



## 1995 ASSEMBLY BILL 908

February 21, 1996 - Introduced by Representatives KELSO, OLSEN, GROTHMAN, JENSEN, LADWIG, SKINDRUD, HAHN, UNDERHEIM and ZUKOWSKI, cosponsored by Senator DRZEWIECKI. Referred to Committee on Education.

1     **AN ACT to amend** 48.981 (1) (a) 2., 302.045 (2) (c), 813.122 (1) (a) 2., 901.04 (3)  
2           (c), 939.626 (1), 939.74 (2) (c), 948.07 (1), 949.03 (1) (b), 968.38 (2) (intro.), 970.03  
3           (4) (a), 971.31 (11), 971.37 (1) (intro.), 972.11 (2) (b) (intro.) and 972.11 (2) (d) 1.  
4           (intro.); and **to create** 948.095 of the statutes; **relating to:** sexual assault of  
5           a student by certain school employes and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

Current law provides various penalties for sexual assault of a person who has not attained the age of 18 (a child). Specifically, a person who is found guilty of having sexual contact or sexual intercourse with a child who has not attained the age of 13 may be imprisoned for not more than 40 years. A person who is found guilty of having sexual contact or sexual intercourse with a child who has not attained the age of 16 may be imprisoned for not more than 20 years or fined not more than \$10,000 or both. A person who is found guilty of having sexual intercourse with a child who has attained the age of 16 and who is not his or her spouse may be imprisoned for not more than 9 months or fined not more than \$10,000 or both.

This bill provides that a person who has sexual contact or sexual intercourse with a child who has attained the age of 16 and who is not his or her spouse may be imprisoned for not more than 5 years or fined not more than \$10,000 if the person is a member of the instructional staff of the school at which the child is enrolled as a student. Under the bill, "instructional staff" is defined to mean all professional employes of a school, including teachers, librarians, pupil services staff and

administrative staff, who have direct contact with students of the school or with the instructional program of the school.

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

1           **SECTION 1.** 48.981 (1) (a) 2. of the statutes is amended to read:

2           48.981 (1) (a) 2. Sexual intercourse or sexual contact under s. 940.225, 948.02  
3           ~~or~~, 948.025 or 948.095.

4           **SECTION 2.** 302.045 (2) (c) of the statutes is amended to read:

5           302.045 (2) (c) The inmate is incarcerated regarding a violation other than a  
6           crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.055, 948.06,  
7           948.07 ~~or~~, 948.08 or 948.095.

8           **SECTION 3.** 813.122 (1) (a) 2. of the statutes is amended to read:

9           813.122 (1) (a) 2. Sexual intercourse or sexual contact under s. 940.225, 948.02  
10          ~~or~~, 948.025 or 948.095.

11          **SECTION 4.** 901.04 (3) (c) of the statutes is amended to read:

12          901.04 (3) (c) In actions under s. 940.225, 948.02 ~~or~~, 948.025 or 948.095,  
13          admissibility of the prior sexual conduct or reputation of a complaining witness.

14          **SECTION 5.** 939.626 (1) of the statutes is amended to read:

15          939.626 (1) In this section, "child sex crime" means a violation of s. 948.02,  
16          948.025, 948.05, 948.06, 948.07 ~~or~~, 948.08 or 948.095.

17          **SECTION 6.** 939.74 (2) (c) of the statutes is amended to read:

18          939.74 (2) (c) A prosecution for violation of s. 948.02, 948.03, 948.04, 948.05,  
19          948.06, 948.07 ~~or~~, 948.08 or 948.095 shall be commenced before the victim reaches  
20          the age of 26 years, or be barred.

21          **SECTION 7.** 948.07 (1) of the statutes is amended to read:

1           948.07 (1) Having sexual contact or sexual intercourse with the child in  
2 violation of s. 948.02 or 948.095.

3           **SECTION 8.** 948.095 of the statutes is created to read:

4           **948.095 Sexual assault of a student by a school instructional staff**  
5 **person. (1)** In this section:

6           (a) "Instructional staff" means all professional employes of a school who have,  
7 as part of their responsibility, direct contact with students of the school or with the  
8 instructional program of the school. "Instructional staff" includes teachers,  
9 librarians, pupil services staff and administrative staff.

