

## 1999 SENATE BILL 82

March 16, 1999 – Introduced by Senators DARLING, DRZEWIECKI, ROESSLER, BAUMGART, WELCH, SCHULTZ and A. LASEE, cosponsored by Representatives LEIBHAM, SUDER, GUNDRUM, STONE, LADWIG, F. LASEE, STASKUNAS and OWENS. Referred to Committee on Judiciary and Consumer Affairs.

1     **AN ACT to amend** 940.22 (2), 948.06 (intro.), 948.07 (intro.), 948.08, 948.11 (2) (a),  
2             948.11 (2) (am), 948.12 (intro.) and 948.13 (2); and **to create** 939.626, 940.225  
3             (3s), 948.02 (3g), 948.025 (2g), 948.05 (2m), 948.055 (3) and 948.095 (3) of the  
4             statutes; **relating to:** minimum sentences for certain sex offenses.

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### *Analysis by the Legislative Reference Bureau*

Current law provides penalties for various sex offenses. The current penalties include periods of imprisonment in a jail or the state prisons. In addition, a court may currently place a person convicted of a sex offense on probation, except that in certain cases involving repeat offenders a court must impose a prison sentence and may not place the repeat offender on probation.

This bill provides that if a person is convicted of certain felony sex offenses, the court must sentence the person to at least one year in prison and may not place the person on probation. The felony sex offenses covered by the bill include the following: sexual exploitation by a therapist; sexual assault; sexual assault of a child; sexual exploitation of a child; causing a child to view or listen to sexual activity; incest with a child; child enticement; soliciting a child for prostitution; sexual assault of a student by a school instructional staff person; exposing a child to harmful material or harmful descriptions or narrations; possession of child pornography; and working with children after being convicted of a serious child sex offense.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 939.626 of the statutes is created to read:

2           **939.626 Minimum sentence for serious sex crimes. (1)** In this section,  
3 “serious sex crime” means a violation of s. 940.22 (2), 940.225 (1), (2) or (3), 948.02  
4 (1), (2) or (3), 948.025 (1), 948.05 (1) or (2), 948.055 (1), 948.06, 948.07, 948.08,  
5 948.095 (2), 948.11 (2) (a) or (am), 948.12 or 948.13 (2).

6           **(2)** If a person is convicted of committing a serious sex crime, the court shall  
7 sentence the person to not less than one year in the Wisconsin state prisons, but  
8 otherwise the penalties for the crime apply, subject to any applicable penalty  
9 enhancement. The court may not place the person on probation.

10           **(3)** Subsection (2) does not apply to a person who is sentenced under s. 939.626  
11 (2m) or 939.623.

12           **SECTION 2.** 940.22 (2) of the statutes is amended to read:

13           **940.22 (2) SEXUAL CONTACT PROHIBITED.** Any person who is or who holds himself  
14 or herself out to be a therapist and who intentionally has sexual contact with a  
15 patient or client during any ongoing therapist–patient or therapist–client  
16 relationship, regardless of whether it occurs during any treatment, consultation,  
17 interview or examination, is guilty of a Class C felony and shall be sentenced as  
18 provided in s. 939.626. Consent is not an issue in an action under this subsection.

19           **SECTION 3.** 940.225 (3s) of the statutes is created to read:

20           **940.225 (3s) MINIMUM SENTENCE.** A person who violates sub. (1), (2) or (3) shall  
21 be sentenced as provided in s. 939.626.

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1           **SECTION 4.** 948.02 (3g) of the statutes is created to read:

2           948.02 **(3g)** MINIMUM SENTENCE. A person who violates sub. (1), (2) or (3) shall  
3 be sentenced as provided in s. 939.626.

4           **SECTION 5.** 948.025 (2g) of the statutes is created to read:

5           948.025 **(2g)** A person who violates sub. (1) shall be sentenced as provided in  
6 s. 939.626.

7           **SECTION 6.** 948.05 (2m) of the statutes is created to read:

8           948.05 **(2m)** A person who violates sub. (1) or (2) shall be sentenced as provided  
9 in s. 939.626.

10          **SECTION 7.** 948.055 (3) of the statutes is created to read:

11          948.055 **(3)** A person who violates sub. (1) shall be sentenced as provided in s.  
12 939.626.

13          **SECTION 8.** 948.06 (intro.) of the statutes is amended to read:

14          **948.06 Incest with a child.** (intro.) Whoever does any of the following is  
15 guilty of a Class BC felony and shall be sentenced as provided in s. 939.626:

16          **SECTION 9.** 948.07 (intro.) of the statutes is amended to read:

17          **948.07 Child enticement.** (intro.) Whoever, with intent to commit any of the  
18 following acts, causes or attempts to cause any child who has not attained the age  
19 of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class  
20 BC felony and shall be sentenced as provided in s. 939.626:

21          **SECTION 10.** 948.08 of the statutes is amended to read:

22          **948.08 Soliciting a child for prostitution.** Whoever intentionally solicits  
23 or causes any child to practice prostitution or establishes any child in a place of  
24 prostitution is guilty of a Class BC felony and shall be sentenced as provided in s.  
25 939.626.

**SENATE BILL 82****SECTION 11**

1           **SECTION 11.** 948.095 (3) of the statutes is created to read:

2           948.095 (3) A person who violates sub. (2) shall be sentenced as provided in s.  
3 939.626.

4           **SECTION 12.** 948.11 (2) (a) of the statutes is amended to read:

5           948.11 (2) (a) Whoever, with knowledge of the nature of the material, sells,  
6 rents, exhibits, transfers or loans to a child any harmful material, with or without  
7 monetary consideration, is guilty of a Class E felony and shall be sentenced as  
8 provided in s. 939.626.

9           **SECTION 13.** 948.11 (2) (am) of the statutes is amended to read:

10           948.11 (2) (am) Any person who has attained the age of 17 and who, with  
11 knowledge of the nature of the description or narrative account, verbally  
12 communicates, by any means, a harmful description or narrative account to a child,  
13 with or without monetary consideration, is guilty of a Class E felony and shall be  
14 sentenced as provided in s. 939.626.

15           **SECTION 14.** 948.12 (intro.) of the statutes is amended to read:

16           **948.12 Possession of child pornography.** (intro.) Whoever possesses any  
17 undeveloped film, photographic negative, photograph, motion picture, videotape or  
18 other pictorial reproduction or audio recording of a child engaged in sexually explicit  
19 conduct under all of the following circumstances is guilty of a Class E felony and shall  
20 be sentenced as provided in s. 939.626:

21           **SECTION 15.** 948.13 (2) of the statutes is amended to read:

22           948.13 (2) Whoever has been convicted of a serious child sex offense and  
23 subsequently engages in an occupation or participates in a volunteer position that  
24 requires him or her to work or interact primarily and directly with children under  
25 16 years of age is guilty of a Class C felony and shall be sentenced as provided in s.

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1 939.626. This subsection does not apply to a person who is exempt under a court  
2 order issued under sub. (2m).

3 **SECTION 16. Initial applicability.**

4 (1) This act applies to offenses committed on or after the effective date of this  
5 subsection.

6 (END)