



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1721/PT

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

This bill is explained in the <sup>CS</sup> notes provided by the Joint Legislative Council in the bill.

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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  
 5 (1) (e) 2. d., 939.616 (1g), 939.74 (2d) (d), 948.21 (1) (b), (c) and (d), 948.53 (2) (b)  
 6 2., 3. and 4. and 972.15 (1m) of the statutes; relating to: crimes against  
 7 children and providing penalties.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.

**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 <sup>1st</sup>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. <sup>first</sup>

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. <sup>first</sup>

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 <sup>two</sup> 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 <sup>also</sup> 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~~<sup>bill</sup> 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~~<sup>bill</sup> 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~~<sup>bill</sup> 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~~<sup>bill</sup>, 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~~<sup>bill</sup> 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~~<sup>bill</sup>, 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~~<sup>bill</sup> 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,
- 3        or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02
- 4        (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07 (1) to (4), 948.075, 948.08, 948.085,
- 5        948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31 if

1 the victim was a minor and the person who committed the violation was not the  
2 victim's parent.

3 SECTION 2. 301.48 (1) (e) 1. of the statutes, as created by 2005 Wisconsin Act  
4 431, is amended to read:

5 301.48 (1) (e) 1. Section 948.02 (1) (b), (c), (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.

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

7 301.48 (1) (e) 1m. Section 948.02 (1) (b) or (c) or 948.025 (1) (b) or (c) if the  
8 offense 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.

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

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

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

1           939.616 (1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or  
2           948.025 (1) (a) (b), the court shall impose a bifurcated sentence under s. 973.01. The  
3           term of confinement in prison portion of the bifurcated sentence shall be at least 25  
4           years. Otherwise the penalties for the crime apply, subject to any applicable penalty  
5           enhancement.

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

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

7           939.616 (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or  
8           948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make  
9           an extended supervision eligibility date determination on a date that will occur  
10          before the person has served 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.

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

13          939.616 (2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025  
14          (1) (ag) (c), the court shall impose a bifurcated sentence under s. 973.01. The term  
15          of confinement in prison portion of the bifurcated sentence shall be at least 5 years.  
16          Otherwise the penalties for the crime apply, subject to any applicable penalty  
17          enhancement.

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

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

*The mandatory minimum sentences in this section do not apply to an offender who was under 18*

1           939.616 (3) This section does not apply if ~~the offender was under 18 years of~~  
2 ~~age when the violation occurred~~ or if s. 939.62 (2m) (c) applies.

*years of age when the violation occurred.*

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.

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

5           939.74 (2) (a) A prosecution under s. 940.01, 940.02, 940.03, 940.05, 948.02 (1),  
6 or 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.

7           **SECTION 10.** 939.74 (2d) (c) of the statutes, as affected by 2005 Wisconsin Acts  
8 60 and 276, is repealed and recreated to read:

9           939.74 (2d) (c) If before the time limitation under sub. (2) (c) expired, the state  
10 collected biological material that is evidence of the identity of the person who  
11 committed a violation of s. 948.02 (2) or 948.025 (1) (e), the state identified a  
12 deoxyribonucleic acid profile from the biological material, and comparisons of that  
13 deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did  
14 not result in a probable identification of the person who is the source of the biological  
15 material, the state may commence prosecution of the person who is the source of the  
16 biological material for the violation of s. 948.02 (2) or 948.025 (1) (e) or a crime that  
17 is related to the violation or both within 12 months after comparison of the  
18 deoxyribonucleic acid profile relating to the violation results in a probable  
19 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.

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

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

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

15           948.02 (1) FIRST DEGREE SEXUAL ASSAULT. (am) Whoever has sexual contact or  
16 sexual intercourse with a person who has not attained the age of 13 years and causes  
17 great bodily harm to the person is guilty of a Class A felony.

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



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

3 (d) Whoever has sexual contact with a person who has not attained the age of  
4 16 years by use or threat of force or violence is guilty of a Class B felony if the actor  
5 is at least 18 years of age when the sexual contact occurs.

6 (e) Whoever has sexual contact with a person who has not attained the age of  
7 13 years is guilty of a Class B felony.

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

*close up* 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.

*close up* 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).

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

10 948.025 (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2)  
11 within a specified period of time involving the same child is guilty of:

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

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

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

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

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

NOTE: This SECTION restructures the offense of engaging in repeated acts <sup>involving</sup> 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).

