

**2007 DRAFTING REQUEST**

**Bill**

Received: **01/30/2007**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Anne Sappenfield**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sex offenses  
Criminal Law - victims**

Extra Copies:

Submit via email: **YES**

Requester's email: **anne.sappenfield@legis.wisconsin.gov**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Crimes against children--Leg Council revisions

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	chanaman 03/05/2007	csicilia 03/05/2007		_____			
/P2	chanaman 03/06/2007	csicilia 03/06/2007	natzke 03/05/2007	_____	lparisi 03/05/2007		
/1	chanaman 03/13/2007	csicilia 03/13/2007	jfrantze 03/06/2007	_____	cduerst 03/06/2007		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2			jfrantze 03/14/2007	_____	sbasford 03/14/2007	lparisi 03/16/2007	

FE Sent For:

~~NO~~

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03-29-2007  
(Intro. Version)

see  
attached

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jfrantze \_\_\_\_\_  
03/14/2007 \_\_\_\_\_

sbasford \_\_\_\_\_  
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Criminal Law - victims

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Requester's email: anne.sappenfield@legis.wisconsin.gov

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#### Topic:

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#### Instructions:

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/P1	chanaman 03/05/2007	csicilia 03/05/2007					
/P2			nnatzke 03/05/2007		lparisi 03/05/2007		

FE Sent For:

*J. Sell*  
3/b <END>

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*UPJ - please correct - d*

*give to cmH*

1     **AN ACT** *to renumber and amend* 939.616 (1), 948.21 (1) and 948.53 (2) (b); *to*  
2     *amend* 301.45 (1d) (b), 301.48 (1) (e) 1., 939.616 (2), 939.616 (3), 939.74 (2) (a),  
3     948.025 (3), 948.03 (2) (a) and 948.08; *to repeal and recreate* 939.74 (2d) (c),  
4     948.02 (1), 948.025 (1) and 948.025 (2); and *to create* 301.48 (1) (e) 1m., 301.48 (1)  
5     (e) 2. d., 939.616 (1g), 939.74 (2d) (d), 948.21 (1) (b), (c) and (d), 948.53 (2) (b) 2.,  
6     3. and 4. and 972.15 (1m) of the statutes; **relating to:** crimes against children.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This bill draft was prepared for the Joint Legislative Council’s Special Committee on Review of Crimes Against Children.

***Sex offender registry:***

Current law requires sex offender registration following a conviction for a sex offense, as that term is defined in s. 301.45 (1d) (b), stats. “Sex offense” is defined to include all of the types of child enticement offenses under s. 948.07, stats.

Under s. 948.07 (5) and (6), stats., child enticement includes causing or attempting to cause any child under 18 years old to go into any vehicle, building, room, or secluded place, with intent to cause bodily or mental harm to a child or to give or sell a controlled substance or controlled substance analog to a child.

The bill draft removes these offenses from the list of offenses requiring mandatory sex offender registration.

***Reconciliation of 2005 Wisconsin Acts 430, 431, and 437:***

The bill draft reconciles 2005 Wisconsin Acts 430, 431, and 437. The Revisor of Statutes has determined that provisions of these acts are mutually inconsistent.

***2005 Wisconsin Act 430*** (“Act 430”), commonly referred to as “Jessica’s Law”, modified the offense of 1st-degree sexual assault of a child as follows:

- Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony and is subject to a mandatory minimum term of confinement in prison of 25 years.
- Whoever has sexual intercourse with a person who has not attained the age of 16 years by the use or threat of force or violence is guilty of a Class B felony and is subject to a mandatory minimum term of confinement in prison of 25 years.
- Whoever has sexual contact with a person who has not attained the age of 16 years by the use or threat of force or violence if the actor is at least 18 years of age when the sexual contact occurs is guilty of a Class B felony and is subject to a mandatory minimum term of confinement in prison of 5 years.
- Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony.

Act 430 also created a new definition of "sexual intercourse" for purposes of the offense of 1st-degree sexual assault of a child. Under the act, "sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of an inanimate object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required. Under prior law, "sexual intercourse" for purposes of the offense of 1st-degree sexual assault of a child was the same as the general definition for other sexual assault crimes and also included the intrusion, however slight, of any part of a person's body into the genital or anal opening either by the defendant or upon the defendant's instruction.

