

## 2009 DRAFTING REQUEST

### Bill

Received: **02/10/2009**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Joe Parisi (608) 266-5342**

By/Representing: **Mike Murray**

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

Drafter: **chanaman**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Parisi@legis.wisconsin.gov**

Carbon copy (CC:) to: **anne.sappenfield@legis.wisconsin.gov**

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### Pre Topic:

No specific pre topic given

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### Topic:

Victim privacy

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### Instructions:

See attached--07-3187/P1 (not /P2), sections 2, 4, 5, 8, and 9

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### 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>
/?	chanaman 02/12/2009	nmatzke 02/13/2009		_____			S&L
/P1	chanaman 02/25/2009	nmatzke 02/27/2009	mduchek 02/13/2009	_____	cduerst 02/13/2009		S&L
/P2			mduchek 02/27/2009	_____	cduerst 02/27/2009		S&L
/1	rnelson2	kfollett	jfrantze	_____	cduerst	lparisi	

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	03/05/2009	03/06/2009 nmatzke 03/09/2009	03/10/2009 _____ _____ _____		03/10/2009	08/05/2009	

FE Sent For: "/1" @ intro. 9/11/09

<END>

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*6-17-09 - turned over to Rep. Radcliffe*  
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/P2		nwn 1/3/9	mduchek 02/27/2009	_____	cduerst 02/27/2009		

*Jb*  
3/10

*Jb/Km*  
3/10

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/P1		/P2 <sup>nwn</sup> 2/26	mduchek 02/13/2009	_____	cduerst 02/13/2009		

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<END>  
2/25

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FE Sent For:

2/19 <END>



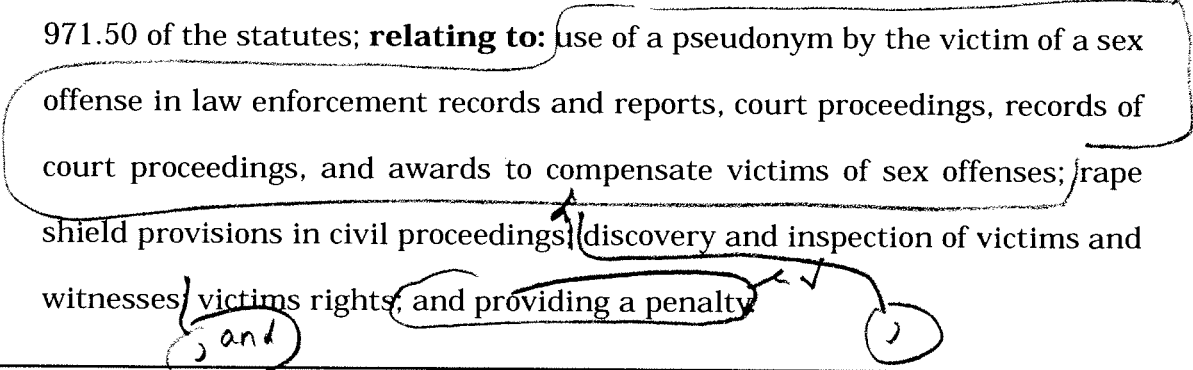
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓  
x-ref ✓

*repen car*

1 AN ACT *to renumber* 949.04 (3) and 949.16; *to renumber and amend* 949.04  
 2 (2), 949.24 (2) and 949.36; *to amend* 949.24 (3); and *to create* 165.94, 901.08,  
 3 946.77, 949.01 (5g), 949.04 (3) (b), 949.16 (2), 949.20 (6m), 949.36 (2m), 949.37  
 4 (1) (d), 950.04 (1v) (er), 968.263, 971.23 (1) (i), 971.23 (5c), 971.23 (6c) and  
 5 971.50 of the statutes; **relating to:** use of a pseudonym by the victim of a sex  
 6 offense in law enforcement records and reports, court proceedings, records of  
 7 court proceedings, and awards to compensate victims of sex offenses; rape  
 8 shield provisions in civil proceedings; discovery and inspection of victims and  
 9 witnesses; victims rights; and providing a penalty



**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version. Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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

1           **SECTION 1.** 165.94 of the statutes is created to read:

2           **165.94 Sex offense victim pseudonyms. (1)** In this section:

3           (a) “Department” means the department of justice.

4           (b) “Law enforcement unit” means a law enforcement agency, as defined in s.  
5 165.83 (1) (b), or a district attorney’s office.

