

CHAPTER 948

CRIMES AGAINST CHILDREN

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NOTE: Chapter 948 as shown here was created by 1987 Wis. Act 332 eff. 7-1-89. Chapter 948, "Crimes Against Animals" is effective until 7-1-89 and is shown in smaller type following this chapter. It is also shown as renumbered chapter 951.

948.01 Definitions. In this chapter, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:

(1) "Child" means a person who has not attained the age of 18 years.

(2) "Mental harm" means substantial harm to a child's psychological or intellectual functioning which may be evidenced by a substantial degree of certain characteristics of the child including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior. "Mental harm" may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(3) "Person responsible for the child's welfare" includes the child's parent; guardian; foster parent; an employe of a public or private residential home, institution or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child.

(4) "Sodomasochistic abuse" means the infliction of force, pain or violence upon a person for the purpose of sexual arousal or gratification.

(5) "Sexual contact" means any intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant.

(6) "Sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(7) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, meaning vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either

by a person or upon the person's instruction. The emission of semen is not required;

(b) Bestiality;

(c) Masturbation;

(d) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or

(e) Lewd exhibition of the genitals or pubic area.

History: 1987 a. 332.

948.015 Other offenses against children. In addition to the offenses under this chapter, offenses against children include, but are not limited to, the following:

(1) Sections 103.19 to 103.32 and 103.64 to 103.82, relating to employment of minors.

(2) Section 118.13, relating to pupil discrimination.

(3) Section 125.07, relating to furnishing alcohol beverages to underage persons.

(4) Section 146.01, relating to infant blindness.

(5) Section 151.03, relating to lead poisoning.

(6) Sections 161.01 (6) and 161.49, relating to distributing controlled substances to children.

(7) Section 444.09 (4), relating to boxing.

History: 1987 a. 332.

948.02 Sexual assault of a child. (1) FIRST DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class B felony.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony.

(3) FAILURE TO ACT. A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

(4) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(5) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1987 a. 332.

948.03 Physical abuse of a child. (1) DEFINITIONS. In this section, "recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.

(2) INTENTIONAL CAUSATION OF BODILY HARM. (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class C felony.

(b) Whoever intentionally causes bodily harm to a child is guilty of a Class D felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class C felony.

(3) RECKLESS CAUSATION OF BODILY HARM. (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class D felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class E felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class D felony.

(4) FAILING TO ACT TO PREVENT BODILY HARM. (a) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that is caused by the other person.

(b) A person responsible for the child's welfare is guilty of a Class D felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.

(5) PENALTY ENHANCEMENT; ABUSE BY CERTAIN PERSONS. If a person violates sub. (2) or (3) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

(6) TREATMENT THROUGH PRAYER. A person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under s. 48.981 (3) (c) 4 or 448.03 (6) in lieu of medical or surgical treatment.

History: 1987 a. 332.

948.04 Causing mental harm to a child. (1) Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child is guilty of a Class C felony.

(2) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking

action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

History: 1987 a. 332.

948.05 Sexual exploitation of a child. (1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is guilty of a Class C felony:

(a) Employs, uses, persuades, induces, entices or coerces any child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying in any way the conduct.

(b) Photographs, films, videotapes, records the sounds of or displays in any way a child engaged in sexually explicit conduct.

(c) Produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes or possesses with intent to sell or distribute, any undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of a child engaging in sexually explicit conduct.

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a), (b) or (c) is guilty of a Class C felony.

(3) It is an affirmative defense to prosecution for violation of this section if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant, or the defendant's agent or client, a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

History: 1987 a. 332.

948.06 Incest with a child. Whoever does any of the following is guilty of a Class C felony:

(1) Marries or has sexual intercourse or sexual contact with a child he or she knows is related, either by blood or adoption, and the child is related in a degree of kinship closer than 2nd cousin; or

(2) Is a person responsible for the child's welfare and:

(a) Has knowledge that another person related to the child by blood or adoption in a degree of kinship closer than 2nd cousin has had or intends to have sexual intercourse or sexual contact with the child;

(b) Is physically and emotionally capable of taking action that will prevent the intercourse or contact from occurring or being repeated;

(c) Fails to take that action; and

(d) The failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

History: 1987 a. 332.

948.07 Child enticement. Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class C felony:

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

(2) Causing the child to engage in prostitution.

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(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.

(4) Taking pictures of the child engaging in sexually explicit conduct.

(5) Causing bodily or mental harm to the child.

(6) Giving or selling to the child a controlled substance in violation of ch. 161.

History: 1987 a. 332.