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

5 948.025 (2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find  
6 the defendant guilty the members of the jury must unanimously agree that at least  
7 3 violations of s. 948.02 (1) (am) ✓ occurred within the specified period of time but need  
8 not agree on which acts constitute the requisite number.

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

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

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

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

*close up* 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).

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

7 948.025 (3) The state may not charge in the same action a defendant with a  
8 violation of this section and with ~~a felony violation involving the same child under~~  
9 ~~ch. 944 or a violation involving the same child under s. 948.02, 948.05, 948.06,~~  
10 ~~948.07, 948.075, 948.08, or 948.10, 948.11, or 948.12,~~ unless the other violation  
11 occurred outside of the time period applicable under sub. (1). This subsection does  
12 not prohibit a conviction for an included crime under s. 939.66 when the defendant  
13 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.] *a*

*close up*

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.

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

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

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

5 948.08 Soliciting a child for prostitution. Whoever intentionally solicits  
6 or causes any child to practise engage in an act of prostitution or establishes any child  
7 in a place of 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.

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

10 948.21 (1) (a) Any person who is responsible for a child's welfare who, through  
11 his or her actions or failure to take action, intentionally contributes to the neglect of  
12 the child is guilty of a Class A misdemeanor or, if death is a consequence, a Class D  
13 felony.

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

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

15 948.21 (1) (b) A person who violates par. (a) is guilty of a Class H felony if bodily  
16 harm is a consequence.

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

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

*(intra)*  
*one of the following: (A) (a) A*  
*insert AR "yellow" bill*  
*create A.R. "yellow"*

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.

1 SECTION 20. 948.53 (2) (b) of the statutes is renumbered 948.53 (2) (b) <sup>(intro.)</sup> 1. and  
2 amended to read:

3 948.53 (2) (b) <sup>(intro.)</sup> 1. Any person who violates par. (a) is guilty of a <sup>(intro.)</sup> Class A  
4 misdemeanor or, if death is a consequence, a Class G felony. <sup>one of the following: 91 1.A</sup>

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

6 948.53 (2) (b) 2. Any person who violates par. (a) is guilty of a Class I felony if  
7 bodily harm is a consequence.

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

10 4. Any person who violates par. (a) is guilty of a Class G felony if death is a  
11 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.

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

13 972.15 (1m) SEX-RELATED CRIMES AGAINST CHILDREN. After a conviction for a  
14 felony that requires sex offender registration under 301.45 (1d) (b), involving a

15 the victim who was under 18 years of age at the time of the offense, the court shall order

16 a presentence investigation report that includes an assessment of the risk of the  
17 defendant committing another sex-related crime against a child, conducted by the

18 department, unless the court finds that the report would not materially benefit the  
19 court or the department.

20 SECTION 23. Effective date. This act takes

effect on the day after publication, except as follows:

INS A  
From p. 14  
fix component

offense, as defined in s. 301.45 (1d) (b),

the department to conduct

OFFENSES  
MINORS  
IF  
person is convicted  
and if...  
S.  
S.  
S.

16

to whether

person is at risk for

minor

(m.)

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

3 **SECTION 24. Initial applicability.**

4 (1) This act first applies to offenses the prosecution of which is not barred before  
5 the effective date of this subsection.

NOTE: This SECTION provides that the <sup>bill's</sup> ~~bill drafts~~ provisions relating to statutes of limitations for prosecution of sexual assault of a child apply to offenses for which the statute of limitations has not expired on the effective date.

6 (END)

INSERT  
A  
(move to page 13)

D-note ✓

Amre: 940.225  
Under s. 940.225 (1) (a), a person is guilty of first-degree sexual assault if that person has had sexual contact or sexual intercourse with another person without the person's consent and causes pregnancy or great bodily harm. Do you want to amend pregnancy is ~~can~~ weighed as adult but not for a child?  
CMH

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1721/P2dn  
CMH:cjs:nwn

March 5, 2007

Anne:

Under s. 940.225 (1) (a), a person is guilty of first-degree sexual assault if that person has had sexual contact or sexual intercourse with another person without that person's consent and causes pregnancy or great bodily harm. Do you want to include pregnancy in s. 948.02 (1) (am)? Otherwise pregnancy is weighed as equal to great bodily harm for an adult but not for a child.