6           (c) “Sex offense” has the meaning given in s. 968.263 (1).

7           **(2)** The department shall develop a form that allows a person who reports that  
8 he or she is a victim of a sex offense to designate a pseudonym, as provided under s.  
9 968.263, and shall distribute the form to all law enforcement units.

10          **(3)** The department shall maintain a confidential registry of the pseudonyms,  
11 real names, and any other information necessary for identification of a person, from  
12 completed pseudonym forms that law enforcement units forward to the department  
13 under s. 968.263 (3) (b).

14          **(4)** The department may release information from the registry or from a  
15 pseudonym form only upon the request of any of the following:

16          (a) The person, or a parent or legal guardian of the person, who is the subject  
17 of that registry information or the pseudonym form.

18          (b) A law enforcement officer or a district attorney who seeks information  
19 regarding the identity of a victim, or information on how to contact a victim, if the  
20 law enforcement officer or district attorney needs the information as part of the  
21 criminal investigation or to protect the victim.

1 (c) An examiner appointed under s. 949.11 (2) if needed to establish the validity  
2 of an application under s. 949.04.

3 (d) An examiner appointed under s. 949.31 (2) if needed to establish the validity  
4 of an application under s. 949.24.

5 <sup>√ X ^</sup>  
**SECTION 2.** 901.08 of the statutes is created to read:

6 **901.08 Admissibility of sexual conduct. (1)** In this section:

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

10 (b) "Sexual misconduct" means a <sup>INS 3-10 (from page 8)</sup> sex offense, as defined in s. 968.283 ~~or~~  
11 <sup>and includes</sup> sexual harassment, as defined in s. 111.32 (13).<sup>✓</sup>

12 (c) "Victim" means a person against whom sexual misconduct allegedly has  
13 been committed.<sup>✓</sup>

14 (2) In a civil action involving damages for an injury resulting from sexual  
15 misconduct, any evidence concerning a victim's sexual conduct, opinions of the  
16 victim's sexual conduct, and reputation as to the victim's sexual conduct, offered to  
17 prove that the victim engaged in other sexual conduct or to prove the victim's sexual  
18 predisposition <sup>may</sup> shall not be admitted into evidence during the course of any hearing  
19 or trial, nor <sup>may</sup> shall any reference to such sexual conduct be made in the presence of the  
20 jury, except the following:

21 (a) Evidence of the specific, consensual sexual conduct between the alleged  
22 offender and the victim.<sup>✓</sup>

23 (b) Evidence of specific instances of sexual conduct by the alleged victim after  
24 an in camera showing by the party requesting the admission that the sexual conduct

SECTION 2

1 was the actual cause of the victim's injury for which damages are requested in the  
2 action. ✓

3 (3) There is a rebuttable presumption that consensual sexual conduct is not the  
4 cause of the injury to the victim for which damages are requested in the action. ✓

5 SECTION 3. 946.77 of the statutes is created to read:

6 **946.77 Disclosure of name for pseudonym.** Whoever, due to employment  
7 by the department of justice, a law enforcement agency, a district attorney, or a court;  
8 due to his or her status as a defendant, witness, or attorney for the defendant; or in  
9 the course of jury duty, knows or learns the real name of a person who is using a  
10 pseudonym under s. 968.263, other information that could identify that person, or  
11 other information removed under s. 968.263 (3) (a) for that person, and knowingly  
12 discloses that name or information, except as required by a court order or allowed or  
13 required under s. 165.94 (4) or 971.50 (2) (a) is guilty of a Class C misdemeanor.

14 SECTION 4. 949.01 (5g) of the statutes is created to read:

15 949.01 (5g) "Personally identifiable information" has the meaning given in s.  
16 19.62 (5).

17 SECTION 5. <sup>✓/✗</sup> 949.04 (2) of the statutes, as affected by 2007 Wisconsin Act 20, is  
18 renumbered 949.04 (2) (a) and amended to read:

19 949.04 (2) (a) The department shall prescribe application forms for awards

20 under this subchapter and The forms shall provide for the use of a pseudonym for

21 persons who have designated a pseudonym under s. 968.263 and may not require any

22 personally identifiable information or any information removed under s. 968.263 (3)

23 (a) for such persons

plain

as defined in  
s. 19.62 (5)

Any personally identifiable information  
provided on the application form is confidential and not a

public record

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

4           **SECTION 6.** 949.04 (3) of the statutes is renumbered 949.04 (3) (a).