**2005 Wisconsin Act 431** ("Act 431"), effective July 1, 2007, requires global positioning system (GPS) tracking for certain sex offenders, including persons found to have committed 1st-degree sexual assault of a child as follows: (a) the person had sexual intercourse with a person under 12 years of age; (b) the person had sexual intercourse by use or threat of force or violence with a person under 16 years of age; or (c) the person had sexual contact by use or threat of force or violence with a person under 16 years of age and the person was 18 years of age or older at the time of the offense.

**2005 Wisconsin Act 437** ("Act 437") modified the offense of 1st-degree sexual assault of a child so that it is a Class B felony to have sexual contact or sexual intercourse with a person who is under 13 years of age and it is a Class A felony to have sexual contact or sexual intercourse with a person who is under 13 years of age if the sexual contact or sexual intercourse resulted in great bodily harm.

The bill draft also includes the following substantive changes to these provisions, which are described in the notes following the SECTIONS:

- Under the bill draft, mandatory minimum terms of confinement in prison for first-degree sexual assault of a child do not apply if the offender was under 18 years of age at the time of the violation.
- The bill draft modifies the offense created by 2005 Wisconsin Act 437 to clarify that the great bodily harm need not result from the sexual intercourse or contact.
- The bill draft eliminates the definition of "sexual intercourse" that applies only to the offense of first-degree sexual assault of a child but maintains the definition for purposes of GPS tracking requirements.
- The bill draft makes certain changes for purposes of consistency (e.g., requiring GPS tracking for persons convicted of first-degree sexual assault of a child if the person caused great bodily harm).

***Statute of limitations for prosecution of sexual assault of a child:***

Current law imposes time limits for commencing prosecution for most crimes. The 2003 Wisconsin statutes required that prosecution for a sexual assault of a child be commenced before the victim reaches the age of 45. However, also under the 2003 statutes, if the state collected deoxyribonucleic acid (DNA) evidence in connection with a sexual assault of a child before the time period for commencing prosecution of the sexual assault expired (e.g., before the victim reached the age of 45) and did not match the DNA evidence with an identified person until after the time period expired, the state was permitted to commence prosecution of the person who was the source of the DNA for the sexual assault within one year after making the match.

The statutes were affected by 2 Wisconsin acts in the 2005-06 legislative session.

2005 Act 60 provides that if the state collects DNA evidence in connection with a sexual assault of a child and does not match the DNA evidence with an identified person, as described above, the one-year extension to the time period for commencing prosecution for the sexual assault also applies to prosecution for a crime that is related to the sexual assault.

2005 Act 276 eliminates all time limits for commencing prosecution for a first-degree sexual assault of a child.

This bill draft eliminates the time limits for commencing a prosecution of first-degree sexual assault of a child and the various offenses of engaging in repeated acts of first-degree sexual assault of a child.

The bill draft provides that, within 12 months after a DNA profile is matched to an identified person for a violation of second-degree sexual assault of a child, a prosecution may be brought for the second-degree sexual assault of a child violation or for a crime that is related to the sexual assault violation, or both.

Finally, the bill draft provides that, within 12 months after a DNA profile is matched to an identified person for a violation of first-degree sexual assault of a child, a prosecution may be brought for a crime that is related to the sexual assault violation.

***Offenses that may not be charged with repeated acts of sexual assault of the same child:***

Current law prohibits any of the following violations from being charged in the same action as a charge of engaging in repeated acts of sexual assault of the same child unless the other violation occurred outside of the time period in which the repeated acts took place: crimes against sexual morality, sexual assault of a child, sexual exploitation of a child, incest with a child, child enticement, use of a computer to facilitate a child sex crime, soliciting a child for prostitution, exposing genital or pubic area, exposing a child to harmful material or harmful descriptions or narrations, or possession of child pornography.

The bill draft allows prosecution of all of these violations except sexual assault of a child and exposing genitals to a child in the same action as a charge of engaging in repeated acts of sexual assault of the same child, even if the other violation occurred during the time period in which the repeated acts took place.