948.08 Soliciting a child for prostitution. Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a Class C felony.

History: 1987 a. 332.

948.09 Sexual intercourse with a child age 16 or older.

Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor.

History: 1987 a. 332.

948.10 Exposing a sex organ. Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose a sex organ or exposes a sex organ to a child is guilty of a Class A misdemeanor. This section does not apply if the child is the defendant's spouse.

History: 1987 a. 332.

948.11 Exposing a child to harmful material. (1) DEFINITIONS. In this section:

(a) "Harmful material" means:

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, sadomasochistic abuse, physical torture or brutality and which is harmful to children; or

2. Any book, pamphlet, magazine, printed matter however reproduced or sound recording which contains any matter enumerated in subd. 1, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, sadomasochistic abuse, physical torture or brutality and which, taken as a whole, is harmful to children.

(b) "Harmful to children" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of children;

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for children; and

3. Lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole.

(c) "Knowledge of the nature of the material" means knowledge of the character and content of any material described herein.

(d) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(2) **CRIMINAL PENALTIES.** (a) Whoever, with knowledge of the nature of the material, sells, exhibits, transfers or loans to

a child any material which is harmful to children, with or without monetary consideration, is guilty of a Class E felony.

(b) Whoever, with knowledge of the nature of the material, possesses material which is harmful to children with the intent to sell, exhibit, transfer or loan the material to a child is guilty of a Class A misdemeanor.

(c) It is an affirmative defense to prosecution for violation of this section if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by evidence that is clear, satisfactory and convincing.

(3) **EXTRADITION.** If any person is convicted under sub. (2) and cannot be found in this state, the governor or any person performing the functions of governor by authority of the law shall, unless the convicted person has appealed from the judgment of contempt or conviction and the appeal has not been finally determined, demand his or her extradition from the executive authority of the state in which the person is found.

History: 1987 a. 332.

948.12 Possession of child pornography. Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape or other pictorial reproduction of a child engaged in sexually explicit conduct under all of the following circumstances is guilty of a Class E felony:

(1) The person knows that he or she possesses the material.

(2) The person knows the character and content of the sexually explicit conduct shown in the material.

(3) The person knows or reasonably should know that the child engaged in sexually explicit conduct has not attained the age of 18 years.

History: 1987 a. 332.

948.20 Abandonment of a child. Whoever, with intent to abandon the child, leaves any child in a place where the child may suffer because of neglect is guilty of a Class D felony.

History: 1977 c. 173; 1987 a. 332 s. 35; Stats. 1987 s. 948.20.

948.21 Neglecting a child. (1) Any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of a Class A misdemeanor or, if death is a consequence, a Class C felony.

(2) Under sub. (1), a person responsible for the child's welfare contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.

History: 1987 a. 332.

948.22 Failure to support. (1) In this section:

(a) "Child support" means an amount which a person is legally obligated to provide under s. 49.90, 767.25 or 767.51.

(b) 1. "Grandchild support" means an amount which a person is legally obligated to provide under s. 49.90 (1) (a) 2 and (11).

2. Subdivision 1 does not apply after December 31, 1989.

(c) "Spousal support" means an amount which a person is legally obligated to provide under s. 49.90 or 767.26.

(2) Before January 1, 1990, any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class E felony.

(2m) After December 31, 1989, any person who intentionally fails for 120 or more consecutive days to provide spousal or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class E felony.

(3) Before January 1, 1990, any person who intentionally fails for less than 120 consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(3m) After December 31, 1989, any person who intentionally fails for less than 120 consecutive days to provide spousal or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(4) Before January 1, 1990, under this section, the following is prima facie evidence of intentional failure to provide child, grandchild or spousal support:

(a) Before January 1, 1990, for a person subject to a court order requiring child, grandchild or spousal support payments, failure to pay any child, grandchild or spousal support payment required under the order.

(b) Before January 1, 1990, for a person not subject to a court order requiring child, grandchild or spousal support payments, failure to provide support equal to at least the amount set forth under s. 49.19 (1) (a) 1 or causing a spouse, grandchild or child to become a dependent person as defined in s. 49.01 (2).

(4m) After December 31, 1989, under this section, the following is prima facie evidence of intentional failure to provide child or spousal support:

(a) After December 31, 1989, for a person subject to a court order requiring child or spousal support payments, failure to pay any child or spousal support payment required under the order.

(b) After December 31, 1989, for a person not subject to a court order requiring child or spousal support payments, failure to provide support equal to at least the amount set forth under s. 49.19 (1) (a) 1 or causing a spouse or child to become a dependent person as defined in s. 49.01 (2).