5           **SECTION 7.** 949.04 (3) (b) of the statutes is created to read:

6           949.04 (3) (b) If, under par. (a), the department receives reports or generates  
7 documents or files from examinations or reports relating to an applicant who has  
8 designated a pseudonym under s. 968.263, the department shall modify the reports,  
9 documents, and files so that the applicant is referred to only by the pseudonym and  
10 so that the reports, documents, and files do not include any personally identifiable  
11 information or any information removed under s. 968.263 (3) (a) for the person.

12           **SECTION 8.** 949.16 of the statutes, as affected by 2007 Wisconsin Act 20, is  
13 renumbered 949.16 (1).

14           **SECTION 9.** 949.16 (2) of the statutes is created to read:

15           949.16 (2) If any records or reports under this subchapter relate to a person who  
16 has designated a pseudonym under s. 968.263, the records or reports may refer to the  
17 person only by the pseudonym and may not include any personally identifiable  
18 information or any information removed under s. 968.263 (3) (a) for the person.

19           **SECTION 10.** 949.20 (6m) of the statutes is created to read:

20           949.20 (6m) "Personally identifiable information" has the meaning given in s.  
21 19.62 (5).

22           **SECTION 11.** 949.24 (2) of the statutes, as created by 2007 Wisconsin Act 20, is  
23 renumbered 949.24 (2) (a) and amended to read:

24           949.24 (2) (a) The department shall prescribe application forms for awards  
25 under this subchapter and. The forms shall provide for the use of a pseudonym for

97  
about  
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victim

1 persons who have designated a pseudonym under s. 968.263 and may not require any  
2 personally identifiable information or any information removed under s. 968.263 (3)  
3 (a) for such persons.

4 (b) The department shall furnish health care providers with the forms under  
5 par. (a).

\*\*\*NOTE: This subchapter allows for awards even if the alleged victim does not cooperate with law enforcement. But pseudonyms are created when the person reports that he or she is a victim of a sex offense to a DA or to a law enforcement agency. Should DOJ distribute pseudonym forms to health care providers for the situations in which the person does not want to cooperate?

6 **SECTION 12.** 949.24 (3) of the statutes, as created by 2007 Wisconsin Act 20, is  
7 amended to read:

8 949.24 (3) MEDICAL RECORDS. An applicant shall submit to the department  
9 reports from any physician, physician's assistant, or nurse who treated or examined  
10 the victim to gather evidence regarding a sex offense, performed any procedure  
11 during that treatment or examination that tests for or prevents a sexually  
12 transmitted disease, or provided or prescribed any medication to prevent or treat a  
13 sexually transmitted disease. If the victim is a person who has designated a  
14 pseudonym under s. 968.263, the reports may refer to the person only by the  
15 pseudonym and may not include any personally identifiable information or any  
16 information removed under s. 968.263 (3) (a) for the person. The applicant may not  
17 submit to the department any other records than those pertaining to the  
18 examination, treatment, procedure, or medication for which the applicant is seeking  
19 an award.

20 **SECTION 13.** 949.36 of the statutes, as created by 2007 Wisconsin Act 20, is  
21 renumbered 949.36 (1m), and 949.36 (1m) (intro.) and (a), as renumbered, are  
22 amended to read:

1           949.36 (1m) (intro.) If a health care provider seeks an award under this  
2 subchapter, any personally identifiable information, ~~as defined in s. 19.62 (5),~~ of the  
3 victim who received the examination shall remain confidential unless written  
4 consent for the release of any personally identifiable information is provided by one  
5 of the following:

6           (a) Except as provided under ~~sub. (2) par. (b),~~ the victim.

7           **SECTION 14.** 949.36 (2m) of the statutes is created to read:

8           949.36 (2m) If the department receives or generates reports, files, or  
9 documents relating to a person who has designated a pseudonym under s. 968.263,  
10 the department shall modify the reports, files, and documents so that the person is  
11 referred to only by the pseudonym and so that the reports, files, or documents do not  
12 include any personally identifiable information or any information removed under  
13 s. 968.263 (3) (a) for the person.