***Physical abuse of a child:***

Under current law, it is a Class E felony to intentionally cause great bodily harm to a child. This draft changes this offense to a Class C felony.

***Soliciting a child for prostitution:***

Under current law, whoever intentionally solicits or causes any child to practice prostitution is guilty of a Class D felony. The bill draft modifies the offense so that it prohibits soliciting or causing any child to engage in an act of prostitution. As under current law, it is also a violation to establish a child in a place of prostitution under the bill draft.

***Criminal neglect of a child:***

Under current law, any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of a Class A misdemeanor or, if death is a consequence, a Class D felony.

The bill draft creates offenses for cases in which bodily harm is a consequence of neglect and in which great bodily harm is a consequence of neglect. Under the draft, the offense involving bodily harm is a Class H felony and the offense involving great bodily harm is a Class F felony.

Also under current law, a person responsible for a child's welfare while the child is being transported in a child care vehicle may not leave the child unattended at any time from the time the child is placed in the care of that person to the time the child is placed in the care of another person responsible for the child's welfare. A person who violates this provision is guilty of a Class A misdemeanor or, if death is a consequence, a Class G felony.

The bill draft creates offenses for cases in which bodily harm is a consequence of leaving a child unattended in a child care vehicle and in which great bodily harm is a consequence. Under the bill draft, the offense involving bodily harm is a Class I felony and the offense involving great bodily harm is a Class H felony.

***Presentence investigation:***

The bill draft requires the court to order a presentence investigation report that includes an assessment of the risk of the defendant committing another sex-related crime against a child in cases in which there is a conviction for a felony requiring sex offender registration listed under s. 301.45 (1d) (b), stats., and the victim was under the age of 18 at the time of the offense, unless the court finds that the report would not materially benefit the department of corrections or the court.

1           **SECTION 1.** 301.45 (1d) (b) of the statutes is amended to read:

2           301.45 **(1d)** (b) "Sex offense" means a violation, or the solicitation, conspiracy, or  
3 attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or  
4 (2), 948.025, 948.05, 948.055, 948.06, 948.07 (1) to (4), 948.075, 948.08, 948.085, 948.095,  
5 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31 if the victim was  
6 a minor and the person who committed the violation was not the victim's parent.

**NOTE:** This SECTION modifies the list of offenses for which sex offender registration is required to remove s. 948.07 (5) and (6), stats. (child enticement with intent to cause bodily or mental harm to a child or to give or sell a controlled substance or controlled substance analog to a child).

1           **SECTION 2.** 301.48 (1) (e) 1. of the statutes, as created by 2005 Wisconsin Act 431, is  
2 amended to read:

3           301.48 (1) (e) 1. Section 948.02 (1) ~~(b), (c), (d), (e), (am), or (d)~~ or 948.025 (1) (a) ~~or (ag)~~.

**NOTE:** This SECTION expands the GPS tracking requirements so that they apply to a person found to have committed 1st-degree sexual assault of a child if the offender caused great bodily harm to the child.

4           **SECTION 3.** 301.48 (1) (e) 1m. of the statutes is created to read:

5           301.48 (1) (e) 1m. Section 948.02 (1) (b) or (c) or 948.025 (1) (b) or (c) if the offense  
6 involved sexual intercourse as defined in par. (g).

**NOTE:** This SECTION provides that, if a person is convicted under s. 948.02 (1) (b) or (c) or 948.025 (1) (b) or (c) of having sexual intercourse with a person under 12 years of age or of having sexual intercourse with a person under 16 years of age by the use or threat of force or violence, the person is subject to GPS tracking requirements if the offense involved sexual intercourse as defined in s. 301.48 (1) (g). Under that section, "sexual intercourse" is defined as vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of any inanimate object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

This definition applies to the offenses under ss. 948.02 (1) (b) and (c) and 948.025 (1) (b) and (c) under current law. This bill draft repeals that definition from s. 948.02. Therefore, under this SECTION, GPS tracking requirements under current law for the offenses described above are not affected.