(5) Before January 1, 1990, under this section, it is not a defense that child, grandchild or spousal support is provided wholly or partially by any other person.

(5m) After December 31, 1989, under this section, it is not a defense that child or spousal support is provided wholly or partially by any other person.

(6) Before January 1, 1990, under this section, affirmative defenses include but are not limited to inability to provide child, grandchild or spousal support. A person may not demonstrate inability to provide child, grandchild or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(6m) After December 31, 1989, under this section, affirmative defenses include but are not limited to inability to provide child or spousal support. A person may not demonstrate inability to provide child or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(7) (a) Before January 1, 1990, before trial, upon petition by the complainant and notice to the defendant, the court

may enter a temporary order requiring payment of child, grandchild or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class E felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. Before January 1, 1990, if a court order requiring the defendant to pay child, grandchild or spousal support exists, order the defendant to pay the amount required including any amount necessary to meet a past legal obligation for support and, if appropriate, modify that order.

2. Before January 1, 1990, if no court order described under subd. 1 exists, enter such an order and do so, for orders for child or spousal support, after considering s. 767.25.

(c) Before January 1, 1990, an order under par. (a) or (b), other than an order for grandchild support, constitutes an income assignment under s. 767.265 and may be enforced under s. 767.30. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under s. 767.29.

(7m) (a) After December 31, 1989, before trial, upon petition by the complainant and notice to the defendant, the court may enter a temporary order requiring payment of child or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class E felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. After December 31, 1989, if a court order requiring the defendant to pay child or spousal support exists, order the defendant to pay the amount required including any amount necessary to meet a past legal obligation for support and, if appropriate, modify that order.

2. After December 31, 1989, if no court order described under subd. 1 exists, enter such an order after considering s. 767.25.

(c) After December 31, 1989, an order under par. (a) or (b) constitutes an income assignment under s. 767.265 and may be enforced under s. 767.30. Any payment ordered under par. (a) or (b) shall be made in the manner provided under s. 767.29.

(8) The provisions of any court order requiring payment of grandchild support payments, issued under this section prior to January 1, 1990, do not apply after December 31, 1989.

History: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22.

948.23 Concealing death of child. Any person who conceals the corpse of any issue of a woman's body with intent to prevent a determination of whether it was born dead or alive is guilty of a Class E felony.

History: 1977 c. 173; 1987 a. 332 s. 47; Stats. 1987 s. 948.23.

948.24 Unauthorized placement for adoption. (1) Whoever does any of the following is guilty of a Class D felony:

(a) Places or agrees to place his or her child for adoption for anything exceeding the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services rendered in connection with the adoption.

(b) For anything of value, solicits, negotiates or arranges the placement of a child for adoption except under s. 48.833.

(c) In order to receive a child for adoption, gives anything exceeding the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services rendered in connection with the adoption.

(2) This section does not apply to placements under s. 48.839, 48.98 or 48.988.

History: 1981 c. 81; 1987 a. 332 s. 50; Stats. 1987 s. 948.24.

948.30 Abduction of another's child; constructive custody.

(1) Any person who, for any unlawful purpose, does any of the following is guilty of a Class C felony:

(a) Takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) Detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(2) Any person who, for any unlawful purpose, does any of the following is guilty of a Class B felony:

(a) By force or threat of imminent force, takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) By force or threat of imminent force, detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(3) For purposes of subs. (1) (a) and (2) (a), a child is in the custody of his or her parent, guardian or legal custodian if:

(a) The child is in the actual physical custody of the parent, guardian or legal custodian; or

(b) The child is not in the actual physical custody of his or her parent, guardian or legal custodian, but the parent, guardian or legal custodian continues to have control of the child.

History: 1987 a. 332.

948.31 Interference with custody by parent or others. (1)

(a) In this subsection, "legal custodian of a child" means:

1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, custody, paternity, guardianship or habeas corpus.

2. The department of health and social services or any person, county department under s. 46.215, 46.22 or 46.23 or licensed child welfare agency, if custody of the child has been transferred under ch. 48 to the department, person or agency.

(b) Except as provided under ch. 48, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court-approved visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class E felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child.

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents, or the child's mother in the case of a nonmarital child where parents do not subsequently intermarry under s. 767.60, without the consent of the parents or the mother, is guilty of a Class E felony. This subsection is not applicable if custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class E felony:

(a) Intentionally conceals a child from the child's other parent.

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining custody rights to a child, takes the child or causes the child to leave with intent to deprive the other parent of physical custody as defined in s. 822.02 (9).

