



2019 SENATE BILL 139

March 28, 2019 - Introduced by Senators JACQUE, RISSER, COWLES and MARKLEIN, cosponsored by Representatives WICHGERS, BRANDTJEN, EDMING, JAMES, LOUDENBECK, MURPHY, MYERS, SKOWRONSKI, SUBECK and C. TAYLOR. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to repeal* 944.17 (2) (a), 944.17 (2) (c) and 944.17 (2) (d); *to renumber*
2 *and amend* 944.17 (2) (intro.); *to amend* 173.07 (1), 173.10, 173.13 (1) (a) 8.,
3 173.21 (1) (a), 173.22 (4) (d) (intro.), 173.22 (4) (d) 1., 173.22 (4) (d) 2., 173.22 (4)
4 (e) and 301.45 (1d) (b); and *to create* 944.18 and 948.015 (11) of the statutes;
5 **relating to:** sexual contact with an animal and providing a penalty.

Analysis by the Legislative Reference Bureau

Under this bill, it is a Class H felony to have sexual contact with an animal, to promote or otherwise participate in sexual contact with animals, to create, possess, or distribute obscene material depicting a person engaged in sexual contact with an animal, or to advertise, harbor, transport, provide, or obtain an animal for the purpose of having sexual contact with the animal. In addition, it is a Class F felony to force, coerce, entice, or encourage a child under the age of 13 to engage in sexual contact with an animal or a Class G felony if the child is over the age of 13 but under the age of 18. It is also a Class F felony to have sexual contact with an animal in the presence of a child under the age of 13 or a Class G felony if the child is over the age of 13 but under the age of 18. In addition, all felony classifications are increased for second or subsequent violations.

Under current law, it is a Class A misdemeanor for a person to commit an act of sexual gratification involving his or her sex organ and the sex organ, mouth, or anus of an animal, or involving his or her sex organ, mouth, anus, or other body part and the sex organ of an animal.

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Under current law, a person may be required to register as a sex offender for certain crimes that are sexually motivated if the judge determines that it would be in the interest of public protection to have the person register. Under this bill, the new offense of bestiality would be subject to this provision.

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.

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

1 **SECTION 1.** 173.07 (1) of the statutes is amended to read:

2 173.07 (1) **ENFORCEMENT.** A humane officer shall enforce s. ss. 95.21 and 944.18,
3 this chapter, chs. 174 and 951 and ordinances relating to animals enacted by political
4 subdivisions in which the humane officer has jurisdiction under s. 173.03 (3).

5 **SECTION 2.** 173.10 of the statutes is amended to read:

6 **173.10 Investigation of cruelty complaints.** A person may apply for a
7 search warrant under s. 968.12 if there is reason to believe that a violation of s.
8 944.18 or ch. 951 has taken place or is taking place. If the court is satisfied that
9 probable cause exists, it shall issue a search warrant directing a law enforcement
10 officer in the county to proceed immediately to the location of the alleged violation
11 with a doctor of veterinary medicine, if the court determines that a veterinarian is
12 necessary for purposes of the search, and directing the law enforcement officer to
13 search the place designated in the warrant, retaining in his or her custody subject
14 to the order of the court such property or things as are specified in the warrant,
15 including any animal. If the person applying for the search warrant is a humane
16 officer, the warrant shall direct that the humane officer accompany the law
17 enforcement officer who is directed to perform the search. The warrant shall be
18 executed and returned to the court which issued the warrant in accordance with ss.

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1 968.15 and 968.17. This section does not affect other powers and duties of law
2 enforcement officers.

3 **SECTION 3.** 173.13 (1) (a) 8. of the statutes is amended to read:

4 173.13 (1) (a) 8. An animal used in any crime under s. 944.18 or ch. 951 or that
5 constitutes evidence of a crime under s. 944.18 or ch. 951.

