

1993 Senate Bill 308

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1993 WISCONSIN ACT 227

AN ACT to amend 36.11 (22) (a) 1. a., 38.12 (11) (a) 1, 46.95 (1) (a), 48.296 (2) (intro.), 48.299 (4) (b), 48.34 (15) (a) 1, 48.346 (1) (e), 48.78 (3), 48.981 (1) (a) 2, 49.02 (7), 51.20 (13) (cr), 165.76 (1) (a), (b) and (c), 165.93 (1) (b), 175.45 (1) (a) to (d), 301.046 (4) (b), 301.048 (4m) (b), 302.045 (2) (c), 304.06 (1) (d) 1, 304.06 (1) (em), 304.063 (2), 343.06 (1) (i), 343.30 (2d), 813.122 (1) (a) 2, 901.04 (3) (c), 939.623 (1), 939.65, 949.03 (1) (b), 968.38 (2) (intro.), 969.035 (1), 969.035 (2) (a), 969.08 (10) (b), 970.03 (4) (a), 971.17 (1m), 971.31 (11), 971.37 (1) (intro.), 972.11 (2) (b) (intro.), 972.11 (2) (d) 1. (intro.), 973.047 (1) (a) and 975.01 (2); and to create 939.22 (21) (t), 939.74 (2) (d), 941.38 (1) (b) 20 and 948.025 of the statutes, relating to: sexual assault and providing penalties.

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

SECTION 1. 36.11 (22) (a) 1. a. of the statutes is amended to read:

36.11 (22) (a) 1. a. The legal definitions of, and penalties for, sexual assault under ss. 940.225 and 948.02 and 948.025, sexual exploitation by a therapist under s. 940.22 and harassment under s. 947.013.

SECTION 2. 38.12 (11) (a) 1. of the statutes is amended to read:

38.12 (11) (a) 1. The legal definitions of, and penalties for, sexual assault under ss. 940.225 and 948.02 and 948.025, sexual exploitation by a therapist under s. 940.22 and harassment under s. 947.013.

SECTION 3. 46.95 (1) (a) of the statutes is amended to read:

46.95 (1) (a) "Domestic abuse" means physical abuse, including a violation of s. 940.225 (1), (2) or (3), or any threat of physical abuse between adult family or household members or by a minor family or household member against an adult family or household member. "Domestic abuse" does not mean physical abuse, including a violation of s. 948.02, 948.025 or 948.03, or any threat of physical abuse against a minor family or household member by an adult family or household member.

SECTION 4. 48.296 (2) (intro.) of the statutes, as created by 1993 Wisconsin Act 32, is amended to read:

48.296 (2) (intro.) In a proceeding under s. 48.12 or 48.13 (12) in which the child is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06, the district attorney or corporation counsel shall apply to the court for an order requiring the child to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease and to disclose the results of that test or series of tests as specified in sub. (4) (a) to (e), if all of the following apply:

SECTION 5. 48.299 (4) (b) of the statutes, as affected by 1993 Wisconsin Act 32, is amended to read:

48.299 (4) (b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a waiver hearing under s. 48.18, a hearing for a child held in custody under s. 48.21, a runaway home hearing under s. 48.227 (4), a hearing under s. 48.296 (4) for a child who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06, a dispositional hearing, or a hearing about changes in placement, revision of dispositional orders or extension of dispositional orders. At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude imma-

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terial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

SECTION 6. 48.34 (15) (a) 1. of the statutes, as affected by 1993 Wisconsin Act 98, is amended to read:

48.34 (15) (a) 1. If the child is adjudicated delinquent on the basis of a violation of s. 940.225 ~~or~~ 948.02 (1) or (2) or 948.025, the court shall require the child to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. If the violation is of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025, the court shall require the child to comply with the reporting requirements under s. 175.45. If the violation is of s. 940.225 (3) or (3m), the court may require the child to comply with the reporting requirements under s. 175.45 if the court determines that the underlying conduct was seriously sexually assaultive in nature and that it would be in the interest of public protection to have the child report under s. 175.45.

SECTION 7. 48.346 (1) (e) of the statutes, as created by 1993 Wisconsin Act 32, is amended to read:

48.346 (1) (e) The procedure under s. 48.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a child who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06 to submit to a test or a series of tests to detect the presence of HIV, as defined in s. 146.025 (1) (b), antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease, as defined in s. 143.07 (1), and to have the results of that test or series of tests disclosed as provided in s. 48.296 (4) (a) to (e).