(c) After issuance of a temporary or final order specifying joint custody rights, takes a child from or causes a child to

leave the other parent in violation of the custody order or withholds a child for more than 12 hours beyond the court-approved visitation period.

(4) (a) It is an affirmative defense to prosecution for violation of this section if the action:

1. Is taken by a parent or by a person authorized by a parent to protect his or her child from imminent physical harm or sexual assault;

2. Is taken by a parent fleeing from imminent physical harm to himself or herself;

3. Is consented to by the other parent or any other person or agency having legal custody of the child; or

4. Is otherwise authorized by law.

(b) A defendant who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(5) The venue of an action under this section is prescribed in s. 971.19 (8).

(6) In addition [to any] other penalties provided for violation of this section, a court may order a violator to pay restitution, regardless of whether the violator is placed on probation under s. 973.09, to provide reimbursement for any reasonable expenses incurred by any person or any governmental entity in locating and returning the child. Any such amounts paid by the violator shall be paid to the person or governmental entity which incurred the expense on a pro-rated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

NOTE: The bracketed words "to any" were inadvertently dropped from 1987 Wis. Act 332, which created this chapter, eff. 7-1-89.

History: 1987 a. 332.

"Imminent physical harm" under (4) discussed. State v. McCoy, 143 W (2d) 274, 421 NW (2d) 107 (1988).

948.40 Contributing to the delinquency of a child. (1)

No person may intentionally encourage or contribute to the delinquency of a child as defined in s. 48.02 (3m). This subsection includes intentionally encouraging or contributing to an act by a child under the age of 12 which would be a delinquent act if committed by a child 12 years of age or older.

(2) No person who is responsible for the child's welfare may, by disregard of the welfare of the child, contribute to the delinquency of the child. This subsection includes disregard which contributes to an act by a child under the age of 12 which would be a delinquent act if committed by a child 12 years of age or older.

(3) Under this section, a person encourages or contributes to the delinquency of a child although the child does not actually become delinquent if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become delinquent.

(4) A person who violates this section is guilty of a Class A misdemeanor, except:

(a) If death is a consequence, the person is guilty of a Class C felony; or

(b) If the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class D felony.

History: 1987 a. 332.

948.50 Strip search by school employe. (1) The legislature intends, by enacting this section, to protect pupils from being strip searched. By limiting the coverage of this section, the legislature is not condoning the use of strip searches under other circumstances.

(2) In this section:

(a) "School" means a public, parochial or private school which provides an educational program for one or more grades between kindergarten and grade 12 and which is commonly known as a kindergarten, elementary school, middle school, junior high school, senior high school or high school.

(b) "Strip search" means a search in which a person's genitals, pubic area, buttock or anus, or a female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

(3) Any official, employe or agent of any school or school district who conducts a strip search of any pupil is guilty of a Class B misdemeanor.

(4) This section does not apply to a search of any person who:

(a) Is serving a sentence, pursuant to a conviction, in a jail, state prison or house of correction.

(b) Is placed in or transferred to a secured correctional facility.

(c) Is committed, transferred or admitted under ch. 51, 971 or 975.

(5) This section does not apply to any law enforcement officer conducting a strip search under s. 968.255.

History: 1983 a. 489; 1987 a. 332 s. 38; Stats 1987 s. 948.50.

948.51 Hazing. (1) In this section "forced activity" means any activity which is a condition of initiation or admission into or affiliation with an organization, regardless of a student's willingness to participate in the activity.

(2) No person may intentionally or recklessly engage in acts which endanger the physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating in connection with a school, college or university. Under those circumstances, prohibited acts may include any brutality of a physical nature, such as whipping, beating, branding, forced consumption of any food, liquor, drug or other substance, forced confinement or any other forced activity which endangers the physical health or safety of the student.

(3) Whoever violates sub. (2) is guilty of:

(a) A Class A misdemeanor if the act results in or is likely to result in bodily harm to another.

(b) A Class E felony if the act results in great bodily harm or death to another.

History: 1983 a. 356; 1987 a. 332 s. 32; Stats 1987 s. 948.51.

948.60 Possession of a dangerous weapon by a child. (1) In this section, "dangerous weapon" means any firearm having a barrel less than 12 inches long; any electric weapon, as defined in s. 941.295 (4); metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather; a cestus or similar material weighted with metal or other substance and worn on the hand; a shuriken or any similar pointed star-like object intended to injure a person when thrown; or a manrikigusari or similar length of chain having weighted ends.

(2) Any child who possesses or goes armed with a dangerous weapon or any person who intentionally sells, loans or gives a dangerous weapon to a child is guilty of a Class A misdemeanor. A child who has violated this subsection is subject to the provisions of ch. 48 unless jurisdiction is waived under s. 48.18.

