

# State of Wisconsin



2009 Assembly Bill 419

Date of enactment: **March 3, 2010**  
Date of publication\*: **March 17, 2010**

## 2009 WISCONSIN ACT 138

**AN ACT** to renumber and amend 949.04 (2); and to create 901.08, 950.04 (1v) (er), 971.23 (5c) and 971.23 (6c) of the statutes; relating to: rape shield provisions in civil proceedings, discovery and inspection of victims and witnesses, and victims rights.

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

**SECTION 1.** 901.08 of the statutes is created to read:

**901.08 Admissibility of sexual conduct. (1)** In this section:

(a) "Sexual conduct" means any conduct or behavior relating to sexual activities, including prior experience of sexual intercourse or sexual contact, use of contraceptives, and sexual life-style.

(b) "Sexual misconduct" includes a violation of s. 940.22 (2), 940.225 (1), (2), or (3), 940.32, 942.08, 942.09, 948.02, 948.025, 948.05 (1) or (1m), 948.055 (1), 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, or 948.11 (2) and includes sexual harassment, as defined in s. 111.32 (13).

(c) "Victim" means a person against whom sexual misconduct allegedly has been committed.

(2) In a civil action involving damages for an injury resulting from sexual misconduct, any evidence concerning a victim's sexual conduct, opinions of the victim's sexual conduct, and reputation as to the victim's sexual conduct, offered to prove that the victim engaged in other sexual conduct or to prove the victim's sexual predisposition may not be admitted into evidence during the course of any hearing or trial, nor may any reference to such

sexual conduct be made in the presence of the jury, except the following:

(a) Evidence of the specific, consensual sexual conduct between the alleged offender and the victim.

(b) Evidence of specific instances of sexual conduct by the alleged victim after an in camera showing by the party requesting the admission that the sexual conduct was the actual cause of the victim's injury for which damages are requested in the action.

**SECTION 2.** 949.04 (2) of the statutes is renumbered 949.04 (2) (a) and amended to read:

949.04 (2) (a) The department shall prescribe application forms for awards under this subchapter and, If the application results from the commission of or the attempt to commit a crime specified in s. 940.22 (2), 940.225, 948.02, 948.025, 948.051, 948.085, or 948.095 or a crime or an act compensable under s. 949.03 that was sexually motivated, as defined in s. 980.01 (5), any personally identifiable information, as defined in s. 19.62 (5), provided on the application form is not subject to inspection or copying under s. 19.35 (1).

(b) The department shall furnish law enforcement agencies with the forms under par. (a). The law enforcement agency investigating a crime shall provide forms to each person who may be eligible to file a claim under this subchapter.

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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**SECTION 4.** 950.04 (1v) (er) of the statutes is created to read:

950.04 (1v) (er) To not be compelled to submit to a pretrial interview or deposition by a defendant or his or her attorney as provided under s. 971.23 (6c).

**SECTION 5.** 971.23 (5c) of the statutes is created to read:

971.23 (5c) **PSYCHIATRIC TESTING OF VICTIMS OR WITNESSES.** In a prosecution of s. 940.225, 948.02, or 948.025 or of any other crime if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), the court may not order any witness or victim, as a condition of allowing testimony, to

submit to a psychiatric or psychological examination to assess his or her credibility.

**SECTION 6.** 971.23 (6c) of the statutes is created to read:

971.23 (6c) **INTERVIEWS OF VICTIMS BY DEFENSE.** Except as provided in s. 967.04, the defendant or his or her attorney may not compel a victim of a crime to submit to a pretrial interview or deposition.

**SECTION 7. Initial applicability.**

(1) The treatment of section 971.23 (5c) of the statutes first applies to complaints filed on the effective date of this subsection.

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