7           **SECTION 4.** 301.48 (1) (e) 2. d. of the statutes is created to read:

8           301.48 (1) (e) 2. d. The actor has sexual contact or sexual intercourse with a person who  
9 has not attained the age of 13 years and causes great bodily harm, as defined in s. 939.22 (14),  
10 to the person.

**NOTE:** This SECTION requires GPS tracking for a person found to have committed 1st-degree sexual assault of a child under the 2003 statutes if the actor had sexual contact or sexual intercourse with a person under the age of 13 years and the offender caused great bodily harm to the person.

1           **SECTION 5.** 939.616 (1) of the statutes, as created by 2005 Wisconsin Act 430, is  
2           renumbered 939.616 (1r) and amended to read:

3           939.616 (1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or 948.025  
4           (1) (a) (b), the court shall impose a bifurcated sentence under s. 973.01. The term of  
5           confinement in prison portion of the bifurcated sentence shall be at least 25 years. Otherwise  
6           the penalties for the crime apply, subject to any applicable penalty enhancement.

**NOTE:** This SECTION changes a cross-reference to reflect the renumbering of s. 948.025 (1) in the bill draft.

7           **SECTION 6.** 939.616 (1g) of the statutes is created to read:

8           939.616 (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or 948.025 (1)  
9           (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make an extended  
10          supervision eligibility date determination on a date that will occur before the person has served  
11          a 25-year term of confinement in prison.

**NOTE:** This SECTION provides that if a person is convicted of having sexual intercourse or sexual contact with a person who is under 13 years of age and causing great bodily harm to the person or having repeatedly committed such an act, the court must order a term of confinement in prison of at least 25 years. The underlying offense is a Class A felony.

12          **SECTION 7.** 939.616 (2) of the statutes, as created by 2005 Wisconsin Act 430, is  
13          amended to read:

14          939.616 (2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025 (1)  
15          (ag) (c), the court shall impose a bifurcated sentence under s. 973.01. The term of confinement  
16          in prison portion of the bifurcated sentence shall be at least 5 years. Otherwise the penalties  
17          for the crime apply, subject to any applicable penalty enhancement.

**NOTE:** This SECTION changes a cross-reference to reflect the renumbering of s. 948.025 (1) in the bill draft.

1           **SECTION 8.** 939.616 (3) of the statutes, as created by 2005 Wisconsin Act 430, is  
2 amended to read:

3           939.616 (3) This section does not apply if the offender was under 18 years of age when  
4 the violation occurred or if s. 939.62 (2m) (c) applies.

**NOTE:** This SECTION provides that mandatory minimum terms of prison confinement for first-degree sexual assault of a child do not apply if the offender was under 18 years of age when the violation occurred.

5           **SECTION 9.** 939.74 (2) (a) of the statutes, as affected by 2005 Wisconsin Act 276, is  
6 amended to read:

7           939.74 (2) (a) A prosecution under s. 940.01, 940.02, 940.03, 940.05, 948.02 (1), or  
8 948.025 (1) (a), (b), (c), or (d) may be commenced at any time.

**NOTE:** This SECTION adds cross references to additional offenses of engaging in repeated acts of first-degree sexual assault of the same child to include all offenses of engaging in repeated acts of sexual assault of the same child. Under this SECTION, there is no time limitation for prosecuting any first-degree sexual assault of a child offense.

9           **SECTION 10.** 939.74 (2d) (c) of the statutes, as affected by 2005 Wisconsin Acts 60 and  
10 276, is repealed and recreated to read:

11           939.74 (2d) (c) If before the time limitation under sub. (2) (c) expired, the state collected  
12 biological material that is evidence of the identity of the person who committed a violation  
13 of s. 948.02 (2) or 948.025 (1) (e), the state identified a deoxyribonucleic acid profile from  
14 the biological material, and comparisons of that deoxyribonucleic acid profile to  
15 deoxyribonucleic acid profiles of known persons did not result in a probable identification of  
16 the person who is the source of the biological material, the state may commence prosecution  
17 of the person who is the source of the biological material for the violation of s. 948.02 (2) or  
18 948.025 (1) (e) or a crime that is related to the violation or both within 12 months after



1 comparison of the deoxyribonucleic acid profile relating to the violation results in a probable  
2 identification of the person.