14           **SECTION 15.** 949.37 (1) (d) of the statutes is created to read:

15           949.37 (1) (d) Except as required under a court order or as permitted by the  
16 victim or the guardian of the victim, if the victim is a person who has designated a  
17 pseudonym under s. 968.263, disclose the real name or any personally identifiable  
18 information of that person or disclose information removed under s. 968.263 (3) (a)  
19 for that person. This paragraph does not apply if s. 946.77 covers the disclosure.

\*\*\*\*NOTE: I did not add health care providers to the list of persons subject to the  
penalty under s. 946.77--which is a Class C misdemeanor (\$500 fine, imprisonment not  
to exceed 30 days or both). This provision makes the violator subject to a \$500 fine,  
imprisonment not to exceed 6 months, or both, and he or she must forfeit any benefit  
received and reimburse the state (although the violator is not subject to the misdemeanor  
charge). Is that okay? I did not add any penalties to s. 949.17 because, under s. 946.77,  
DOJ employees who disclose any protected information are already subject to the  
misdemeanor. That is also why I added the last sentence to this paragraph.

20

<sup>JJA</sup>  
**SECTION 16.** 950.04 (1v) (er) of the statutes is created to read:

STAYS

STAYS



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

3 SECTION 17. 968.263 of the statutes is created to read:

4 **968.263 Use of pseudonym by victims of sex offenses. (1)** In this section,

5 "sex offense" means a violation of s. 940.22 (2), 940.225 (1), (2), or (3), 940.32, 942.08,  
6 942.09, 948.02, 948.025, 948.05 (1) or (1m), 948.055 (1), 948.06, 948.07, 948.075,  
7 948.08, 948.09, 948.095, 948.10, or 948.11 (2). ✓

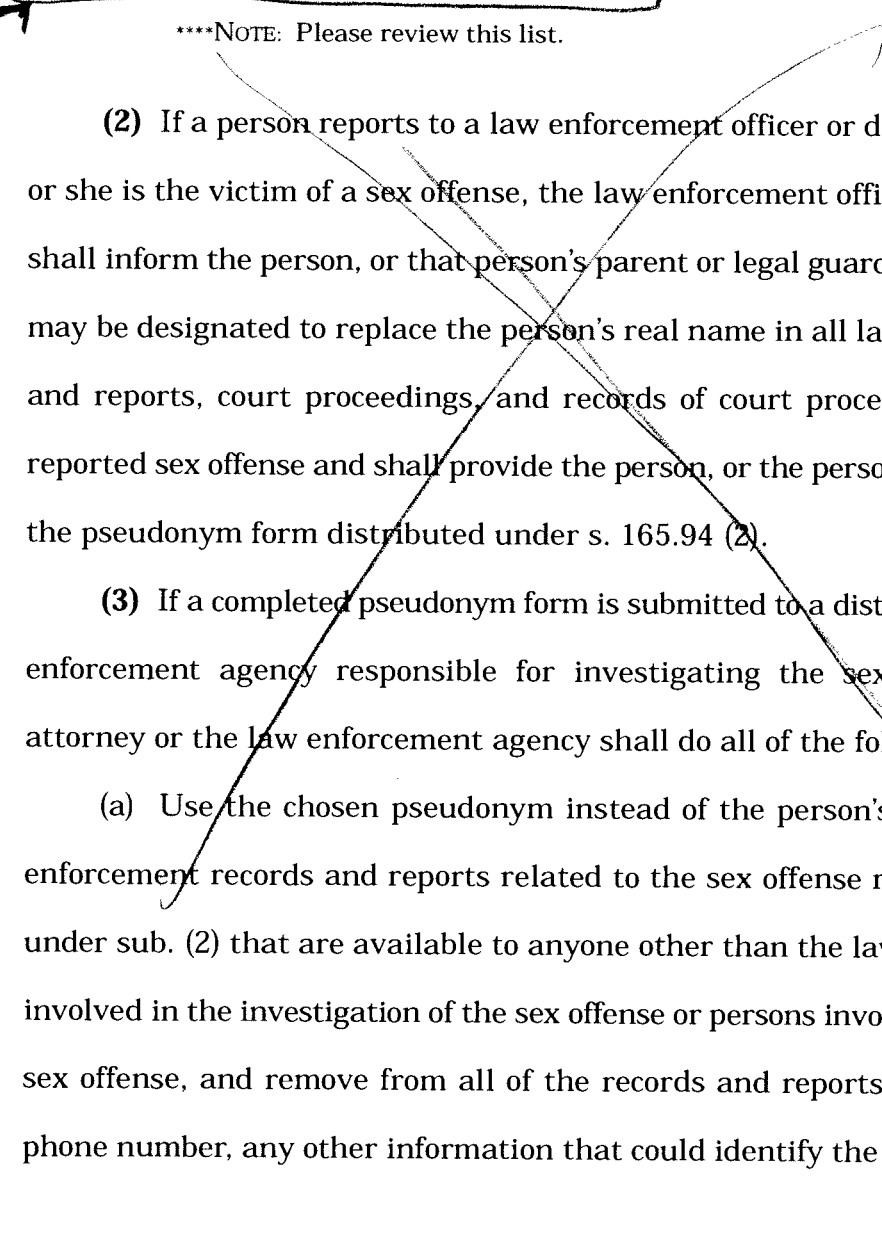
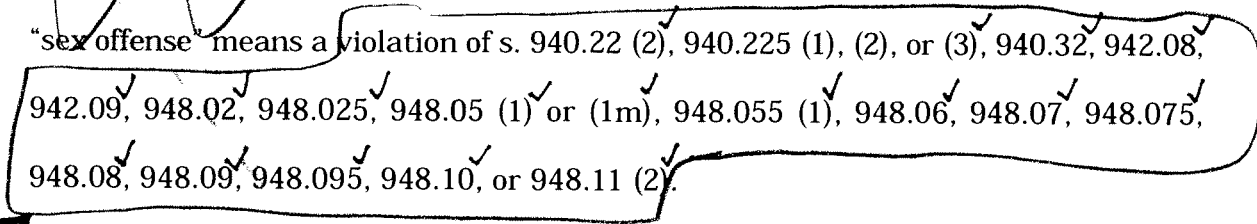
\*\*\*\*NOTE: Please review this list.