(3) This section does not apply to a child who possesses or is armed with a dangerous weapon when the dangerous weapon is being used in target practice under the supervision

of an adult or in a course of instruction in the traditional and proper use of the dangerous weapon under the supervision of an adult. This section does not apply to an adult who transfers a dangerous weapon to a child for use only in target practice under the adult's supervision or in a course of instruction in the traditional and proper use of the dangerous weapon under the adult's supervision.

History: 1987 a. 332.

948.61 Dangerous weapons on school premises. (1) In this section:

(a) "Dangerous weapon" has the meaning specified in s. 939.22 (10).

(b) "School" means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

(c) "School premises" means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.

(2) Any person who knowingly possesses or goes armed with a dangerous weapon on school premises is guilty of:

(a) A Class A misdemeanor.

(b) A Class E felony, if the violation is the person's 2nd or subsequent violation of this section within a 5-year period, as measured from the dates the violations occurred.

(3) This section does not apply to any person who:

(a) Uses a weapon solely for school-sanctioned purposes.

(b) Engages in military activities, sponsored by the federal or state government, when acting in the discharge of his or her official duties.

(c) Is a law enforcement officer acting in the discharge of his or her official duties.

(d) Participates in a convocation or firearms safety course authorized by school authorities in which firearms or other weapons of collectors or instructors are handled or displayed.

(e) Drives a motor vehicle in which a dangerous weapon is located onto school premises for school-sanctioned purposes or for the purpose of delivering or picking up passengers or property. The weapon may not be removed from the vehicle or be used in any manner.

(f) Possesses an unloaded firearm while traversing school premises for the purpose of gaining access to public or private lands open to hunting if the entry on school premises is authorized by school authorities.

(g) Possesses or uses a firearm for hunting on school premises in accordance with ch. 29, if hunting on the premises is authorized by school authorities.

(4) A child who has violated this section is subject to the provisions of ch. 48, unless jurisdiction is waived under s. 48.18.

History: 1987 a. 332.

948.62 Receiving stolen property from a child. (1) Whoever intentionally receives stolen property from a child or conceals stolen property received from a child is guilty of:

(a) A Class E felony, if the value of the property does not exceed \$500.

(b) A Class D felony, if the value of the property exceeds \$500 but does not exceed \$2,500.

(c) A Class C felony, if the value of the property exceeds \$2,500.

(2) Under this section, proof of all of the following is prima facie evidence that property received from a child was stolen and that the person receiving the property knew it was stolen:

(a) That the value of the property received from the child exceeds \$500.

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(b) That there was no consent by a person responsible for the child's welfare to the delivery of the property to the person.

History: 1987 a. 332.

948.63 Receiving property from a child. Whoever does either of the following is guilty of a Class A misdemeanor:

(1) As a dealer in secondhand articles or junk, purchases any personal property, except old rags and waste paper, from

any child, without the written consent of his or her parent or guardian; or

(2) As a pawnbroker or other person who loans money and takes personal property as security therefor, receives personal property as security for a loan from any child without the written consent of his or her parent or guardian.

History: 1971 c. 228; 1977 c. 173; 1987 a. 332 s. 40; Stats. 1987 s. 948.63.

NOTE: 1987 Wisconsin Act 332 rennumbers Chapter 948 "Crimes Against Animals" to be Chapter 951, eff. 7-1-89. Prior to that date, ch. 948, as affected by 1987 Wis. Act 248, is shown in small type.

CHAPTER 948

CRIMES AGAINST ANIMALS

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948.01 Definitions. In this chapter:

- (1) "Animal" includes every living:
 (a) Warmblooded creature, except a human being;
 (b) Reptile; or
 (c) Amphibian.

(2) "Cruel" means causing unnecessary and excessive pain or suffering or unjustifiable injury or death.

(3) "Farm animal" means any warmblooded animal normally raised on farms in the United States and used or intended for use as food or fiber.

(4) "Law enforcement officer" has the meaning assigned under s. 967.02 (5) and includes a humane officer under s. 58.07 but does not include a conservation warden appointed under s. 23.10.

History: 1973 c. 314; 1983 a. 189; 1987 a. 248.

Legislative Council Note, 1973: The definition of "animal" is based on s. 346.20, Minn. Stats. Anno. (1971). The term includes not only animals strictly so-called but birds and other living warmblooded creatures except people. [Bill 16-S]

948.015 Construction and application. This chapter shall not be interpreted as controverting any law regulating the taking of game as defined in s. 29.01 (4) to (7) and (10), the trapping of animals, the use of live animals in dog trials or in the training of hunting dogs or the slaughter of animals by persons acting under state or federal law.