**NOTE:** This SECTION provides that, within 12 months after a DNA profile is matched to an identified person for a violation of second-degree sexual assault of a child, a prosecution may be brought for the second-degree sexual assault of a child violation or for a crime that is related to the sexual assault violation, or both.

Under current law, crimes are related if they are committed against the same victim, are proximate in time, and are committed with the same intent, purpose, or opportunity so as to be part of the same course of conduct.

3 **SECTION 11.** 939.74 (2d) (d) of the statutes is created to read:

4 939.74 (2d) (d) For prosecution of a crime related to a violation of s. 948.02 (1) or  
5 948.025 (1) (a), (b), (c), or (d) if before the time limitation for prosecution of the related crime  
6 expired, the state collected biological material that is evidence of the identity of the person  
7 who committed a violation of s. 948.02 (1) or 948.025 (1) (a), (b), (c), or (d) the state identified  
8 a deoxyribonucleic acid profile from the biological material, and comparisons of that  
9 deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did not  
10 result in a probable identification of the person who is the source of the biological material,  
11 the state may commence prosecution of the person who is the source of the biological material  
12 for the related crime within 12 months after comparison of that deoxyribonucleic acid profile  
13 results in a probable identification of the person.

**NOTE:** This SECTION provides that, within 12 months after a DNA profile is matched to an identified person for a violation of first-degree sexual assault of a child, a prosecution may be brought for a crime that is related to the sexual assault violation if the state collected DNA evidence before the statute of limitations for the prosecution of the related crime expired.

14 **SECTION 12.** 948.02 (1) of the statutes, as affected by 2005 Wisconsin Acts 430 and 437,  
15 is repealed and recreated to read:

1           948.02 (1) FIRST DEGREE SEXUAL ASSAULT. (am) Whoever has sexual contact or sexual  
2 intercourse with a person who has not attained the age of 13 years and causes great bodily harm  
3 to the person is guilty of a Class A felony.

4           (b) Whoever has sexual intercourse with a person who has not attained the age of 12  
5 years is guilty of a Class B felony.

6           (c) Whoever has sexual intercourse with a person who has not attained the age of 16  
7 years by use or threat of force or violence is guilty of a Class B felony.

8           (d) Whoever has sexual contact with a person who has not attained the age of 16 years  
9 by use or threat of force or violence is guilty of a Class B felony if the actor is at least 18 years  
10 of age when the sexual contact occurs.

11           (e) Whoever has sexual contact with a person who has not attained the age of 13 years  
12 is guilty of a Class B felony.

**NOTE:** This SECTION recreates the offense of 1st-degree sexual assault of a child to reflect the changes made in Acts 430 and 437.

This SECTION deletes the separate definition of "sexual intercourse" so that the general definition for ch. 948 applies to the offense of first-degree sexual assault of a child.

Also under this SECTION, the wording par. (am) is amended to remove a requirement under Act 430 that the great bodily harm result from the sexual contact or sexual intercourse. This change is intended to allow conviction under par. (am) if the great bodily harm was caused by the defendant during the course of conduct that immediately preceded, was concurrent with, or immediately followed the act of sexual assault. See, *State v. Schambow*, 176 Wis. 2d 286, 500 N.W.2d 362 (Ct. App. 1993).

13           **SECTION 13.** 948.025 (1) of the statutes, as affected by 2005 Wisconsin Acts 430 and  
14 437, is repealed and recreated to read:

15           948.025 (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within  
16 a specified period of time involving the same child is guilty of:

1 (a) A Class A felony if at least 3 of the violations were violations of s. 948.02 (1) (am).

2 (b) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am),  
3 (b), or (c).

4 (c) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am),  
5 (b), (c), or (d).

6 (d) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1).

7 (e) A Class C felony if at least 3 of the violations were violations of s. 948.02 (1) or (2).

**NOTE:** This SECTION restructures the offense of engaging in repeated acts of the same child. Under current law, for example, par. (c) requires a showing that the defendant committed at least 3 violations of sub. (1) (am), (b), (c), or (d), but that fewer than 3 of the violations were of sub. (am), (b), or (c).

