

1991 Assembly Bill 918

Date of enactment: April 8, 1992
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1991 WISCONSIN ACT 153

AN ACT to amend 161.455 (3), 939.30 (1), 939.72 (1) and 969.08 (10) (a); and to create 948.35 and 948.36 of the statutes, relating to: solicitation or use of a minor to commit a felony and providing a penalty.

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

SECTION 1. 161.455 (3) of the statutes is amended to read:

161.455 (3) Solicitation under sub. (1) occurs in the manner described under s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s. 939.30 or 948.35.

SECTION 2. 939.30 (1) of the statutes is amended to read:

939.30 (1) Except as provided in sub. (2) and s. ss. 161.455 and 948.35, whoever, with intent that a felony be committed, advises another to commit that crime under circumstances that indicate unequivocally that he or she has the intent is guilty of a Class D felony.

SECTION 3. 939.72 (1) of the statutes is amended to read:

939.72 (1) Section 939.30, 948.35 or 948.36 for solicitation and s. 939.05 as a party to a crime which is the objective of the solicitation; or

SECTION 4. 948.35 of the statutes is created to read:

948.35 Solicitation of a child to commit a felony. (1) (a) Except as provided in pars. (b) to (d) or s. 161.455, any person who has attained the age of 18 years and who, with the intent that a felony be committed and under circumstances that indicate unequivocally that he or she has the intent, knowingly solicits, advises, hires, directs or counsels a child to commit that felony may be fined or imprisoned or both, not to exceed the maximum penalty for the felony.

(b) For a solicitation to commit a Class A felony under the circumstances described under par. (a), the person may be imprisoned not to exceed the maximum period of imprisonment for a Class B felony.

(c) For a solicitation to commit a Class B felony under the circumstances described under par. (a), the person may be fined or imprisoned or both, not to exceed the maximum penalties for a Class C felony.

(d) For a solicitation to commit a Class C felony under the circumstances described under par. (a), the person may be fined or imprisoned or both, not to exceed the maximum penalties for a Class D felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. A defendant does not have a defense to a prosecution under this section because he or she mistakenly believed that the person who was solicited, advised, hired, directed or counseled had attained the age of 18 years, even if the mistaken belief was reasonable.

SECTION 5. 948.36 of the statutes is created to read:

948.36 Use of child to commit a Class A felony. (1) Any person who has attained the age of 18 years and who, with the intent that a Class A felony be committed and under circumstances that indicate unequivocally that he or she has that intent, knowingly solicits, advises, hires, directs, counsels, employes, uses or otherwise procures a child to commit that Class A felony may, if the Class A felony is committed by the child, be imprisoned for not more than 5 years in excess of the maximum period of imprisonment provided by law for that Class A felony.

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(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. A defendant does not have a defense to a prosecution under this section because he or she mistakenly believed that the person who was advised, hired, directed, counseled, employed, used or procured had attained the age of 18 years, even if the mistaken belief was reasonable.

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SECTION 6. 969.08 (10) (a) of the statutes is amended to read:

969.08 (10) (a) “Commission of a serious crime” includes a solicitation, conspiracy or attempt, under s. 939.30, 939.31 ~~or~~ 939.32 or 948.35, to commit a serious crime.