

2001 ASSEMBLY BILL 482

August 21, 2001 – Introduced by Representatives GUNDRUM, KRAWCZYK, STASKUNAS, STARZYK, WASSERMAN, GUNDERSON, RYBA, WADE, HUNDERTMARK, JESKEWITZ, SYKORA, OLSEN, WALKER, NASS, SKINDRUD, MUSSER, URBAN, AINSWORTH, OWENS, OTT, PETTIS, VRAKAS, LEIBHAM, MCCORMICK, LIPPERT, WARD, ALBERS, BIES, PETROWSKI, HUEBSCH, TOWNSEND, MONTGOMERY, RHOADES, LADWIG, KEDZIE, KESTELL, SERATTI, KREIBICH and STONE, cosponsored by Senators DARLING, SCHULTZ, ZIEN, ROESSLER and LAZICH. Referred to Committee on Judiciary.

1 **AN ACT to renumber and amend** 948.13 (2); **to amend** 948.13 (1) (a), 948.13
2 (2m) (a) (intro.), 948.13 (2m) (a) 1., 948.13 (2m) (a) 2., 948.13 (2m) (c), 948.13
3 (2m) (e) 2. and 973.034; and **to create** 948.13 (2) (b) and 948.13 (2m) (em) of the
4 statutes; **relating to:** child sex offenders working or volunteering with children
5 and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person who has been convicted of certain sex offenses against children may not thereafter engage in an occupation or participate in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age. The sex offenses against children covered by this prohibition include first degree sexual assault of child, which is sexual assault of a child who has not attained the age of 13, repeated acts of sexual assault of a child who has not attained the age of 16, sexual exploitation of a child, incest with a child and child enticement for sexual purposes.

Current law also provides that a person who has been convicted of repeated acts of sexual assault of a child may be granted an exemption from the prohibition if all of the following apply: 1) the child was age 13, 14, or 15; 2) the person had not attained the age of 19 and was within four years of age of the child; and 3) a judge determines that it is not necessary in the interest of public protection to have the prohibition apply to the person. If a person who has been convicted of one of the covered sex offenses and who has not been granted an exemption from the

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prohibition is convicted of violating the prohibition, he or she may be fined not more than \$10,000 or imprisoned for not more than 15 years or both.

This bill provides that the prohibition against a child sex offender working or volunteering with children also applies to a person who has been convicted of second degree sexual assault of a child, which is sexual assault of a child who has not attained the age of 16. The bill also provides that a person convicted of second degree sexual assault of a child may be granted an exemption from the prohibition if he or she satisfies the same criteria that currently allow for exemption of a person convicted of repeated acts of sexual assault of a child. Finally, the prohibition does not immediately apply to a person convicted of second degree sexual assault of a child before this bill becomes law if the person has not been convicted of any other covered sex offense against children and if the person satisfies the first and second exemption criteria discussed above. Instead, the prohibition first applies 90 days after the date on which the person receives notice of the prohibition from a law enforcement agency.

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

1 **SECTION 1.** 948.13 (1) (a) of the statutes is amended to read:

2 948.13 (1) (a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim
3 is under 18 years of age at the time of the offense, or a crime under s. 948.02 (1) or
4 (2), 948.025 (1), 948.05 (1) or (1m), 948.06 or 948.07 (1), (2), (3) or (4).

5 **SECTION 2.** 948.13 (2) of the statutes is renumbered 948.13 (2) (a) and amended
6 to read:

7 948.13 (2) (a) ~~Whoever~~ Except as provided in pars. (b) and (c), whoever has been
8 convicted of a serious child sex offense and subsequently engages in an occupation
9 or participates in a volunteer position that requires him or her to work or interact
10 primarily and directly with children under 16 years of age is guilty of a Class C
11 felony. ~~This subsection~~

12 (c) The prohibition under par. (a) does not apply to a person who is exempt
13 under a court order issued under sub. (2m).

14 **SECTION 3.** 948.13 (2) (b) of the statutes is created to read:

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1 948.13 **(2)** (b) If all of the following apply, the prohibition under par. (a) does
2 not apply to a person who has been convicted of a serious child sex offense until 90
3 days after the date on which the person receives actual written notice from a law
4 enforcement agency, as defined in s. 165.77 (1) (b), of the prohibition under par. (a):

5 1. The only serious child sex offense for which the person has been convicted
6 is a crime under s. 948.02 (2).

7 2. The person was convicted of the serious child sex offense before the effective
8 date of this subdivision [revisor inserts date].