8 **SECTION 14.** 948.025 (2) of the statutes, as affected by 2005 Wisconsin Acts 430 and  
9 437, is repealed and recreated to read:

10 948.025 (2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find the  
11 defendant guilty the members of the jury must unanimously agree that at least 3 violations of  
12 s. 948.02 (1) (am) occurred within the specified period of time but need not agree on which  
13 acts constitute the requisite number.

14 (b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant guilty  
15 the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am),  
16 (b), or (c) occurred within the specified period of time but need not agree on which acts  
17 constitute the requisite number and need not agree on whether a particular violation was a  
18 violation of s. 948.02 (1) (am), (b), or (c).

19 (c) If an action under sub. (1) (c) is tried to a jury, in order to find the defendant guilty  
20 the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am),  
21 (b), (c), or (d) occurred within the specified period of time but need not agree on which acts

1 constitute the requisite number and need not agree on whether a particular violation was a  
2 violation of s. 948.02 (1) (am), (b), (c), or (d).

3 (d) If an action under sub. (1) (d) is tried to a jury, in order to find the defendant guilty  
4 the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1)  
5 occurred within the specified period of time but need not agree on which acts constitute the  
6 requisite number.

7 (e) If an action under sub. (1) (e) is tried to a jury, in order to find the defendant guilty  
8 the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) or  
9 (2) occurred within the specified period of time but need not agree on which acts constitute  
10 the requisite number and need not agree on whether a particular violation was a violation of  
11 s. 948.02 (1) or (2).

**NOTE:** This SECTION reconciles Acts 430 and 437 for the required jury findings to convict a person of repeated acts of sexual assault of the same child. Under this SECTION, in an action alleging that a person committed at least 3 violations that resulted in great bodily harm, the members of the jury must unanimously agree that at least 3 violations resulting in great bodily harm occurred within the specified period of time but need not agree on which acts constitute the requisite number.

For the other actions of repeated sexual assault of the same child, the members of the jury must unanimously agree that at least 3 of the specified violations occurred within the specified period of time but need not agree which acts constitute the requisite number and need not agree on whether a particular violation was a violation of a specific 1st-degree sexual assault of a child provision (i.e., whether the act involved sexual intercourse with a person under the age of 12 years or involved sexual intercourse with a person under the age of 16 years by use or threat of force or violence).

12 **SECTION 15.** 948.025 (3) of the statutes is amended to read:

13 948.025 (3) The state may not charge in the same action a defendant with a violation  
14 of this section and with a felony violation involving the same child under ch. 944 or a violation  
15 involving the same child under s. 948.02, 948.05, 948.06, 948.07, 948.075, 948.08, or 948.10,

1 948.11, or 948.12, unless the other violation occurred outside of the time period applicable  
2 under sub. (1). This subsection does not prohibit a conviction for an included crime under s.  
3 939.66 when the defendant is charged with a violation of this section.

**NOTE:** Current law prohibits any of the following violations from being charged in the same action as a charge of engaging in repeated acts of sexual assault of the same child unless the other violation occurred outside of the time period in which the repeated acts took place: crimes against sexual morality [ch. 944, stats.], sexual assault of a child [s. 948.02, stats.], sexual exploitation of a child [s. 948.05, stats.], incest with a child [s. 948.06, stats.], child enticement [s. 948.07, stats.], use of a computer to facilitate a child sex crime [s. 948.075, stats.], soliciting a child for prostitution [s. 948.08, stats.], exposing genital or pubic area [s. 948.10, stats.], exposing a child to harmful material or harmful descriptions or narrations [s. 948.11, stats.], or possession of child pornography [s. 948.12, stats.]

This SECTION allows prosecution of all of these violations except sexual assault of a child and exposing genitals to a child in the same action as a charge of engaging in repeated acts of sexual assault of the same child, even if the other violation occurred during the time period in which the repeated acts took place.

4 **SECTION 16.** 948.03 (2) (a) of the statutes is amended to read:

5 948.03 (2) (a) Whoever intentionally causes great bodily harm to a child is guilty of a  
6 Class E felony.