History: 1973 c. 314; 1983 a. 27 s. 2202 (38).

948.02 Mistreating animals. No person may treat any animal, whether belonging to himself or another, in a cruel manner. This section does not prohibit bona fide experiments carried on for scientific research or normal and accepted veterinary practices.

History: 1973 c. 314.

Legislative Council Note, 1973: This general anticruelty statute is a restatement of present s. 947.10 (1) (a); however, the intent of the wrongdoer is no longer a controlling factor. Specific exception is provided for bona fide experiments and accepted veterinary practices. [Bill 16-S]

Conviction under this section does not require proof of intent or negligence. *State v. Stanfield*, 105 W (2d) 553, 314 NW (2d) 339 (1982).

948.025 Decompression prohibited. No person may kill an animal by means of decompression.

History: 1985 a. 48.

948.03 Dognapping and catnapping. No person may take the dog or cat of another from one place to another without the owner's consent or cause such a dog or cat to be confined or carried out of this state or held for any purpose without the owner's consent. This section does not apply to law enforcement officers or humane society agents engaged in the exercise of their official duties.

History: 1973 c. 314.

948.04 Leading animal from motor vehicle. No person shall lead any animal upon a highway from a motor vehicle or from a trailer or semitrailer drawn by a motor vehicle.

History: 1973 c. 314.

948.05 Transportation of animals. No person may transport any animal in or upon any vehicle in a cruel manner.

History: 1973 c. 314.

948.06 Use of poisonous and controlled substances. No person may expose any domestic animal owned by another to any known poisonous substance or controlled substance listed in s. 161.14, whether mixed with meat or other food or not, so that the substance is liable to be eaten by the animal and for the purpose of harming the animal. This section shall not apply to poison used on one's own premises and designed for the purpose of rodent or pest

extermination nor to the use of a controlled substance in bona fide experiments carried on for scientific research or in accepted veterinary practices.

History: 1973 c. 314.

948.07 Use of certain devices prohibited. No person may directly or indirectly, or by aiding, abetting or permitting the doing thereof, either put, place, fasten, use or fix upon or to any animal used or readied for use for a work purpose or for use in an exhibition, competition, rodeo, circus or other performance, any of the following devices: a bristle bur, tack bur or like device; or a poling device used to train a horse to jump which is charged with electricity or to which have been affixed nails, tacks or other sharp points.

History: 1973 c. 314.

948.08 Instigating fights between animals. (1) No person may intentionally instigate, promote, aid or abet as a principal, agent or employe, or participate in the earnings from, or intentionally maintain or allow any place to be used for a cockfight, dog fight, bullfight or other fight between the same or different kinds of animals or between an animal and a person. This section does not prohibit events or exhibitions commonly featured at rodeos or bloodless bullfights.

(2) No person may own, possess, keep or train any animal with the intent that the animal be engaged in an exhibition of fighting.

(2m) If a person has been convicted under sub. (1) or (2), the person may not own, possess, keep or train any animal for a period of 5 years after the conviction. In computing the 5-year period, time which the person spent in actual confinement serving a criminal sentence shall be excluded. The person may move the sentencing court to have this requirement waived. The court may waive the requirement except that the waiver may not authorize the person to own, possess, keep or train animals of the species involved in the offense under sub. (1) or (2).

(3) No person may intentionally be a spectator at a cockfight, dog fight, bullfight or other fight between the same or different kinds of animals or between an animal and a person.

History: 1973 c. 314; 1981 c. 160; 1983 a. 95.

948.09 Shooting at caged or staked animals. No person may instigate, promote, aid or abet as a principal, agent, employe, participant or spectator, or participate in the earnings from, or intentionally maintain or allow any place to be used for the shooting, killing or wounding with a firearm or any deadly weapon, any animal that is tied, staked out, caged or otherwise intentionally confined in a man-made enclosure, regardless of size. Nothing in this section prohibits the shooting of any wild game in its wild state or the shooting of game birds and waterfowl at licensed game farms or licensed shooting preserves.

History: 1973 c. 314.

948.10 Sale of baby rabbits, chicks and other fowl. (1) No person may sell, offer for sale, barter or give away living chicks, ducklings or other fowl unless he provides proper brooder facilities for the care of such chicks, ducklings or other fowl during the time they are in his possession.

(2) No retailer, as defined in s. 100.30 (2) (e), may sell, offer for sale, barter or give away living baby rabbits, baby chicks, ducklings or other fowl under 2 months of age in any quantity less than 6 unless in the business of selling these animals for agricultural, wildlife or scientific purposes.