8 (2) If a person reports to a law enforcement officer or district attorney that he  
9 or she is the victim of a sex offense, the law enforcement officer or district attorney  
10 shall inform the person, or that person's parent or legal guardian, that a pseudonym  
11 may be designated to replace the person's real name in all law enforcement records  
12 and reports, court proceedings, and records of court proceedings concerning the  
13 reported sex offense and shall provide the person, or the person's parent or guardian,  
14 the pseudonym form distributed under s. 165.94 (2).

15 (3) If a completed pseudonym form is submitted to a district attorney or the law  
16 enforcement agency responsible for investigating the sex offense, the district  
17 attorney or the law enforcement agency shall do all of the following:

18 (a) Use the chosen pseudonym instead of the person's real name in all law  
19 enforcement records and reports related to the sex offense reported by the person  
20 under sub. (2) that are available to anyone other than the law enforcement officers  
21 involved in the investigation of the sex offense or persons involved in prosecuting the  
22 sex offense, and remove from all of the records and reports the person's address,  
23 phone number, any other information that could identify the person, and, if the sex

This is INS 3-10





1 offense may be a violation of s. 948.06, the name and any other information that could  
2 identify the alleged violator.

3 (b) Forward the completed pseudonym form to the department of justice.

4 (c) If the form is submitted to a law enforcement agency or to a district attorney  
5 who will not be responsible for prosecuting the sex offense, inform the district  
6 attorney or the attorney general, whichever is responsible for prosecuting the sex  
7 offense, that the person has chosen to use a pseudonym under this section and  
8 forward a copy of the pseudonym form completed by the person to the appropriate  
9 prosecutor.

10 **SECTION 18.** 971.23 (1) (i) of the statutes is created to read:

11 971.23 (1) (i) Any pseudonym form that an alleged victim of the offense for  
12 which the defendant is charged submitted to a law enforcement agency or district  
13 attorney under s. 968.263 (3) in connection with the offense.

14 **SECTION 19.** <sup>✓/∧</sup>971.23 (5c) of the statutes is created to read:

15 971.23 (5c) PSYCHIATRIC TESTING OF VICTIMS OR WITNESSES. In a prosecution of  
16 s. 940.225, <sup>✓</sup>948.02, or <sup>✓</sup>948.025 or of any other crime if the court determines that the  
17 underlying conduct was sexually motivated, as defined in s. 980.01 (5), <sup>✓</sup>the court may  
18 not order any witness or victim, as a condition of allowing testimony, to submit to a  
19 psychiatric or psychological examination to assess his or her credibility.<sup>✓</sup>

