) Commission of a violation of s. 948.051 involving any child
2 or a violation of the law of any other state or federal law, if that violation would be
3 a violation of s. 948.051 involving any child if committed in this state.

4 **SECTION 3.** 939.74 (2) (c) of the statutes is amended to read:

5 939.74 **(2)** (c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (b), 948.03
6 (2) (a), 948.05, 948.051, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085,
7 or 948.095 shall be commenced before the victim reaches the age of 45 years or be
8 barred, except as provided in sub. (2d).

9 **SECTION 4.** 939.74 (2) (d) of the statutes is repealed.

10 **SECTION 5.** 939.74 (2d) (c) of the statutes is amended to read:

11 939.74 **(2d)** (c) If, before the applicable time limitation under sub. (1) or (2)
12 (am), (c), or (cm), ~~or (d)~~ for commencing prosecution of a felony under ch. 940 or 948,
13 other than a felony under s. 940.225 (1) or a felony specified in sub. (2) (a), expires,
14 the state collects biological material that is evidence of the identity of the person who
15 committed the felony, identifies a deoxyribonucleic acid profile from the biological
16 material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid
17 profiles of known persons, the state may commence prosecution of the person who
18 is the source of the biological material for the felony or a crime that is related to the
19 felony or both within 12 months after comparison of the deoxyribonucleic acid profile
20 relating to the felony results in a probable identification of the person or within the
21 applicable time under sub. (1) or (2), whichever is latest.

22 **SECTION 6.** 948.12 (1m) of the statutes is amended to read:

23 948.12 **(1m)** Whoever possesses, or accesses in any way with the intent to view,
24 any undeveloped film, photographic negative, photograph, motion picture,

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1 videotape, or other recording of a child engaged in sexually explicit conduct under
2 all of the following circumstances may be penalized under sub. (3):

3 (a) The person knows that he or she possesses or has accessed the material.

4 (b) The person knows ~~the character and content of the,~~ or reasonably should
5 know, that the material that is possessed or accessed contains depictions of sexually
6 explicit conduct in the material.

7 (c) The person knows or reasonably should know that the child depicted in the
8 material who is engaged in sexually explicit conduct has not attained the age of 18
9 years.

10 **SECTION 7.** 949.03 (1) (b) of the statutes is amended to read:

11 949.03 (1) (b) The commission or the attempt to commit any crime specified in
12 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
13 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24,
14 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32, 941.327,
15 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86, 943.87,
16 948.02, 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.075, 948.08,
17 948.085, 948.09, 948.095, 948.20, 948.30 or 948.51.

18 **SECTION 8.** 968.28 of the statutes is amended to read:

19 **968.28 Application for court order to intercept communications.** The
20 attorney general together with the district attorney of any county may approve a
21 request of an investigative or law enforcement officer to apply to the chief judge of
22 the judicial administrative district for the county where the interception is to take
23 place for an order authorizing or approving the interception of wire, electronic or oral
24 communications. The chief judge may under s. 968.30 grant an order authorizing or
25 approving the interception of wire, electronic or oral communications by

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1 investigative or law enforcement officers having responsibility for the investigation
2 of the offense for which the application is made. The authorization shall be permitted
3 only if the interception may provide or has provided evidence of the commission of
4 the offense of homicide, felony murder, kidnapping, commercial gambling, bribery,
5 extortion, dealing in controlled substances or controlled substance analogs, a
6 computer crime that is a felony under s. 943.70, sexual exploitation of a child under
7 s. 948.05, trafficking of a child under s. 948.051, child enticement under s. 948.07,
8 use of a computer to facilitate a child sex crime under s. 948.075, or soliciting a child
9 for prostitution under s. 948.08, or any conspiracy to commit any of the foregoing
10 offenses.

11 **SECTION 9.** 972.11 (2) (b) (intro.) of the statutes is amended to read:

12 972.11 (2) (b) (intro.) If the defendant is accused of a crime under s. 940.225,
13 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, 948.09, or
14 948.095, or under s. 940.302 (2), if the court finds that the crime was sexually
15 motivated, as defined in s. 980.01 (5), any evidence concerning the complaining
16 witness's prior sexual conduct or opinions of the witness's prior sexual conduct and
17 reputation as to prior sexual conduct shall not be admitted into evidence during the
18 course of the hearing or trial, nor shall any reference to such conduct be made in the
19 presence of the jury, except the following, subject to s. 971.31 (11):

20 **SECTION 10. Initial applicability.**

21 (1) Notwithstanding section 990.06 of the statutes, the treatment of section
22 939.74 (2) (c) and (d) and (2d) (c) first applies to an act for which the time limit under
23 section 939.74 of the statutes for prosecution has not expired as of the effective date
24 of this subsection.

25 (END)