SECTION 8. 48.78 (3) of the statutes, as affected by 1993 Wisconsin Acts 16, 92 and 95, is amended to read:

48.78 (3) If a child adjudged delinquent on the basis of a violation of s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a), 943.23 (1g), (1m) or (1r), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.60, 948.605 or 948.61 or any crime specified in ch. 940 has escaped from a secured correctional facility, has been allowed to leave a secured correctional facility for a specified time period and is absent from the facility for more than 12 hours after the expiration of the specified period or has run away from the child's placement in the community while under corrective sanctions supervision, the department may release the child's name and any information about the child the department deter-

mines to be necessary for the protection of the public or to secure the child's return to the facility or placement. The department shall promulgate rules establishing guidelines for the release of the child's name or information about the child to the public.

SECTION 9. 48.981 (1) (a) 2. of the statutes is amended to read:

48.981 (1) (a) 2. Sexual intercourse or sexual contact under s. 940.225 ~~or~~ 948.02 or 948.025.

SECTION 10. 49.02 (7) of the statutes is amended to read:

49.02 (7) Whenever the authorities charged with the administration of this section have reason to believe that a person receiving relief is engaging in conduct or behavior prohibited in ch. 944 or ss. 940.225, 948.02, 948.025 or 948.06 to 948.11 they shall promptly notify the law enforcement officials of the county thereof, including facts relating to such person's alleged misconduct or illegal behavior.

SECTION 11. 51.20 (13) (cr) of the statutes, as created by 1993 Wisconsin Act 98, is amended to read:

51.20 (13) (cr) If the subject individual is before the court on a petition filed under a court order under s. 48.30 (5) (c) 1. and is found to have committed a violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025, the court shall require the individual to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis and to comply with the reporting and testing requirements of s. 175.45.

SECTION 12. 165.76 (1) (a), (b) and (c) of the statutes, as created by 1993 Wisconsin Act 16, are amended to read:

165.76 (1) (a) Is in prison or a secured correctional facility, as defined in s. 48.02 (15m), or on probation, parole, supervision, aftercare supervision or corrective sanctions supervision on or after August 12, 1993, for any violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025.

(b) Is found not guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed under s. 51.20 or 971.17 for any violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025.

(c) Is in institutional care on or after August 12, 1993, for any violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025.

SECTION 13. 165.93 (1) (b) of the statutes, as created by 1993 Wisconsin Act 16, is amended to read:

165.93 (1) (b) "Sexual assault" means conduct that is in violation of s. 940.225, 940.227, 948.02, 948.025, 948.03, 948.06, 948.07, 948.08, 948.09 or 948.10.

SECTION 14. 175.45 (1) (a) to (d) of the statutes, as created by 1993 Wisconsin Act 98, are amended to read:

175.45 (1) (a) Is convicted, adjudicated delinquent or found in need of protection or services on or after December 25, 1993, for any violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025.

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(b) Is in prison or a secured correctional facility or on probation, parole, supervision or aftercare supervision on or after December 25, 1993, for any violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025.

(c) Is found not guilty or not responsible by reason of mental disease or defect on or after December 25, 1993, and committed under s. 51.20 or 971.17 for any violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025.

(d) Is in institutional care or on conditional transfer under s. 51.35 (1) or conditional release under s. 971.17 on or after December 25, 1993, for any violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025.

SECTION 15. 301.046 (4) (b) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

301.046 (4) (b) Before a prisoner is confined under sub. (1) for a violation of s. 940.03, 940.05, 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025, the department shall make a reasonable effort to notify the following person, if he or she can be found, in accordance with par. (c) and after receiving a completed card under par. (d): the victim of the crime committed by the inmate or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

SECTION 16. 301.048 (4m) (b) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

301.048 (4m) (b) As soon as possible after a prisoner, probationer or parolee who has violated s. 940.03, 940.05, 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025 enters the intensive sanctions program, the department shall make a reasonable effort to notify the following person, if he or she can be found, in accordance with par. (c) and after receiving a completed card under par. (d): the victim of the crime committed by the inmate or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

SECTION 17. 302.045 (2) (c) of the statutes is amended to read:

302.045 (2) (c) The inmate is incarcerated regarding a violation other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.06, 948.07 or 948.08.

SECTION 18. 304.06 (1) (d) 1. of the statutes, as affected by 1993 Wisconsin Act 97, is amended to read:

304.06 (1) (d) 1. The notice under par. (c) shall inform the offices and persons under par. (c) 1. to 3. of the manner in which they may provide written statements under this subsection and inform persons under par. (c) 3. who are victims, or family members of victims, of crimes specified in s. 940.01, 940.03, 940.05, 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025 of the manner in which they may have direct input in the parole decision-making process under par. (em). The parole commission shall provide notice under this paragraph for an inmate's

first application for parole and, upon request, for subsequent applications for parole.