20 **SECTION 20.** <sup>✓✓∧</sup>971.23 (6c) of the statutes is created to read:

21 971.23 (6c) INTERVIEWS OF VICTIMS BY DEFENSE. Except as provided in s. 967.04,<sup>✓</sup>  
22 the defendant or his or her attorney may not compel a victim of a crime to submit to  
23 a pretrial interview or deposition.<sup>✓</sup>

24 **SECTION 21.** 971.50 of the statutes is created to read:

STAVS  
17  
18  
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21

1           **971.50 Proceedings involving victim pseudonyms.** (1) (a) If a victim of  
2 an offense that is the subject of a criminal proceeding designates a pseudonym under  
3 s. 968.263, the court, the attorneys for the parties, and the witnesses shall, except  
4 as provided in sub. (2), refer to the victim only by the pseudonym in all criminal court  
5 proceedings related to the offense and may not refer to any information that could  
6 identify the victim.

7           (b) If the defendant's name has been omitted from law enforcement records and  
8 reports under s. 968.263 (3) (a) because the alleged offense is a violation of s. 948.04,  
9 the court, the attorneys for the parties, and the witnesses shall, except as provided  
10 in sub. (2), refer to the defendant by a name other than his or her actual name and  
11 may not refer to any information that could identify the defendant.

12           (2) (a) The court and the attorneys for the parties shall use real names during  
13 examination of jurors under s. 805.08 (1). The court shall instruct the jurors that  
14 they may not disclose the real name of a person who is covered by sub. (1) to anyone  
15 and shall tell the jurors of the penalty under s. 946.77.

16           (b) The court may exclude from the juror examination all persons who are not  
17 officers of the court, members of the victim's or defendant's families, or others that  
18 the court considers to be supportive of the victim or defendant, the service  
19 representative, as defined in s. 895.45 (1) (c), or other persons required to attend, if  
20 the court finds that the state or the defendant has established a compelling interest  
21 that would likely be prejudiced if the persons were not excluded. The court may  
22 consider as a compelling interest, among others, the need to protect a victim from  
23 undue embarrassment and emotional trauma.

1 (c) In making its order under par. (b), the court shall set forth specific findings  
2 sufficient to support the closure order. In making these findings, the court shall  
3 consider, and give substantial weight to, any expressed desires of the victim.

4 (3) (a) The court may order that any portion of the record in which the victim's  
5 real name is used be sealed or order that the person's real name be expunged from  
6 those portions of the court record.

7 (b) If sub. (1) (b) applies, the court may order that any portion of the record in  
8 which the defendant's real name is used be sealed or order that the defendant's real  
9 name be expunged from those portions of the court record.

10 (4) If a completed pseudonym form is submitted to a district attorney or a law  
11 enforcement agency, the court, the prosecuting attorney, or the attorney for the  
12 defendant may not require in any testimony the person using the pseudonym or any  
13 witness to disclose the person's name, any information that could identify the person,  
14 or any information removed under s. 968.263 (3) (a) for the person.

15 (5) Notwithstanding sub. (4) and s. 946.77, a court may allow the defendant or  
16 his or her attorney to disclose only to necessary parties any information, limited by  
17 the court to necessary information, that identifies the person using the pseudonym  
18 under s. 968.263, only if the court finds any of the following:

19 (a) The party requesting access to the information shows good cause to have  
20 access.

21 (b) The prosecution finds the disclosure of the information essential to the trial.

22 (c) The identity of the victim is in issue.

23 **SECTION 22. Initial applicability.**

24 (1) The treatment of section 968.263 of the statutes first applies to offenses  
25 reported on the effective date of this subsection.

KEEP →

**SECTION 22**

1 (2) The treatment of section 971.23 (1) (i) of the statutes first applies to  
2 pseudonym forms submitted to law enforcement agencies or district attorneys on the  
3 effective date of this subsection.

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

6 (4) The treatment of section 971.50 of the statutes first applies to court  
7 proceedings initiated on the effective date of this subsection.

8 **SECTION 23. Effective dates.** This act takes effect on the first day of the 7th  
9 month beginning after publication, except as follows:

10 (1) The treatment of sections 901.08, 950.04 (1r) (er), and 971.23 (5c) and (6c)  
11 of the statutes and SECTION 22 (3) of this act take effect on the day after publication.