**NOTE:** This SECTION increases the penalty for intentionally causing great bodily harm to a child from a Class E to a Class C felony.

7 **SECTION 17.** 948.08 of the statutes is amended to read:

8 **948.08 Soliciting a child for prostitution.** Whoever intentionally solicits or causes  
9 any child to practice engage in an act of prostitution or establishes any child in a place of  
10 prostitution is guilty of a Class D felony.

**NOTE:** This SECTION modifies the offense of soliciting a child for prostitution so that it is a Class D felony to intentionally solicit or cause any child to engage in an act of prostitution, instead of to intentionally solicit or cause any child to practice prostitution.

1           **SECTION 18.** 948.21 (1) of the statutes is renumbered 948.21 (1) (a) and amended to  
2 read:

3           948.21 (1) (a) Any person who is responsible for a child's welfare who, through his or  
4 her actions or failure to take action, intentionally contributes to the neglect of the child is guilty  
5 of a Class A misdemeanor ~~or, if death is a consequence, a Class D felony.~~

**NOTE:** The offense for neglect in which death is a consequence is moved  
to par. (d), in SECTION 19 of the draft.

6           **SECTION 19.** 948.21 (1) (b), (c) and (d) of the statutes are created to read:

7           948.21 (1) (b) A person who violates par. (a) is guilty of a Class H felony if bodily harm  
8 is a consequence.

9           (c) A person who violates par. (a) is guilty of a Class F felony if great bodily harm is  
10 a consequence.

11           (d) Any person who violates par. (a) is guilty of a Class D felony if death is a  
12 consequence.

**NOTE:** This SECTION creates offenses for neglect if bodily harm is a  
consequence and if great bodily harm is a consequence. The offense  
involving bodily harm is a Class H felony and the offense involving  
great bodily harm is a Class F felony.

13           **SECTION 20.** 948.53 (2) (b) of the statutes is renumbered 948.53 (2) (b) 1. and amended  
14 to read:

15           948.53 (2) (b) 1. Any person who violates par. (a) is guilty of a Class A misdemeanor  
16 ~~or, if death is a consequence, a Class G felony.~~

17           **SECTION 21.** 948.53 (2) (b) 2., 3. and 4. of the statutes are created to read:

18           948.53 (2) (b) 2. Any person who violates par. (a) is guilty of a Class I felony if bodily  
19 harm is a consequence.

1           3. Any person who violates par. (a) is guilty of a Class H felony if great bodily harm  
2 is a consequence.

3           4. Any person who violates par. (a) is guilty of a Class G felony if death is a  
4 consequence.

**NOTE:** This SECTION creates offenses for cases in which bodily harm is a consequence of leaving a child unattended in a child care vehicle and in which great bodily harm is a consequence. The offense involving bodily harm is a Class I felony and the offense involving great bodily harm is a Class H felony.

5           **SECTION 22.** 972.15 (1m) of the statutes is created to read:

6           972.15 (1m) SEX-RELATED CRIMES AGAINST CHILDREN. After a conviction for a felony  
7 that requires sex offender registration under 301.45 (1d) (b), involving a victim who was under  
8 18 years of age at the time of the offense, the court shall order a presentence investigation  
9 report that includes an assessment of the risk of the defendant committing another sex-related  
10 crime against a child, conducted by the department, unless the court finds that the report would  
11 not materially benefit the court or the department.

**NOTE:** This SECTION requires the court to order a presentence investigation report that includes an assessment of the risk of the defendant committing another sex-related crime against a child in cases in which there is a conviction for a felony requiring sex offender registration listed under s. 301.45 (1d) (b), stats., and the victim was under the age of 18 at the time of the offense, unless the court finds that the report would not materially benefit the department of corrections or the court.

12           **SECTION 23. Effective date.**

13           (1) The treatment of section 301.48 (1) (e) 1. and 2. d. of the statutes takes effect on July  
14 1, 2007.

**NOTE:** This SECTION provides that the treatment of the statutes relating to GPS tracking take effect on July 1, 2007, the effective date of 2005 Wisconsin Act 431.