SECTION 19. 304.06 (1) (em) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

304.06 (1) (em) The parole commission shall promulgate rules that provide a procedure to allow any person who is a victim, or a family member of a victim, of a crime specified in s. 940.01, 940.03, 940.05, 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025 to have direct input in the parole decision-making process.

SECTION 20. 304.063 (2) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

304.063 (2) Before a prisoner is released on parole under s. 302.11, 304.02 or 304.06, if applicable, for a violation of s. 940.01, 940.03, 940.05, 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025, the department shall make a reasonable effort to notify the following person, if he or she can be found, in accordance with sub. (3) and after receiving a completed card under sub. (4): the victim of the crime committed by the inmate or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

SECTION 21. 343.06 (1) (i) of the statutes is amended to read:

343.06 (1) (i) To any person who has been convicted of any offense specified under ss. 940.225, 948.02, 948.025 and 948.07 or adjudged delinquent under ch. 48 for a like or similar offense, when the sentencing court makes a finding that issuance of a license will be inimical to the public safety and welfare. The prohibition against issuance of a license to the offenders shall apply immediately upon receipt of a record of the conviction and the court finding by the secretary, for a period of one year or until discharge from any jail or prison sentence or any period of probation or parole with respect to the offenses specified, whichever date is the later. Receipt by the offender of a certificate of discharge from the department of corrections or other responsible supervising agency, after one year has elapsed since the prohibition began, entitles the holder to apply for an operator's license. The applicant may be required to present the certificate of discharge to the secretary if the latter deems it necessary.

SECTION 22. 343.30 (2d) of the statutes is amended to read:

343.30 (2d) A court may suspend or revoke a person's operating privilege upon conviction of any offense specified under ss. 940.225, 948.02, 948.025 and 948.07, if the court finds that it is inimical to the public safety and welfare for the offender to have operating privileges. The suspension or revocation shall be for one year or until discharge from prison or jail sentence or probation or parole with respect to the offenses specified, whichever date is later. Receipt of a certificate of discharge from the department of corrections or other responsible supervising

ing agency, after one year has elapsed since the suspension or revocation, entitles the holder to reinstatement of operating privileges. The holder may be required to present the certificate to the secretary if the secretary deems necessary.

SECTION 23. 813.122 (1) (a) 2. of the statutes is amended to read:

813.122 (1) (a) 2. Sexual intercourse or sexual contact under s. 940.225 ~~or~~ 948.02 or 948.025.

SECTION 24. 901.04 (3) (c) of the statutes is amended to read:

901.04 (3) (c) In actions under s. 940.225 ~~or~~ 948.02 or 948.025, admissibility of the prior sexual conduct or reputation of a complaining witness.

SECTION 25. 939.22 (21) (t) of the statutes is created to read:

939.22 (21) (t) Repeated acts of sexual assault of the same child, as prohibited in s. 948.025.

SECTION 26. 939.623 (1) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

939.623 (1) In this section, “serious sex crime” means a violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025.

SECTION 27. 939.65 of the statutes is amended to read:

939.65 Prosecution under more than one section permitted. If Except as provided in s. 948.025 (3), if an act forms the basis for a crime punishable under more than one statutory provision, prosecution may proceed under any or all such provisions.

SECTION 28. 939.74 (2) (d) of the statutes is created to read:

939.74 (2) (d) A prosecution for violation of s. 948.025 may be commenced within the time period specified in sub. (1) or by the time the victim reaches the age of 25 years, whichever is later.

SECTION 29. 941.38 (1) (b) 20. of the statutes is created to read:

941.38 (1) (b) 20. Repeated acts of sexual assault of the same child, as prohibited in s. 948.025.

SECTION 30. 948.025 of the statutes is created to read:

948.025 Engaging in repeated acts of sexual assault of the same child. (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of a Class B felony.

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

(3) The state may not charge in the same action a defendant with a violation of this section and with a felony violation involving the same child under ch. 944 or a violation involving the same child under s. 948.02, 948.05, 948.06, 948.07, 948.08, 948.10, 948.11 or

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

SECTION 31. 949.03 (1) (b) of the statutes, as affected by 1993 Wisconsin Act 92, is amended to read:

949.03 (1) (b) The commission or the attempt to commit any crime specified in s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19, 940.20, 940.21, 940.22 (2), 940.225, 940.23, 940.24, 940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), (1m) or (1r), 943.32, 948.02, 948.025, 948.03, 948.04, 948.07, 948.20, 948.30 or 948.51.