History: 1973 c. 314; 1979 c. 34 s. 2102 (3) (a); 1979 c. 176; 1983 a. 189 s. 329 (20).

948.11 Artificially colored animals; sale. No person may sell, offer for sale, raffle, give as a prize or premium, use as an advertising device or display living chicks, ducklings, other fowl or rabbits that have been dyed or otherwise colored artificially.

History: 1973 c. 314.

948.13 Providing proper food and drink to confined animals. No person owning or responsible for confining or impounding any animal may fail to supply the animal with a sufficient supply of food and water as prescribed in this section.

(1) **FOOD.** The food shall be sufficient to maintain all animals in good health.

(2) **WATER.** If potable water is not accessible to the animals at all times, it shall be provided daily and in sufficient quantity for the health of the animal.

History: 1973 c. 314; 1983 a. 95.

948.14 Providing proper shelter. No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter as prescribed in this section. In the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in the particular county where the animal or shelter is located.

(1) **INDOOR STANDARDS.** Minimum indoor standards of shelter shall include:

(a) *Ambient temperatures.* The ambient temperature shall be compatible with the health of the animal.

(b) *Ventilation.* Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

(2) **OUTDOOR STANDARDS.** Minimum outdoor standards of shelter shall include:

(a) *Shelter from sunlight.* When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. As used in this paragraph, "caged" does not include farm fencing used to confine farm animals.

(b) *Shelter from inclement weather.* 1. Animals generally. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.

2. Dogs. If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a shelter of suitable size to accommodate the dog shall be provided.

(3) **SPACE STANDARDS.** Minimum space requirements for both indoor and outdoor enclosures shall include:

(a) *Structural strength.* The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

(b) *Space requirements.* Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.

(4) **SANITATION STANDARDS.** Minimum standards of sanitation for both indoor and outdoor enclosures shall include periodic cleaning to remove excreta and other waste materials, dirt and trash so as to minimize health hazards.

History: 1973 c. 314.

948.15 Animals; neglected or abandoned; police powers. (1) No person may abandon any animal.

(2) Any law enforcement officer may remove, shelter and care for any animal found to be cruelly exposed to the weather, starved or denied adequate water, neglected, abandoned or otherwise treated in a cruel manner and may deliver such animal to another person to be sheltered, cared for and given medical attention, if necessary. In all cases the owner, if known, shall be immediately notified and such officer, or other person, having possession of the animal shall have a lien thereon for its care, keeping and medical attention and the expense of notice.

(3) If the owner or custodian is unknown and cannot with reasonable effort be ascertained, or does not within 5 days after notice redeem the animal by paying the expenses incurred, it may be treated as a stray and dealt with as such.

(4) Whenever in the opinion of any such officer an animal is hopelessly injured or diseased so as to be beyond the probability of recovery it shall be lawful for such officer to kill such animal and the owner thereof shall not recover damages for the killing of such animal unless he shall prove that such killing was unwarranted.

History: 1973 c. 314 ss. 1, 6; 1977 c. 173.

948.16 Investigation of cruelty complaints. Any person who has reason to believe that a violation of this chapter has taken place or is taking place may apply to any circuit court for a search warrant. The court shall examine under oath the person so applying and any witnesses the person may produce and shall take the person's sworn affidavit in writing. The affidavit shall set forth the facts tending to establish probable cause to believe that a violation of this chapter has occurred or is occurring. If the court is satisfied that probable cause exists, it shall issue a search warrant directing a law enforcement officer in the county to proceed immediately to the location of the alleged violation with a doctor of veterinary medicine, if the court determines that a veterinarian is necessary for purposes of the search, and directing the law enforcement officer to search the place designated in the warrant, retaining in his or her custody subject to the order of the court such property or things as are specified in the warrant, including any animal. The warrant shall be executed and returned to the court which issued the warrant in accordance with ss. 968.15 and 968.17. The warrant issued under this section shall have the same force and effect as a warrant issued under s. 968.12. This section shall not affect other powers and duties of law enforcement officers.

History: 1973 c. 314; 1977 c. 449.

948.162 Reports of animal fighting. Any veterinarian who has reason to believe that an animal has been in a fight in violation of s. 948.08 shall report the matter to the local humane officer or society or county or municipal pound or to a local law enforcement agency. The report shall be in writing and shall include a description and the location of the animal, any injuries suffered by the animal and the name and address of the owner or person in charge of the

animal, if known. The general penalty provisions under s. 939.61 do not apply to this section.

History: 1981 c. 160; 1987 a. 248.

