



JERRY PETROWSKI

WISCONSIN STATE SENATOR

Senate Bill 519

Senate Committee on Judiciary and Public Safety

September 23, 2021

Good afternoon, Chairman and members of the Committee, and thank you for the opportunity to submit testimony today on Senate Bill 519.

This bill, Kayleigh's Law, is legislation that has recently gone through the Arizona legislative process with overwhelming bipartisan support and was signed into law. Kayleigh's Law sets out to provide the ability for the victim to seek out continued protection from contact by the convicted offender via restraining order, even if probation is terminated. When it was signed into law on April 20, 2021, Arizona became the first state in the nation to offer these protections to victims.

In Wisconsin, nearly one in five high school students (19.9%) reported that someone has forced them "to do sexual things they did not want to do." (Youth Risk Behavior Survey). Nationally, One in three women and one in six men have experienced sexual violence in their lifetime. (National Intimate Partner and Sexual Violence Survey), and 90% of victims know the person who assaulted them. (Rape, Abuse and Incest National Network).

Currently in Wisconsin, a restraining order may be issued for an adult for up to four years and for a child for up to two years. These orders can be extended by four years for adults and two years for children, with the option for 10 years for adults and 5 years for children if there is a substantial risk that there is a substantial risk to the survivor. This bill allows for a LIFETIME restraining order to protect survivors of 1st degree, 2nd degree, or 3rd degree sexual assault, as well as in the case of an "individual at risk".

I want to end by emphasizing that this bill provides protection for a victim from an offender who has been convicted of sexually assaulting him or her. The offender would have to have been found guilty of first, second or third degree sexual assault of an adult, a child or an individual at risk or of repeated acts of sexual assault of the same child – all of which are felonies.

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BARBARA DITTRICH

STATE REPRESENTATIVE • 38th ASSEMBLY DISTRICT

September 23, 2021

Rep. Barbara Dittrich Testimony on SB 519 – permanent restraining orders for victims of sexual assault.

Senate Committee on Judiciary and Public Safety

Thank you Chairman Wanggaard and the members of the Senate Committee on Judiciary and Public Safety for taking the time to listen to testimony today regarding Senate Bill 519, Kayleigh's Law. As you may be aware, this legislation would allow certain sexual assault victims to petition the court for a life-time restraining order against their convicted assaulter.

Kayleigh's law has recently gone through the Arizona legislative process with overwhelming bipartisan support and was signed into law. It sets out to provide the ability for the victim to seek out continued protection from contact, even if a perpetrator's probation is terminated. When it was signed into law on April 20, 2021, Arizona became the first state in the nation to offer these protections to victims.

In Wisconsin, nearly one in five high school students (19.9%) reported that someone has forced them "to do sexual things they did not want to do." (Youth Risk Behavior Survey). Nationally, One in three women and one in six men have experienced sexual violence in their lifetime. (National Intimate Partner and Sexual Violence Survey), and 90% of victims know the person who assaulted them. (Rape, Abuse and Incest National Network).

Under current law in Wisconsin, a restraining order may be issued for an adult for up to four years and for a child for up to two years. These orders can be extended by four years for adults and two years for children, with the option for 10 years for adults and 5 years for children if there is a substantial risk that there is a substantial risk to the survivor. This bill requires a judge to grant a LIFETIME restraining order, if petitioned by the victim, to protect survivors of CONVICTED 1st degree, 2nd degree, or 3rd degree sexual assault, as well as in the case of an "individual at risk". Under this bill, the judge is still required to consider evidence supporting the petition, and the evidence still has to reach the same threshold as an order of protection, under current law.

Included with my testimony you will find information from the Rape, Abuse, and Incest National Network, defining sexual assault as well as detailing what actions are classified as 1st, 2nd, and 3rd degree sexual assault. Only these three classifications are covered under this bill, as they are all felonies under current law.

I want to thank the committee for their time and welcome any questions you may present.

Sex Crimes: Definitions and Penalties

Wisconsin

Last Updated: March 2020

Sexual Assault in the First Degree

Question	Answer
How is it defined?	<p>Whoever:</p> <ul style="list-style-type: none"> • Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person, or • Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon, or • Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.
What are the punishments for this crime?	<p>Class B felony:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 60 years.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • Sexual contact: Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under 940.19(1): <ul style="list-style-type: none"> • Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts; or • Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person; or • Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person 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; or • For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.