9 3. The person is eligible to petition for an exemption from the prohibition under
10 sub. (2m) because he or she meets the criteria specified in sub. (2m) (a) 1. and 1m.

11 **SECTION 4.** 948.13 (2m) (a) (intro.) of the statutes is amended to read:

12 948.13 **(2m)** (a) (intro.) A person who has been convicted of a crime under s.
13 948.02 (2) or 948.025 (1) may petition the court in which he or she was convicted to
14 order that the person be exempt from sub. (2) (a) and permitted to engage in an
15 occupation or participate in a volunteer position that requires the person to work or
16 interact primarily and directly with children under 16 years of age. The court may
17 grant a petition filed under this paragraph if the court finds that all of the following
18 apply:

19 **SECTION 5.** 948.13 (2m) (a) 1. of the statutes is amended to read:

20 948.13 **(2m)** (a) 1. At the time of the commission of the crime under s. 948.02
21 (2) or 948.025 (1) the person had not attained the age of 19 years and was not more
22 than 4 years older or not more than 4 years younger than the child with whom the
23 person had sexual contact or sexual intercourse.

24 **SECTION 6.** 948.13 (2m) (a) 2. of the statutes is amended to read:

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1 948.13 (2m) (a) 2. It is not necessary, in the interest of public protection, to
2 require the person to comply with sub. (2) (a).

3 **SECTION 7.** 948.13 (2m) (c) of the statutes is amended to read:

4 948.13 (2m) (c) A court may hold a hearing on a petition filed under par. (a) and
5 the district attorney who prosecuted the person may appear at the hearing. Any
6 hearing that a court decides to hold under this paragraph shall be held no later than
7 30 days after the petition is filed if the petition specifies that the person filing the
8 petition is covered under sub. (2) (b), that he or she has received actual written notice
9 from a law enforcement agency of the prohibition under sub. (2) (a), and that he or
10 she is seeking an exemption under this subsection before the expiration of the 90-day
11 period under sub. (2) (b).

12 **SECTION 8.** 948.13 (2m) (e) 2. of the statutes is amended to read:

13 948.13 (2m) (e) 2. If a person is examined by a physician, psychologist or other
14 expert under subd. 1., the physician, psychologist or other expert shall file a report
15 of his or her examination with the court, and the court shall provide copies of the
16 report to the person and, if he or she requests a copy, to the district attorney. The
17 contents of the report shall be confidential until the physician, psychologist or other
18 expert has testified at the a hearing held under par. (c). The report shall contain an
19 opinion regarding whether it would be in the interest of public protection to require
20 the person to comply with sub. (2) (a) and the basis for that opinion.

21 **SECTION 9.** 948.13 (2m) (em) of the statutes is created to read:

22 948.13 (2m) (em) A court shall decide a petition no later than 45 days after the
23 petition is filed if the petition specifies that the person filing the petition is covered
24 under sub. (2) (b), that he or she has received actual written notice from a law
25 enforcement agency of the prohibition under sub. (2) (a), and that he or she is seeking

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1 an exemption under this subsection before the expiration of the 90-day period under
2 sub. (2) (b).

3 **SECTION 10.** 973.034 of the statutes is amended to read:

4 **973.034 Sentencing; restriction on child sex offender working with**
5 **children.** Whenever a court imposes a sentence or places a defendant on probation
6 regarding a conviction under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is
7 under 18 years of age at the time of the offense, or a conviction under s. 948.02 (1)
8 or (2), 948.025 (1), 948.05 (1) or (1m), 948.06 or 948.07 (1), (2), (3) or (4), the court shall
9 inform the defendant of the requirements and penalties under s. 948.13.

10 **SECTION 11. Initial applicability.**

11 (1) PROHIBITION AGAINST SEX OFFENDERS WORKING WITH CHILDREN. The treatment
12 of section 948.13 (1) (a) of the statutes first applies to violations of section 948.13 (2)
13 of the statutes that are committed on the effective date of this subsection, but, subject
14 to section 948.13 (2) (b) and (c) of the statutes, does not preclude the counting of an
15 offense under section 948.02 (2) of the statutes that was committed before the
16 effective date of this subsection for purposes of determining whether a person is
17 subject to section 948.13 (2) (a) of the statutes.

18 (2) INFORMATION AT SENTENCING. The treatment of section 973.034 of the
19 statutes first applies to sentencing proceedings that occur on the effective date of this
20 subsection.

21 (END)