948.165 Animal fighting; seizure. (1) If an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime specified in s. 948.08, the animal shall not be returned to the owner by an officer under s. 968.20 (2). In any hearing under s. 968.20 (1), the court shall determine if the animal is needed as evidence or there is reason to believe that the animal has participated or been trained for fighting. If the court makes such a finding, the animal shall be retained in custody under s. 948.16.

(2) If the charges under s. 948.08 are dismissed or if the owner is found not guilty of a crime specified in s. 948.08, the animal shall be returned to the owner unless he or she is subject to the restrictions under s. 948.08 (2m).

(3) (a) If the owner is convicted under s. 948.08 or is subject to the restrictions under s. 948.08 (2m), the animal shall be delivered to the local humane society or county or municipal pound. If the animal is one year old or older or shows indication of having participated in fighting, the animal shall be disposed of in a proper and humane manner.

(b) If the animal is less than one year old and shows no indication of having participated in fighting, the animal shall be released to a person other than the owner or disposed of in a proper and humane manner. If the animal is a dog, the release or disposal shall be in accordance with s. 174.046 (8) or (9), except s. 174.046 (8) (a) does not apply and the fees under s. 174.046 (8) (d) are covered under s. 948.17.

History: 1981 c. 160; 1983 a. 95; 1987 a. 248.

948.17 Reimbursement for expenses. (1) A court shall assess the expenses under this section in any case in which there has been a search authorized under s. 948.16 or in which an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime under this chapter.

(2) Expenses covered under this section include:

(a) Investigative expenses of any search under s. 948.16 or any seizure under this chapter.

(b) Any fees of a doctor of veterinary medicine.

(c) Expenses of taking any animal into custody under this chapter, including expenses reasonably incident to taking the animal into custody.

(d) Expenses of keeping or disposing of any animal taken into custody.

(3) If the person alleged to have violated this chapter is found guilty of the violation, the person shall be assessed the expenses under subs. (1) and (2). If the person is not found guilty, the county treasurer shall pay the expenses from the general fund of the county.

History: 1973 c. 314; 1983 a. 95.

948.18 Penalties. (1) Any person violating s. 948.02, 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.09, 948.10, 948.11, 948.13, 948.14 or 948.15 (1) is subject to a Class C forfeiture. Any person who intentionally or negligently violates any of those sections is guilty of a Class A misdemeanor. Any person who intentionally violates s. 948.02, resulting in the mutilation, disfigurement or death of an animal, is guilty of a Class E felony.

(2) Any person who violates s. 948.08 (2m) or (3) is guilty of a Class A misdemeanor. Any person who violates s. 948.08 (1) or (2) is guilty of a Class E felony for the first violation and is guilty of a Class D felony for the 2nd or subsequent violation.

(3) In addition to penalties applicable to this chapter under this section, a district attorney may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

(4) In addition to penalties applicable to this chapter under this section:

(a) 1. In this paragraph, "pecuniary loss" has the meaning described in s. 973.09 (8).

2. A sentencing court shall require a criminal violator to pay restitution to a person, including any local humane society or county or municipal pound or a law enforcement officer, for any pecuniary loss suffered by the person as a result of the crime, including expenses in keeping any animal that is involved in the crime. This requirement applies regardless of whether the criminal violator is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the criminal violator to pay and shall determine the method of payment. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss under this paragraph.

(b) 1. A sentencing court may order that an animal be delivered to the local humane society or the county or municipal pound or to a law enforcement officer if a person commits a crime under this chapter, the person is the owner of the animal that is involved in the crime and the court considers the order to be reasonable and appropriate. The society, pound or officer shall release the animal to a person other than the owner or dispose of the animal in a proper and humane manner. If the animal is a dog, the release or disposal shall be in accordance with s. 174.046 (8) or (9), except s. 174.046 (8) (a) does not apply and the fees under s. 174.046 (8) (d) do not apply if the expenses are covered under s. 948.17. If the animal is not a dog, the society, pound or officer may charge a fee for the release of the animal.

2. If the court is sentencing a person covered under s. 948.165 (3) (a) and an animal has been seized under s. 948.165, the court shall act in accordance with s. 948.165 (3).

(c) Except as provided in s. 948.08 (2m), a sentencing court may order that the criminal violator may not own, possess or train any animal or type or species of animal for a period specified by the court, but not to exceed 5 years. In computing the time period, time which the person spent in actual confinement serving a sentence shall be excluded.

History: 1973 c. 314; 1977 c. 173; 1981 c. 160; 1983 a. 95; 1985 a. 48 s. 2; 1985 a. 263; 1987 a. 248.