	<ul style="list-style-type: none"> • 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. • 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. Consent is not an issue in alleged violations of subsections (2)(c), (cm), (d), (g), (h), and (i). A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct and a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act are presumed incapable of consent. • Marriage is not a bar to prosecution. • This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.225(1)

Sexual Assault in the Second Degree

Question	Answer
How is it defined?	<p>Whoever:</p> <ul style="list-style-type: none"> • (a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence. • (b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim. • (c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition. • (cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent. • (d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

	<ul style="list-style-type: none"> • (f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person. • (g) Is an employee of an adult family home, community-based residential facility, inpatient health care facility, or state treatment facility and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program. • (h) Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section. • (i) Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agents supervision of the individual. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section. • (j) Is a licensee, employee, or non-client resident of a child welfare agency, a hospital, a home health agency, a temporary employment agency that provides caregivers to another entity, or the board on aging and long-term care, and has sexual contact or sexual intercourse with a client of the entity.
What are the punishments for this crime?	<p>Class C felony:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 40 years, • Fine not to exceed \$ 100,000 • Or both.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above.
Statutory citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.225(2)

Sexual Assault in the Third Degree

Question	Answer
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How is it defined?	<ul style="list-style-type: none"> • Sexual intercourse with a person without the consent of that person. • Sexual contact in the manner described below with a person without the consent of that person: <ul style="list-style-type: none"> • Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person 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. • For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.
What are the punishments for this crime?	<p>Class G felony:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 10 years; • Fine not to exceed \$25,000; • Or both.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above.
Statutory citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.225(3)

Sexual Assault in the Fourth Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Except as provided in Sexual Assault in the Third Degree, having sexual contact with a person without the consent of that person.
What are the punishments for this crime?	<p>Class A misdemeanor:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 9 months; • Fine not to exceed \$10,000; • Or both.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above.
Statutory citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.225(3m)

Sexual Assault of a Child

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • First degree: <ul style="list-style-type: none"> • 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 and subject to a 25 year mandatory minimum; • Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony and subject to a 25 year mandatory minimum; • Whoever has sexual intercourse with a person who has not attained the age of 16 years by use of threat of force or violence is guilty of a Class B felony and subject to a 25 year mandatory minimum; • 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 and is subject to a 5 year mandatory minimum; or • Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony. • Second degree: <ul style="list-style-type: none"> • Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony. <ul style="list-style-type: none"> • Whoever has sexual contact with a child who has attained the age of 15 years but has not attained the age of 16 years, or whoever has sexual intercourse with a child who has attained the age of 15 years, is guilty of a Class A misdemeanor if the actor has not attained the age of 19 years when the violation occurs. This section does not apply if the actor is the child's spouse. • Failure to act: <ul style="list-style-type: none"> • A person responsible for the welfare of a child under 16 is guilty of a Class F felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> • Class A felony: <ul style="list-style-type: none"> • Life imprisonment. • Class B felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 60 years. • Class C felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 40 years; • Fine not to exceed \$100,000; • Or both. • Class F felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 12 years 6 months; • fine not to exceed \$25,000; • Or both. • Subject to mandatory minimum sentences for child sex offenses (see above). • Additional penalties for engaging in repeated acts of sexual assault of the same child under Wis. Stat. § 948.025.
<p>Anything else I should know?</p>	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • Sexual conduct: Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexual degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant: Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts. Intentional touching by the complainant, by the use of any body part or object, of the defendants intimate parts or, if done upon the defendant's instructions, the intimate parts of another person. Or, Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person 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. Or, For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed. • 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 defendants instruction. The emission of semen is not required. • Marriage is not a bar to prosecution. • This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.
<p>Statutory citation(s):</p>	<ul style="list-style-type: none"> • Wis. Stat. § 948.02; and Wis. Stat. Ann. § 948.093

Sexual Exploitation of a Child

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child: <ul style="list-style-type: none"> • Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct; or • Records or displays in any way a child engaged in sexually explicit conduct. • Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years. • A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class C felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 40 years • Fine not to exceed \$100,000 • Or both. • Class F Felony in certain circumstances if the person is under 18 years of age when the offense occurs: <ul style="list-style-type: none"> • Imprisonment not to exceed 12 years and 6 months • Fine not to exceed \$25,000 • Or both. • If the defendant has reasonable cause to believe that the child has attained 18 years of age, it is an affirmative defense. Defendant has the burden of proof.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above.
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 948.05