Cathlene Hanaman  
Legislative Attorney  
Phone: (608) 267-9810  
E-mail: [cathlene.hanaman@legis.wisconsin.gov](mailto:cathlene.hanaman@legis.wisconsin.gov)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1721/P2

CMH:cjs:mwn

TODAY

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

no changes

rejun car

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  
 5 (1) (e) 2. d., 939.616 (1g), 939.74 (2d) (d), 948.21 (1) (b), (c) and (d), 948.53 (2) (b)  
 6 2., 3. and 4. and 972.15 (1m) of the statutes; **relating to:** crimes against  
 7 children and providing penalties.

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

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill 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 removes these offenses from the list of offenses requiring mandatory sex offender registration.

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

The bill 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 first-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 first-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 first-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 first-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 first-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 results in great bodily harm.

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

- Under the bill, 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 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 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 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 two 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 applies also 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 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 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 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 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 bill 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 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.

*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 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 bill, 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 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, 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 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,  
 3       or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02  
 4       (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07 (1) to (4), 948.075, 948.08, 948.085,  
 5       948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31 if

1 the victim was a minor and the person who committed the violation was not the  
2 victim's parent.

3 **SECTION 2.** 301.48 (1) (e) 1. of the statutes, as created by 2005 Wisconsin Act  
4 431, is amended to read:

5 301.48 (1) (e) 1. Section 948.02 (1) ~~(b), (c)~~, (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 first-degree sexual assault of a child if the offender caused great bodily harm to the child.

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

7 301.48 (1) (e) 1m. Section 948.02 (1) (b) or (c) or 948.025 (1) (b) or (c) if the  
8 offense involved sexual intercourse.

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 for s. 301.48. 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 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.

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

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

NOTE: This SECTION requires GPS tracking for a person found to have committed first-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.

13 **SECTION 5.** 939.616 (1) of the statutes is renumbered 939.616 (1r) and amended  
14 to read:

1           939.616 (1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or  
2           948.025 (1) ~~(a)~~ (b), the court shall impose a bifurcated sentence under s. 973.01. The  
3           term of confinement in prison portion of the bifurcated sentence shall be at least 25  
4           years. Otherwise the penalties for the crime apply, subject to any applicable penalty  
5           enhancement.

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

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

7           939.616 (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or  
8           948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make  
9           an extended supervision eligibility date determination on a date that will occur  
10          before the person has served 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.

11          **SECTION 7.** 939.616 (2) of the statutes is amended to read:

12          939.616 (2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025  
13          (1) ~~(ag)~~ (c), the court shall impose a bifurcated sentence under s. 973.01. The term  
14          of confinement in prison portion of the bifurcated sentence shall be at least 5 years.  
15          Otherwise the penalties for the crime apply, subject to any applicable penalty  
16          enhancement.

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

17          **SECTION 8.** 939.616 (3) of the statutes is amended to read:

18          939.616 (3) This section does not apply if s. 939.62 (2m) (c) applies. The  
19          mandatory minimum sentences in this section do not apply to an offender who was  
20          under 18 years of age when the violation occurred.

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.

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

3           939.74 (2) (a) A prosecution under s. 940.01, 940.02, 940.03, 940.05, 948.02 (1),  
4 or 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.

5           **SECTION 10.** 939.74 (2d) (c) of the statutes, as affected by 2005 Wisconsin Acts  
6 60 and 276, is repealed and recreated to read:

7           939.74 (2d) (c) If before the time limitation under sub. (2) (c) expired, the state  
8 collected biological material that is evidence of the identity of the person who  
9 committed a violation of s. 948.02 (2) or 948.025 (1) (e), the state identified a  
10 deoxyribonucleic acid profile from the biological material, and comparisons of that  
11 deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did  
12 not result in a probable identification of the person who is the source of the biological  
13 material, the state may commence prosecution of the person who is the source of the  
14 biological material for the violation of s. 948.02 (2) or 948.025 (1) (e) or a crime that  
15 is related to the violation or both within 12 months after comparison of the  
16 deoxyribonucleic acid profile relating to the violation results in a probable  
17 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.

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

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

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

15           948.02 **(1)** FIRST DEGREE SEXUAL ASSAULT. (am) Whoever has sexual contact or  
16 sexual intercourse with a person who has not attained the age of 13 years and causes  
17 great bodily harm to the person is guilty of a Class A felony.