12 (END)

## Hanaman, Cathlene

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**From:** Sappenfield, Anne  
**Sent:** Tuesday, February 24, 2009 9:32 AM  
**To:** Hanaman, Cathlene  
**Subject:** Draft review: LRB 09-2067/P1 Topic: Victim privacy

Hi Cathlene,

Here are a few changes to LRB-2067. Thanks!

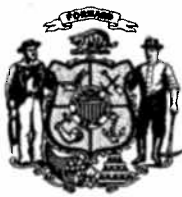
Anne

-Page 1, Line 9: strike "living arrangements" and adding the modifier "sexual" before "life-style"

-Replace "means" with "includes" on page 2 line 1.

-Strike lines 20-21 on page 2 in order to remove the rebuttable presumption

-In SECTION 2, the confidentiality of personally identifiable information should only apply to sexual assault victims.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

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

This is a preliminary draft. An analysis will be provided in a later version.  
For further information see the ***state and local*** fiscal estimate, which will be  
printed as an appendix to this bill.

---

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

5 SECTION 1. 901.08 of the statutes is created to read:  
6 **901.08 Admissibility of sexual conduct.** (1) In this section:  
7 (a) "Sexual conduct" means any conduct or behavior relating to sexual  
8 activities, including prior experience of sexual intercourse or sexual contact, use of  
9 contraceptives, living arrangement, and life-style.

*sexual*

SECTION 1

*Note: This change means that "sexual misconduct" has a meaning not specified here but includes the offenses listed. It's that, okay?*

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

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

7 (2) In a civil action involving damages for an injury resulting from sexual  
8 misconduct, any evidence concerning a victim's sexual conduct, opinions of the  
9 victim's sexual conduct, and reputation as to the victim's sexual conduct, offered to  
10 prove that the victim engaged in other sexual conduct or to prove the victim's sexual  
11 predisposition may not be admitted into evidence during the course of any hearing  
12 or trial, nor may any reference to such sexual conduct be made in the presence of the  
13 jury, except the following:

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

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

20 (3) There is a rebuttable presumption that consensual sexual conduct is not the  
21 cause of the injury to the victim for which damages are requested in the action.

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

*If the application results from the commission* SECTION 2  
*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 that was*  
949.04 (2) (a) The department shall prescribe application forms for awards

under this subchapter and. ~~Any personally identifiable information, as defined in~~  
s. 19.62 (5), provided on the application form is confidential and not a public record.

(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 3. 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 4. 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 5. 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 6. 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.

(END)

*Note: Do you want s. 949.24 (2) to be amended in a similar way?*

*sexually motivated, as defined in s. 980.01 (5)*

*or a direct  
compensable  
under s. 949.03v*





PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV

refer cat

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

---

*Analysis by the Legislative Reference Bureau*

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

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

---

INS  
A+B →

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

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

6 **901.08 Admissibility of sexual conduct.** (1) In this section:

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

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

\*\*\*\*NOTE: This change means that "sexual misconduct" has a meaning not specified here but includes the offenses listed. Is that okay?

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

7 (2) In a civil action involving damages for an injury resulting from sexual  
8 misconduct, any evidence concerning a victim's sexual conduct, opinions of the  
9 victim's sexual conduct, and reputation as to the victim's sexual conduct, offered to  
10 prove that the victim engaged in other sexual conduct or to prove the victim's sexual  
11 predisposition may not be admitted into evidence during the course of any hearing  
12 or trial, nor may any reference to such sexual conduct be made in the presence of the  
13 jury, except the following:

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

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

20 SECTION 2. <sup>√</sup>949.04 (2) of the statutes is renumbered 949.04 (2) (a) and amended  
21 to read:

22 949.04 (2) (a) The department shall prescribe application forms for awards  
23 under this subchapter and. If the application results from the commission of or the

1 attempt to commit a crime specified in s. 940.22 (2), 940.225, 948.02, 948.025,  
2 948.051, 948.085, or 948.095 or a crime or an act compensable under s. 949.03 that  
3 was sexually motivated, as defined in s. 980.01 (5) any personally identifiable  
4 information, as defined in s. 19.62 (5), provided on the application form is  
5 confidential and not a public record.

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

\*\*\*\*NOTE: Do you want s. 949.24 (2) to be amended in a similar way?