Sexual Exploitation of a Therapist

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist-patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class F felony. <ul style="list-style-type: none"> • Consent is not relevant under this subsection.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class F felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 12 years and 6 months • Fine not to exceed \$25,000 • Or both.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above. • Therapist means: A physician, psychologist, social worker, marriage, 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
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.22

Sexual Assault of a Child Placed in Substitute Care

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Whoever does any of the following is guilty of a Class C felony: <ul style="list-style-type: none"> • Has sexual contact or sexual intercourse with a child for whom the actor is a foster parent; or • Has sexual contact or sexual intercourse with a child who is placed in any of the following facilities if the actor works or volunteers at the facility or is directly or indirectly responsible for managing it: <ul style="list-style-type: none"> • A shelter care facility; • A group home; or

	<ul style="list-style-type: none"> • A residential care center for children and youth operated by a child welfare agency.
What are the punishments for this crime?	<p>Class C felony:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 40 years; • Fine not to exceed \$ 100,000; • Or both.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • See definitions under Sexual Assault of a Child, above. • Child: A person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, "child" does not include a person who has attained the age of 17.
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 948.085

Sexual Assault of a Child by a School Staff Person or Person Who Works or Volunteers with Children

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class H felony if all of the following apply: <ul style="list-style-type: none"> • The child is enrolled as a student in a school or a school district, and • The defendant is a member of the school staff of the school or school district in which the child is enrolled. • A person who has attained the age of 21 and engages in an occupation or participates in a volunteer position that requires him to work or interact directly with children (including, teaching, child care, coaching, counselor, youth organization, parks or playground recreation, or school bus driving) may not have sexual contact or sexual intercourse with a child who has attained the age of 16, who is not the person's spouse and with whom the person works or interacts through that occupation or volunteer position.
What are the punishments for this crime?	<p>Class H felony:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 6 years; • Fine not to exceed \$ 10,000;

	<ul style="list-style-type: none"> • Or both.
Anything else I should know?	<ul style="list-style-type: none"> • School means: <ul style="list-style-type: none"> • A public or private elementary or secondary school, or a tribal school. • School staff means: <ul style="list-style-type: none"> • Any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract. • See definitions under Sexual Assault in the First Degree, above.
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 948.095

Statutory Rape

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • “Statutory rape” is commonly used to refer to sexual penetration that is illegal because it involves a youth. • Wisconsin has no specific statutory rape statute, but this concept is captured under “Sexual Intercourse with a Child Age 16 or Older”: <ul style="list-style-type: none"> • Whoever has sexual intercourse with a child who is not the defendant’s spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor if the defendant has attained the age of 19 years when the violation occurs. • Child: <ul style="list-style-type: none"> • A person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, “child” does not include a person who has attained the age of 17. • Also, see “Sexual Assault of a Child”: <ul style="list-style-type: none"> • Whoever has <u>sexual intercourse</u> with a person who has not attained the age of 12 years is guilty of a Class B felony. • Also, see “Underage sexual activity”: <ul style="list-style-type: none"> • Whoever has sexual contact with a child who has attained the age of 15 years but has not attained the age of 16 years, or whoever has sexual intercourse with a child who has attained the age of 15 years, is guilty of a Class A misdemeanor if the actor has not attained the age of 19 years when the violation occurs. This section does not apply if the actor is the child's spouse.

What are the punishments for this crime?	<ul style="list-style-type: none"> • Class A misdemeanor: <ul style="list-style-type: none"> • Imprisonment not to exceed 9 months; • Fine not to exceed \$10,000; • Or both. • Class B felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 60 years.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions under Sexual Assault of a Child, above.
Statutory citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 948.09

Sodomy

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Wisconsin does not have an anti-sodomy law on the books. • Any state laws that outright prohibit sodomy are unconstitutional under <i>Lawrence v. Texas</i>, 539 U.S. 588 (2003).
What are the punishments for this crime?	<ul style="list-style-type: none"> • N/A
What are the punishments for this crime?	<ul style="list-style-type: none"> • N/A
Anything else I should know?	<ul style="list-style-type: none"> • N/A
Statutory Citation(s):	<ul style="list-style-type: none"> • N/A