10          (b) "School" means a public or private elementary or secondary school.

11          **(2)** Whoever has sexual contact or sexual intercourse with a child who has  
12 attained the age of 16 years and who is not the defendant's spouse is guilty of a Class  
13 D felony if all of the following apply:

14          (a) The child is enrolled as a student in a school.

15          (b) The defendant is a member of the instructional staff of the school at which  
16 the child is enrolled as a student.

17          **SECTION 9.** 949.03 (1) (b) of the statutes is amended to read:

18          949.03 (1) (b) The commission or the attempt to commit any crime specified in  
19 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,  
20 940.09, 940.10, 940.19, 940.20, 940.21, 940.22 (2), 940.225, 940.23, 940.24, 940.25,  
21 940.285, 940.29, 940.30, 940.305, 940.31, 941.327, 943.02, 943.03, 943.04, 943.10,  
22 943.20, 943.23 (1g), (1m) or (1r), 943.32, 948.02, 948.025, 948.03, 948.04, 948.07,  
23 948.095, 948.20, 948.30 or 948.51.

24          **SECTION 10.** 968.38 (2) (intro.) of the statutes is amended to read:

1           968.38 (2) (intro.) In a criminal action under s. 940.225, 948.02, 948.025, 948.05  
2 ~~or~~, 948.06 or 948.095, if all of the following apply, the district attorney shall apply to  
3 the circuit court for his or her county to order the defendant to submit to a test or a  
4 series of tests administered by a health care professional to detect the presence of  
5 HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually  
6 transmitted disease and to disclose the results of the test or tests as specified in sub.  
7 (4) (a) to (c):

8           **SECTION 11.** 970.03 (4) (a) of the statutes is amended to read:

9           970.03 (4) (a) If the defendant is accused of a crime under s. 940.225, 948.02,  
10 948.025, 948.05 ~~or~~, 948.06 or 948.095, the court may exclude from the hearing all  
11 persons who are not officers of the court, members of the complainant's or defendant's  
12 families or others considered by the court to be supportive of the complainant or  
13 defendant, the service representative, as defined in s. 895.73 (1) (c), or other persons  
14 required to attend, if the court finds that the state or the defendant has established  
15 a compelling interest that would likely be prejudiced if the persons were not  
16 excluded. The court may consider as a compelling interest, among others, the need  
17 to protect a complainant from undue embarrassment and emotional trauma.

18           **SECTION 12.** 971.31 (11) of the statutes is amended to read:

19           971.31 (11) In actions under s. 940.225, 948.02 ~~or~~, 948.025 or 948.095, evidence  
20 which is admissible under s. 972.11 (2) must be determined by the court upon pretrial  
21 motion to be material to a fact at issue in the case and of sufficient probative value  
22 to outweigh its inflammatory and prejudicial nature before it may be introduced at  
23 trial.

24           **SECTION 13.** 971.37 (1) (intro.) of the statutes is amended to read:

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

4           **SECTION 14.** 972.11 (2) (b) (intro.) of the statutes is amended to read:

5           972.11 (2) (b) (intro.) If the defendant is accused of a crime under s. 940.225,  
6 948.02, 948.025, 948.05 or 948.06 or 948.095, any evidence concerning the  
7 complaining witness’s prior sexual conduct or opinions of the witness’s prior sexual  
8 conduct and reputation as to prior sexual conduct shall not be admitted into evidence  
9 during the course of the hearing or trial, nor shall any reference to such conduct be  
10 made in the presence of the jury, except the following, subject to s. 971.31 (11):

11           **SECTION 15.** 972.11 (2) (d) 1. (intro.) of the statutes is amended to read:

12           972.11 (2) (d) 1. (intro.) If the defendant is accused of a crime under s. 940.225,  
13 948.02, 948.025, 948.05 or 948.06 or 948.095, evidence of the manner of dress of the  
14 complaining witness at the time when the crime occurred is admissible only if it is  
15 relevant to a contested issue at trial and its probative value substantially outweighs  
16 all of the following:

17           **SECTION 16. Initial applicability.**

18           (1) This act first applies to offenses occurring on the effective date of this  
19 subsection.

20           **(END)**