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

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

1 (d) Whoever has sexual contact with a person who has not attained the age of  
2 16 years by use or threat of force or violence is guilty of a Class B felony if the actor  
3 is at least 18 years of age when the sexual contact occurs.

4 (e) Whoever has sexual contact with a person who has not attained the age of  
5 13 years is guilty of a Class B felony.

NOTE: This SECTION recreates the offense of first-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).

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

8 948.025 (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2)  
9 within a specified period of time involving the same child is guilty of:

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

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

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

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

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

NOTE: This SECTION restructures the offense of engaging in repeated acts involving 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).

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

3           948.025 (2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find  
4 the defendant guilty the members of the jury must unanimously agree that at least  
5 3 violations of s. 948.02 (1) (am) occurred within the specified period of time but need  
6 not agree on which acts constitute the requisite number.

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

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

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

21           (e) If an action under sub. (1) (e) is tried to a jury, in order to find the defendant  
22 guilty the members of the jury must unanimously agree that at least 3 violations of  
23 s. 948.02 (1) or (2) occurred within the specified period of time but need not agree on

1 which acts constitute the requisite number and need not agree on whether a  
2 particular violation was a violation of 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 first-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).

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

4 948.025 (3) The state may not charge in the same action a defendant with a  
5 violation of this section and with ~~a felony violation involving the same child under~~  
6 ~~ch. 944 or~~ a violation involving the same child under s. 948.02, ~~948.05, 948.06,~~  
7 ~~948.07, 948.075, 948.08, or~~ 948.10, 948.11, ~~or 948.12,~~ unless the other violation  
8 occurred outside of the time period applicable under sub. (1). This subsection does  
9 not prohibit a conviction for an included crime under s. 939.66 when the defendant  
10 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 a 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.

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

1           948.03 (2) (a) Whoever intentionally causes great bodily harm to a child is  
2 guilty of a Class E C felony.

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

4           **948.08 Soliciting a child for prostitution.** Whoever intentionally solicits  
5 or causes any child to ~~practice~~ engage in an act of prostitution or establishes any child  
6 in a place of 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.

7           **SECTION 18.** 948.21 (1) of the statutes is renumbered 948.21 (1) (intro.) and  
8 amended to read:

9           948.21 (1) (intro.) Any person who is responsible for a child's welfare who,  
10 through his or her actions or failure to take action, intentionally contributes to the  
11 neglect of the child is guilty of ~~a~~ one of the following:

12           (a) 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 bill.

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

14           948.21 (1) (b) A Class H felony if bodily harm is a consequence.

15           (c) A Class F felony if great bodily harm is a consequence.

16           (d) A Class D felony if death is a 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.

17           **SECTION 20.** 948.53 (2) (b) of the statutes is renumbered 948.53 (2) (b) (intro.)  
18 and amended to read:

19           948.53 (2) (b) (intro.) Any person who violates par. (a) is guilty of ~~a~~ one of the  
20 following:

1           1. A Class A misdemeanor or, if death is a consequence, a Class G felony.

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

3           948.53 (2) (b) 2. A Class I felony if bodily harm is a consequence.

4           3. A Class H felony if great bodily harm is a consequence.

5           4. A Class G felony if death is a 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.

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

7           972.15 (1m) SEX OFFENSES AGAINST MINORS. If a person is convicted for a felony  
8 that requires him or her to register under s. 301.45 and if the victim was under 18  
9 years of age at the time of the offense, the court shall order the department to conduct  
10 a presentence investigation report to assess whether the person is at risk for  
11 committing another sex offense, as defined in s. 301.45 (1d) (b), against a minor,  
12 unless the court finds that the report would not materially benefit the court or the  
13 department.

14           **SECTION 23. Initial applicability.**

15           (1) This act first applies to offenses the prosecution of which is not barred before  
16 the effective date of this subsection.

NOTE: This SECTION provides that the bill's provisions relating to statutes of limitations for prosecution of sexual assault of a child apply to offenses for which the statute of limitations has not expired on the effective date.

17           **SECTION 24. Effective dates.** This act takes effect on the day after publication,  
18 except as follows:

19           (1) The treatment of section 301.48 (1) (e) 1., 1m., and 2. d. of the statutes takes  
20 effect on July 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.

1

(END)