SECTION 32. 968.38 (2) (intro.) of the statutes is amended to read:

968.38 (2) (intro.) In a criminal action under s. 940.225, 948.02, 948.025, 948.05 or 948.06, if all of the following apply, the district attorney shall apply to the circuit court for his or her county to order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease and to disclose the results of the test or tests as specified in sub. (4) (a) to (c):

SECTION 33. 969.035 (1) of the statutes is amended to read:

969.035 (1) In this section, “violent crime” means any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.10, 940.19 (2), 940.21, 940.225 (1), 940.23, 941.327, 948.02 (1) or (2), 948.025 or 948.03.

SECTION 34. 969.035 (2) (a) of the statutes is amended to read:

969.035 (2) (a) A person accused of committing an offense under s. 940.01, 940.225 (1) ~~or~~ 948.02 (1) or (2) or 948.025.

SECTION 35. 969.08 (10) (b) of the statutes, as affected by 1993 Wisconsin Acts 50, 92 and 94, is amended to read:

969.08 (10) (b) “Serious crime” means any crime specified in s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (2), 940.20, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.

SECTION 36. 970.03 (4) (a) of the statutes is amended to read:

970.03 (4) (a) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05 or 948.06, the

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court may exclude from the hearing all persons who are not officers of the court, members of the complainant's or defendant's families or others considered by the court to be supportive of the complainant or defendant, the service representative, as defined in s. 895.73 (1) (c), or other persons required to attend, if the court finds that the state or the defendant has established a compelling interest that would likely be prejudiced if the persons were not excluded. The court may consider as a compelling interest, among others, the need to protect a complainant from undue embarrassment and emotional trauma.

SECTION 37. 971.17 (1m) of the statutes, as created by 1993 Wisconsin Act 98, is amended to read:

971.17 **(1m)** SEXUAL ASSAULT; REGISTRATION AND TESTING. If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a violation of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis and to comply with the reporting requirements of s. 175.45.

SECTION 38. 971.31 (11) of the statutes is amended to read:

971.31 **(11)** In actions under s. 940.225 ~~or~~ 948.02 or 948.025, evidence which is admissible under s. 972.11 (2) must be determined by the court upon pretrial motion to be material to a fact at issue in the case and of sufficient probative value to outweigh its inflammatory and prejudicial nature before it may be introduced at trial.

SECTION 39. 971.37 (1) (intro.) of the statutes is amended to read:

971.37 **(1)** (intro.) In this section, "child sexual abuse" means an alleged violation of s. 940.225, 948.02, 948.025, 948.05 or 948.06 if the alleged victim is a minor and the person accused of, or charged with, the violation:

SECTION 40. 972.11 (2) (b) (intro.) of the statutes is amended to read:

972.11 **(2)** (b) (intro.) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05 or 948.06, any evidence concerning the complaining witness's prior sexual conduct or opinions of the witness's

prior sexual conduct and reputation as to prior sexual conduct shall not be admitted into evidence during the course of the hearing or trial, nor shall any reference to such conduct be made in the presence of the jury, except the following, subject to s. 971.31 (11):

SECTION 41. 972.11 (2) (d) 1. (intro.) of the statutes, as created by 1993 Wisconsin Act 97, is amended to read:

972.11 **(2)** (d) 1. (intro.) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05 or 948.06, evidence of the manner of dress of the complaining witness at the time when the crime occurred is admissible only if it is relevant to a contested issue at trial and its probative value substantially outweighs all of the following:

SECTION 42. 973.047 (1) (a) of the statutes, as affected by 1993 Wisconsin Act 98, is amended to read:

973.047 **(1)** (a) If a court imposes a sentence or places a person on probation for a violation of s. 940.225 ~~or~~ 948.02 (1) or (2) or 948.025, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. If the violation is of s. 940.225 (1) or (2) ~~or~~ 948.02 (1) or (2) or 948.025, the court shall require the person to comply with the reporting requirements under s. 175.45. If the violation is of s. 940.225 (3) or (3m), the court may require the person to comply with the reporting requirements under s. 175.45 if the court determines that the underlying conduct was seriously sexually assaultive in nature and that it would be in the interest of public protection to have the person report under s. 175.45.

SECTION 43. 975.01 (2) of the statutes is amended to read:

975.01 **(2)** The legislature finds and declares that persons violating s. 940.225, 948.02, 948.025 or 948.06 or committing crimes when motivated by a desire for sexual excitement may be in need of specialized treatment. The legislature intends that the department should provide treatment for those persons.

SECTION 44. Initial applicability. This act first applies to offenses committed on the effective date of this SECTION.