6 **SECTION 4.** 173.21 (1) (a) of the statutes is amended to read:

7 173.21 (1) (a) There are reasonable grounds to believe that the owner has used
8 the animal in a crime under s. 944.18 or ch. 951 or that the animal constitutes
9 evidence of a crime under s. 944.18 or ch. 951.

10 **SECTION 5.** 173.22 (4) (d) (intro.) of the statutes is amended to read:

11 173.22 (4) (d) (intro.) If an animal that was taken into custody under s. 173.13
12 (1) (a) 8. or is withheld under s. 173.21 (1) (a) is in custody and its owner is charged
13 with a crime under s. 944.18 or ch. 951, one of the following applies:

14 **SECTION 6.** 173.22 (4) (d) 1. of the statutes is amended to read:

15 173.22 (4) (d) 1. If all of the charges are dismissed or the owner is found not
16 guilty of all charges, the political subdivision or person contracting under s. 173.15
17 (1) with custody of the animal shall return the animal to the owner unless the owner
18 is subject to the restrictions under s. 944.18 (3) (c) 1. or 951.08 (2m) or the animal has
19 been treated as unclaimed or is otherwise subject to a disposition under s. 173.23.

20 **SECTION 7.** 173.22 (4) (d) 2. of the statutes is amended to read:

21 173.22 (4) (d) 2. If the owner is convicted of a crime under s. 944.18 or ch. 951,
22 the animal shall be treated as unclaimed under s. 173.23 (1m), except that the
23 charges under s. 173.23 (1m) (a) 4. do not apply if the court assesses the charges as
24 expenses under s. 173.24.

25 **SECTION 8.** 173.22 (4) (e) of the statutes is amended to read:

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1 173.22 (4) (e) If an animal that was taken into custody under s. 173.13 (1) (a)
2 8. or is withheld under s. 173.21 (1) (a) is in custody and the district attorney or the
3 department of justice notifies the political subdivision or person contracting under
4 s. 173.15 (1) with custody of the animal that the animal's owner will not be charged
5 with a crime under s. 944.18 or ch. 951, the political subdivision or person contracting
6 under s. 173.15 (1) with custody of the animal shall return the animal to its owner
7 unless the owner is subject to the restrictions under s. 944.18 (3) (b) 1. or 951.08 (2m)
8 or the animal has been treated as unclaimed or is otherwise subject to a disposition
9 under s. 173.23.

10 **SECTION 9.** 301.45 (1d) (b) of the statutes is amended to read:

11 301.45 (1d) (b) "Sex offense" means a violation, or the solicitation, conspiracy,
12 or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 944.18,
13 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.075,
14 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s.
15 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was
16 a minor and the person who committed the violation was not the victim's parent.

17 **SECTION 10.** 944.17 (2) (intro.) of the statutes is renumbered 944.17 (2) and
18 amended to read:

19 944.17 (2) ~~Whoever does any of the following~~ commits an act of sexual
20 gratification in public involving the sex organ of one person and the mouth or anus
21 of another is guilty of a Class A misdemeanor.

22 **SECTION 11.** 944.17 (2) (a) of the statutes is repealed.

23 **SECTION 12.** 944.17 (2) (c) of the statutes is repealed.

24 **SECTION 13.** 944.17 (2) (d) of the statutes is repealed.

25 **SECTION 14.** 944.18 of the statutes is created to read:

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1 **944.18 Bestiality. (1) DEFINITIONS.** In this section:

2 (a) “Animal” means any creature, either alive or dead, except a human being.

3 (b) “Obscene material” has the meaning given in s. 944.21 (2) (c).

4 (c) “Photograph or film” means the making of a photograph, motion picture
5 film, video tape, digital image, or any other recording.

6 (d) “Sexual contact” means any of the following types of contact that is not an
7 accepted veterinary medical practice, an accepted animal husbandry practice that
8 provides care for animals, an accepted practice related to the insemination of
9 animals for the purpose of procreation, or an accepted practice related to
10 conformation judging:

11 1. An act between a person and an animal involving physical contact between
12 the sex organ, genitals, or anus of one and the mouth, sex organ, genitals, or anus
13 of the other.