9 **SECTION 3.** 950.04 (1v) (er) of the statutes is created to read:

10 950.04 (1v) (er) To not be compelled to submit to a pretrial interview or  
11 deposition by a defendant or his or her attorney as provided under s. 971.23 (6c). ✓

12 **SECTION 4.** 971.23 (5c) of the statutes is created to read:

13 971.23 (5c) PSYCHIATRIC TESTING OF VICTIMS OR WITNESSES. In a prosecution of  
14 s. 940.225, 948.02, or 948.025 or of any other crime if the court determines that the  
15 underlying conduct was sexually motivated, as defined in s. 980.01 (5), the court may  
16 not order any witness or victim, as a condition of allowing testimony, to submit to a  
17 psychiatric or psychological examination to assess his or her credibility. ✓

18 **SECTION 5.** 971.23 (6c) of the statutes is created to read:

19 971.23 (6c) INTERVIEWS OF VICTIMS BY DEFENSE. Except as provided in s. 967.04,  
20 the defendant or his or her attorney may not compel a victim of a crime to submit to  
21 a pretrial interview or deposition. ✓

22 **SECTION 6. Initial applicability.**

INS  
3-9



2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2067/lins  
CMH:.....

1           Insert A

This bill prohibits courts from ordering a witness or victim, as a condition of allowing testimony in a criminal case involving sexual assault or repeated sexual assault of a child, sexual assault, or other criminal acts that are sexually motivated, to submit to a mental examination to assess his or her credibility. This bill also generally prohibits a defendant from compelling a crime victim to a pretrial interview or deposition.

Current law provides for compensation to victims of certain crimes and to health providers who perform certain procedures on a victim of a sex offense. The Department of Justice designs forms for persons applying for compensation. This bill makes any personally identifiable information that is provided on the form about the victim confidential and not a public record.

2

3           Insert 3-9

4           **SECTION 1.** 949.24 (1) of the statutes is amended to read:

5           949.24 (1) **ELIGIBILITY.** Any health care provider who conducts an examination  
6 to gather evidence regarding a sex offense may apply for an award under this  
7 subchapter. Any personally identifiable information, as defined in s. 19.62 (5),  
8 provided on the application form about the victim of the sex offense is confidential  
9 and is not a public record.

History: 2007 a. 20.

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2067/1rnins  
RPN::

ins. anl B:

Generally, evidence that has the tendency to make the existence of a fact <sup>more</sup> ~~most~~ probable or less probable (relevant evidence) is admissible in a court action that involves the issues concerning that fact. Some relevant evidence is excluded from admission if it creates unfair prejudice, confuses the issues, misleads the jury, or is repetitious of other evidence. Some relevant evidence, such as the test for the presence of HIV, is not admissible as evidence to prove a person's character. Some relevant evidence is not admissible unless the collection of that evidence is done under certain protocols or by certain persons certified to collect that evidence, such as the presence of lead in dust.

> This bill prohibits in any civil action seeking damages the admission of evidence concerning the sexual conduct of a person who has been the victim of certain criminal acts, including sexual assault, sexual exploitation by a therapist, and sexual crimes against children if that evidence is offered to prove the victim engaged in other sexual conduct or to prove the victim's sexual predisposition. This prohibition does not apply to evidence of consensual sexual conduct between the victim and the alleged offender or to evidence of sexual conduct that resulted in the victim's damages if that evidence is first shown to the court in the judge's chambers to be related to the victim's damages.

**Nelson, Robert P.**

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**From:** Murray, Mike  
**Sent:** Wednesday, June 17, 2009 4:58 PM  
**To:** Hanaman, Cathlene; Nelson, Robert P.  
**Cc:** Boe, Steve  
**Subject:** LRB 2067/1- Victim Privacy

Hi Cathlene and Bob,

I just wanted to let you know that Rep. Radcliffe will be circulating and introducing this draft as his bill and that Rep. Parisi would like to make sure that Rep. Radcliffe's office has control over the LRB draft from here on out. Please let me know if you have any questions.

I have copied Rep. Radcliffe's staffer, Steve Boe, to this email.

Thanks,

Mike

Mike Murray  
Office of Representative Joe Parisi

**Parisi, Lori**

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**From:** Hanaman, Cathlene  
**Sent:** Wednesday, August 05, 2009 3:12 PM  
**To:** Christina Duerst; Lori Northrop; Mike Barman; Sarah Basford  
**Subject:** Jacket

Steve from Radcliffe's office called asking for a bill jacket for -2067 (a Parisi draft that Parisi shared with him).