

State of Wisconsin



1995 Assembly Bill 908

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1995 WISCONSIN ACT 456

AN ACT to amend 48.981 (1) (a) 2., 302.045 (2) (c), 813.122 (1) (a) 2., 901.04 (3) (c), 939.626 (1), 939.74 (2) (c), 948.07 (1), 949.03 (1) (b), 968.38 (2) (intro.), 970.03 (4) (a), 971.31 (11), 971.37 (1) (intro.), 972.11 (2) (b) (intro.) and 972.11 (2) (d) 1. (intro.); and to create 948.095 of the statutes; relating to: sexual assault of a student by certain school employees and providing a penalty.

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

SECTION 1. 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, 948.02 ~~or~~ 948.025 or 948.095.

SECTION 2. 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, 948.055, 948.06, 948.07 ~~or~~ 948.08 or 948.095.

SECTION 3. 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, 948.02 ~~or~~ 948.025 or 948.095.

SECTION 4. 901.04 (3) (c) of the statutes is amended to read:

901.04 (3) (c) In actions under s. 940.225, 948.02 ~~or~~ 948.025 or 948.095, admissibility of the prior sexual conduct or reputation of a complaining witness.

SECTION 5. 939.626 (1) of the statutes is amended to read:

939.626 (1) In this section, "child sex crime" means a violation of s. 948.02, 948.025, 948.05, 948.06, 948.07 ~~or~~ 948.08 or 948.095.

SECTION 6. 939.74 (2) (c) of the statutes is amended to read:

939.74 (2) (c) A prosecution for violation of s. 948.02, 948.03, 948.04, 948.05, 948.06, 948.07 ~~or~~ 948.08 or 948.095 shall be commenced before the victim reaches the age of 26 years, or be barred.

SECTION 7. 948.07 (1) of the statutes is amended to read:

948.07 (1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02 or 948.095.

SECTION 8. 948.095 of the statutes is created to read:

948.095 Sexual assault of a student by a school instructional staff person. (1) In this section:

(a) "School" means a public or private elementary or secondary school.

(b) "School staff" means any person who provides services to a school or a school board, including an employe of a school or a school board and a person who provides services to a school or a school board under a contract.

* Section 991.11, WISCONSIN STATUTES 1993-94: 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].

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class D felony if all of the following apply:

(a) The child is enrolled as a student in a school or a school district.

(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.

SECTION 9. 949.03 (1) (b) of the statutes 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, 948.095, 948.20, 948.30 or 948.51.

SECTION 10. 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 or 948.095, 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 11. 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 or 948.095, the 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 12. 971.31 (11) of the statutes is amended to read:

971.31 (11) In actions under s. 940.225, 948.02 ~~or~~ 948.025 or 948.095, evidence which is admissible under s. 972.11 (2) must be determined by the court upon pre-trial 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 13. 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 or 948.095 if the alleged victim is a minor and the person accused of, or charged with, the violation:

SECTION 14. 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 or 948.095, 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 15. 972.11 (2) (d) 1. (intro.) of the statutes 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 or 948.095, 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 16. Initial applicability.

(1) This act first applies to offenses occurring on the effective date of this subsection.