14 2. Any touching or fondling by a person, either directly or through clothing, of
15 the sex organ, genitals, or anus of an animal or any insertion, however slight, of any
16 part of a person’s body or any object into the vaginal or anal opening of an animal.

17 3. Any insertion, however slight, of any part of an animal’s body into the vaginal
18 or anal opening of a person.

19 **(2) PROHIBITED CONDUCT.** No person may knowingly do any of the following:

20 (a) Engage in sexual contact with an animal.

21 (b) Advertise, offer, accept an offer, sell, transfer, purchase, or otherwise obtain
22 an animal with the intent that it be used for sexual contact in this state.

23 (c) Organize, promote, conduct, or participate as an observer of an act involving
24 sexual contact with an animal.

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1 (d) Permit sexual contact with an animal to be conducted on any premises
2 under his or her ownership or control.

3 (e) Photograph or film obscene material depicting a person engaged in sexual
4 contact with an animal.

5 (f) Distribute, sell, publish, or transmit obscene material depicting a person
6 engaged in sexual contact with an animal.

7 (g) Possess with the intent to distribute, sell, publish, or transmit obscene
8 material depicting a person engaged in sexual contact with an animal.

9 (h) Force, coerce, entice, or encourage a child who has not attained the age of
10 13 years to engage in sexual contact with an animal.

11 (i) Engage in sexual contact with an animal in the presence of a child who has
12 not attained the age of 13 years.

13 (j) Force, coerce, entice, or encourage a child who has attained the age of 13
14 years but who has not attained the age of 18 years to engage in sexual contact with
15 an animal.

16 (k) Engage in sexual contact with an animal in the presence of a child who has
17 attained the age of 13 years but who has not attained the age of 18 years.

18 **(3) PENALTIES.** (a) Any person who violates sub. (2) (a) to (g) is guilty of a Class
19 H felony for the first violation and is guilty of a Class F felony for a 2nd or subsequent
20 violation or if the act results bodily harm or death of an animal. Any person who
21 violates sub. (2) (h) or (i) is guilty of a Class F felony for the first violation and is guilty
22 of a Class D felony for a 2nd or subsequent violation. Any person who violates sub.
23 (2) (j) or (k) is guilty of a Class G felony for the first violation and is guilty of a Class
24 E felony for a 2nd or subsequent violation.

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1 (b) Any person who violates sub. (2) is subject to a Class C forfeiture, unless
2 such violation occurs within 3 years after a humane officer issues an abatement order
3 under s. 173.11, in which case the person is subject to a Class A forfeiture for a
4 violation that is covered by the abatement order.

5 (c) If a person has been convicted under sub. (2), the sentencing court shall
6 order, in addition to any other applicable penalties, all of the following:

7 1. That the person may not own, possess, reside with, or exercise control over
8 any animal or engage in any occupation, whether paid or unpaid, at any place where
9 animals are kept or cared for, for not less than 5 years or more than 15 years. In
10 computing the time period, time which the person spent in actual confinement
11 serving a criminal sentence shall be excluded.

12 2. That the person shall submit to a psychological assessment and participate
13 in appropriate counseling at the person's expense.

14 3. That the person shall pay restitution to a person, including any local humane
15 officer or society or county or municipal pound or a law enforcement officer or
16 conservation warden or his or her designee, for any pecuniary loss suffered by the
17 person as a result of the crime. This requirement applies regardless of whether the
18 person is placed on probation under s. 973.09. If restitution is ordered, the court shall
19 consider the financial resources and future ability of the person to pay and shall
20 determine the method of payment. Upon application of an interested party, the court
21 shall schedule and hold an evidentiary hearing to determine the value of any
22 pecuniary loss, as defined in s. 951.18 (4) (a) 1., under this subdivision.

23 (4) SEVERABILITY. The provisions of this section are severable, as provided in
24 s. 990.001 (11).

25 **SECTION 15.** 948.015 (11) of the statutes is created to read:

