

December 5, 2023

Testimony on Assembly Bill 341

Good Morning Chairman Kitchens and members of the Assembly Committee on Education, and thank you for hearing my testimony this morning on Assembly Bill 341. This bipartisan bill addresses a loophole in Wisconsin law that does not allow sexual misconduct in a school setting to be charged as a crime.

Under current law, Wisconsin prohibits both sexual contact with a minor and sexual harassment in the workplace. However, sexual harassment is not the same as sexual misconduct. As finalized in the amendment, the bill defines sexual misconduct as “verbal conduct of a sexual nature or physical contact of a sexual nature,” and also separately defines both verbal conduct and physical contact of a sexual nature.

Sexual misconduct in schools is not uncommon. About 10% of students will experience educator sexual misconduct by the time they graduate high school. Verbal comments of a sexual nature are the most common form of educator sexual misconduct reported. The bill combats these disturbing numbers by making sexual misconduct against a pupil a class I felony.

The bill also requires law enforcement, the Department of Children and Families, a county department of social or human services, or a child welfare agency under contract with DCF to report any violation they receive to the Department of Public Instruction. This report to DPI must include the name of the person alleged and the school district or school at which that person works or volunteers.

Lastly, the Assembly Bill 341 adds sexual misconduct to the list of crimes for automatic DPI license revocation. The bill also adds that a person’s license is automatically revoked if he or she is convicted of certain crimes, including sexual misconduct. Additionally, the bill adds that a person’s license is automatically, permanently revoked if he or she is convicted of a Class H felony or higher that is a crime against life or bodily security or a crime against a child. The person’s license may not be reinstated if the person is convicted of a crime against a child that is a Class H felony or higher, sexual misconduct against a pupil, and certain crimes against privacy.

The intent of this bill is simple: to ensure that Wisconsin's students have a safe place to learn. No school staff member should ever make a child feel uncomfortable. You will soon hear testimony from instances where this loophole in statute has been exploited, and understand the importance of this bill.

Again, thank you Chairman Kitchens and committee members for hearing my testimony on Assembly Bill 341. I urge you to support this bipartisan bill and look forward to answering any questions you may have.



December 5th, 2023

Testimony on Assembly Bill 341

Relating to: sexual misconduct against a pupil by a school staff member or volunteer and providing a penalty

Thank you, Chairman Kitchens and members of the committee for hearing this important legislation today. Under current state law, there are prohibitions against sexual contact with a minor and sexual harassment in the workplace between co-workers. However, what about situations where a teacher is verbally degrading a student with sexual comments? Common sense would tell us that the teacher should be charged in some way for his/her actions. Unfortunately, they would not be charged with neither sexual contact, since there is no physical touch, nor with sexual harassment, since student-teacher relationships do not qualify as co-workers. This gray area in state statute requires a new categorization – sexual misconduct.

Sexual misconduct can be anything from sexual advances, physically or verbally, to requests for sexual favors directed at another person of the same or opposite gender. This bill would create a clear statute prohibiting sexual misconduct against pupils by school staff members and volunteers.

To give you some more background, this bill stemmed from a case in the Kenosha School District where a staff member repeatedly made sexual advances towards a student. For example, the staff member asked about her private parts in a sexual way and made other inappropriate comments causing a drop not just in the student's academic performance, but in her mental health. In this case, according to statute, no laws were broken by the staff member since no physical touch was involved and because current harassment laws do not apply to student-teacher relationships.

Advances like this should never be happening in our schools, and I was saddened to hear that this student in Kenosha had to endure such harassment by someone she is told to respect and look up to. I've had discussions with some my colleagues in law enforcement, and they've indicated that they have trouble charging teachers who make sexual advances towards students unless physical touch was involved. Anyone, no matter the profession, needs to be held accountable for sexual misconduct, and we believe this bill will help close some of the loopholes in current statute.

Thank you for the opportunity to testify on this bill, and I will happily take any questions you might have.

Respectfully,

Senator Jesse James
23rd Senate District
Sen.James@legis.wisconsin.gov



Tod Ohnstad

STATE REPRESENTATIVE

December 5th, 2023
Assembly Committee on Education
Testimony on Assembly Bill 341

Thank you Chairman Kitchens, Vice-Chair Dittrich, ranking member Shelton, and members of the committee for hearing this bill today. I'm pleased to have introduced this bipartisan bill with Senator James, Representative Spiros, and Representative McGuire.

Wisconsin's conventional sexual harassment laws do not apply to students in public or private schools, and this bill would give Wisconsin a clear state statute relating to sexual misconduct against pupils. Current sexual harassment laws in Wisconsin govern relationships between employees, supervisors, and coworkers, but not student and school employees.

Accountability is critical when addressing sexual misconduct against pupils. Under AB 341, school staff members and volunteers who engage in such actions will face a Class I Felony if found guilty of sexual misconduct. Furthermore, AB 341 would require mandatory reporting to DPI of suspected cases of sexual misconduct, ensuring transparency and accountability. Lastly, AB 341 proposes automatic license revocation and a lifetime bar on reinstatement if convicted of certain crimes against children, ensuring those who commit sexual misconduct or other crimes against children are not allowed to work in educational settings.

Every child has the right to a safe learning environment regardless of what type of school they attend. Protecting children from sexual misconduct is a shared responsibility of the community, schools, lawmakers, and law enforcement. We all are aware of the long-lasting negative effects on academic performance and emotional well-being victims of sexual misconduct face. By establishing a clear statute, Wisconsin can take a crucial step towards ensuring a conducive learning environment for all pupils.

I want to thank all those involved for their work in crafting this bill over the past year, especially Kerri Pingel for being the inspiration behind such an important bill and sharing her story to create change.

Thank you. I'm happy to answer any questions.



December 5, 2023

Assembly Committee on Education

**Department of Public Instruction Testimony
2023 Assembly Bill 341
Assembly Substitute Amendment 1 to Assembly Bill 341**

I want to thank Chairman Kitchens and members of the committee for the opportunity to provide testimony in support of Assembly Bill 341 (AB 341) and Assembly Substitute Amendment 1 (ASA 1) with modifications. My name is Kevyn Radcliffe, Legislative Liaison for the Department of Public Instruction (DPI).

DPI worked with the authors to draft a bill to help ensure that every child will experience a safe learning environment free from sexual misconduct and harassment.

AB 341 makes it a crime for a person who works or volunteers at a school to commit sexual misconduct against a pupil at that school. This bill closes gaps in the current law that interfered with law enforcement, DPI, and school districts' ability to remove child sexual predators from our schools. By including "verbal conduct of a sexual nature" in the definition of "sexual misconduct," authorities will be able to identify and remove school staff and volunteers who are "grooming" a student. The U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) uses the following definition of grooming:

Grooming is a method used by offenders that involves building trust with a child and the adults around a child in an effort to gain access to and time alone with her/him. In extreme cases, offenders may use threats and physical force to sexually assault or abuse a child. More common, though, are subtle approaches designed to build relationships with families.¹

The definition of sexual misconduct encompasses many of the behaviors utilized by child sex predators that are difficult, if not impossible, to articulate and identify. AB 341 will help to keep these offenders out of our schools.

¹ Pollack, Daniel and MacIver, Andrea. (2019, November 1). "Understanding Sexual Grooming in Child Abuse Cases." [Americanbar.org](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/november-2015/understanding-sexual-grooming-in-child-abuse-cases/), accessed December 3, 2023.
https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/november-2015/understanding-sexual-grooming-in-child-abuse-cases/ ,

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Currently, DPI is authorized to revoke a person's license without a hearing if they are convicted of certain offenses. That person's license may be reinstated after six years if that person demonstrates by clear and convincing evidence, that they are entitled to reinstatement.

AB 341 will

- Add to the list of offenses for which DPI may automatically revoke a person's license. The bill expands the class of felonies eligible for automatic revocation from Class H felonies and higher that are crimes against life or bodily security or a crime against a child, to Class I felonies and higher, including sexual misconduct, certain crimes against privacy, and property theft from a school.
- Create a lifetime bar on reinstatement if the person is convicted of a crime against a child that is a Class H felony or higher.

DPI recommends a singular change to the bill. On p. 3, line 23, the bill defines "sexual misconduct" as including "...conduct directed by a person at another person of the same or opposite gender." DPI recommends striking the words "of the same or opposite gender" so that the new sentence reads "...conduct directed by a person at another person." The change is inclusive of all genders and will keep pace with evolving gender policy and law.

DPI believes that AB 341 will provide needed protections from those who would do devastating harm to our children. We will have greater authority to revoke a person's license without a hearing and keep them out for life creating safer environments for our students to learn and grow.

If you have questions or would like additional information, please contact Kevyn Radcliffe, Legislative Liaison, at kevyn.radcliffe@dpi.wi.gov or (608) 264-6716.

Hello, my name is Kerri Pingel. Thank you for the opportunity to testify in support of AB 341 and to all who made this hearing possible. I'd like to give a content warning for my testimony.

I attended a private school in Wisconsin my last two years of high school. An administrator I went to with questions about my faith soon pulled me out of class for being "impure." He required me to reveal details of sexual experiences I had with my boyfriend who was 20 at the time, I was 16. He instructed me to describe my part in the sexual acts to him from beginning, middle, to end in sexually graphic detail. He'd stare at me in an intimidating and objectifying way as I responded to him. He eventually isolated me from other staff, students, my parents, friends, boyfriend, and counselor - claiming he was preparing me for God's Kingdom. For "confessing" to intimacy with my boyfriend, I was placed at an isolated desk for my last semester, requiring daily check-ins with this administrator.

Here's some partially censored and less extreme details of what this man said to me as a child:

- He described his genitalia to me and said things like he had a "party in his pants" to me.
- He requested details like if I put my hand or my mouth on my boyfriend's private part.
- He searched my phone for unclothed pictures of me and remarked how I looked in a bikini.
- He made degrading comments to me like my boyfriend knew he could call me when he wanted to be pleased sexually or my boyfriend "had me on a leash."
- He wrote me letters, kept frequent contact, and commented on my social media directly focused on my sexual purity after I graduated.

If you find this uncomfortable or inappropriate to hear as adults, imagine what it was like to hear as a child more explicitly at school from my educator on a regular basis. This type of conduct with children is not criminalized in the state of Wisconsin. That is why we are here today.

This may not have impacted me as much as it did without the power imbalance, grooming, punitive nature, and the fact I trusted this educator as a child- my parents trusted him too. He normalized his predatory side to me and hid it well from others. As a child, I believed it was my fault. He also took credit for my accomplishments and "pure" behavior into my early college years- I felt special or indebted to him. This man repeatedly invited me to his house when I was 21 with his wife out of the country. I declined. It took several years to heal from all this and to report it.

When this was reported, no justice was available to me due to serious loopholes in Wisconsin legislation. Law enforcement stated no law was broken because this man never touched me and I was not his employee. Yet I'd be in statutes today for criminal and civil justice in multiple states. The investigation showed this man abused many young girls for over 20 years at this school. This school board willfully protected this predator around more children in their care after they were well aware I was not the first or last child he exploited. He voluntarily resigned his role at the school last year.

I spent 4 years trying to hold this man and school accountable. This bill was inspired by my story. Representatives Tip McGuire or Tod Ohnstad may share further details for this law change. Please also refer to my press conference statement and senate hearing testimony for details.

This man can work or volunteer with your children today. The loophole is greater than just me, just this man, and just this school. I am here to help laws change so no child experiences this without justice again. Many states recognize criminal conduct with children does not begin with touching them. I hope it is Wisconsin's turn. Thank you all again.



PO Box 750
Madison, WI 53701
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October 11, 2023

SENT VIA EMAIL:

Sen.wanggaard@legis.wisconsin.gov

The Hon. Van H. Wanggaard
Chair, Senate Comm. on Labor and Regulatory Reform
State Capitol, Room 122 South
P.O. Box 7882
Madison, WI 53707

Re: Testimony in support of A.B. 341 / S.B. 333

Dear Senator Wanggaard and Committee Members:

I am writing on behalf of the FFRF Action Fund and our local advocates to urge you to support Senate Bill 333. The FFRF Action Fund is the lobbying arm of the Freedom From Religion Foundation, a Madison-based national nonprofit organization with more than 40,000 members across the country, including more than 1,700 members in Wisconsin. The FFRF Action Fund advocates for the constitutional protection of the separation between state and church, and educates about nontheism.

A.B. 341 / S.B. 333 seeks to close a loophole in sexual harassment laws that many states have already closed. Under current state law, there are penalties for sexual harassment of a co-worker, but no such penalties exist for a school teacher or administrator harassing a student. Under this bill, a new state statute categorizing sexual misconduct would protect students from advances of school personnel. This bill makes it a Class I felony for a person who works or volunteers at a school to commit sexual misconduct against a student who is enrolled at that school.

This need for this bill stems from the actions of a school administrator at a private Christian school in Kenosha who repeatedly, and graphically, asked a female student about the details of her intimate encounters with her boyfriend, about her genitals, described in detail the school administrator's own genitals, and overall

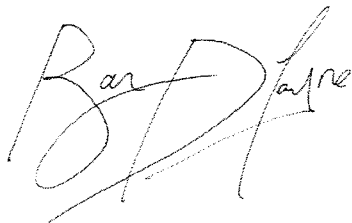
exploited her vulnerability for the administrator's own sexual gratification. Had the administrator made those comments to an adult co-worker, he would have been liable for sexual harassment under Wis. Stat. Ann. § 111.36 and likely fired. Committing these acts upon a child should lead to more severe legal consequences, rather than none at all.

Today, Wisconsin law leaves children unprotected. When the Kenosha student sought assistance from law enforcement, she was told that there was nothing they could do because the perpetrator had committed no crime. A 16-year-old was then left to work through this trauma by herself with no legal recourse. S.B. 333 would remedy that, so no child is left to be victimized every day they go to school at the hands of a school employee.

Protecting Wisconsin children should be a top priority of every lawmaker in this body. Voting in support of this bill would show that you stand with children and you stand to protect them from predators who prey upon their vulnerability. This bill has broad bipartisan support, and must rapidly make its way to the governor's desk for signature. Children cannot afford for lawmakers to stand idly by as predators expose this loophole to get away with what most Wisconsinites would already assume to be criminal activity.

Testimony from at least one victim, as well as broad community support highlight the urgent need to pass this crucial legislation. Show the children of Wisconsin that you have their backs. Please support A.B. 341 / S.B. 333.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ryan D. Jayne". The signature is written in black ink and is positioned above the typed name.

Ryan D. Jayne
Senior Policy Counsel



VCU

School of Education

3 November 2023

TO: Representative Tod Ohnstad
Representative Tip McGuire

FR: Charol Shakeshaft, Ph.D.
Professor

RE: Support for sb 333 and ab 341

Please consider this a strong letter of support for SB 333 and AB 341. I have been researching school employee sexual misconduct for three decades. In addition to academic and professional publications on prevention, I was the author of the 2004 study requested by the United States Senate, *Educator Sexual Misconduct: A Synthesis of Existing Literature of Prevalence*. My most recent book, *Organizational Betrayal: How Schools Enable Employee Sexual Misconduct and How to Stop It*, is forthcoming from Harvard Education Press.

In addition, I am a grandmother to Maya and Samuel Shakeshaft Blinka, children of my daughter, Emma Shakeshaft, and son-in-law, David Blinka, who live in Madison, Wisconsin. I have both a professional and personal stake in my support for your bills.

I have examined hundreds of cases and interviewed parents, victims, offenders, detectives, police officers, attorneys, and school officials. I have evaluated thousands of school policies, examined countless hiring procedures, and taken and critiqued increasingly more training programs as they have come on the market. I have been awarded three federal grants to help me research the prevention of educator sexual misconduct.

I have worked on nearly 300 cases involving sexual abuse of students in the United States by trusted others, particularly teachers and other school employees. I have written 250 expert assessments of organizational compliance with Title IX and other standards related to preventing the sexual abuse of children by adults employed in youth-serving organizations in forty states and the District of Columbia. I have presented expert testimony in over ninety depositions and twenty trials in state and federal cases concerned with sexual abuse in K-12 independent and public schools, child-care facilities, youth organizations, institutions of higher education, and religious organizations that serve children and youth.

I am a Title IX hearing officer at Virginia Commonwealth University. I am the federally appointed monitor for compliance of a settlement agreement between the parties in the USC/Tyndall class

action suit, *Sutedja v. University of Southern California et al.*, 2:18-cv-04258-SVW-GJS (C.D. Cal.) (Dkt. 167-1), as well as the Report of the Equitable Relief Committee.

I have learned that there are far more people complicit in the continuing sexual abuse of children by school employees than just the offending employee. There are the teachers who see something odd but don't do anything; the school administrators who ignore an allegation because they believe that none of their teachers would do such a thing; the school superintendents who fear controversy and leave these issues to others in the district; the school boards who approve resignation of abusers, passing them on to the next school; the parents who trust the school too much; and the friends who have been sworn to secrecy by the victim, so don't tell. We are all complicit.

I'm often asked why school employees sexually abuse students. My answer: Because they can. Despite our claims that we love children and do everything for them when push comes to shove, we care about protecting the adult more than the child. A combination of lack of training, adult protectionism, and indifferent leadership has left millions of children vulnerable to sexual abuse by an employee in a school. Current research and estimates indicate that between 12 and 17% of U.S. students report in studies being the target of school employee sexual misconduct. This represents from 6.3 million to 9.4 million K-12 students at any time. Even when an educator is found to have crossed sexual boundaries with a student, that person is often moved to other schools or districts and continues predatory behaviors.

I support this bill; although it doesn't go far enough for prevention, it does ensure that once reported and determined to be factual, sexual misconduct by an employee will keep that employee out of public schools. There is much more that can be done to stop the sexual abuse of students by school employees, and I hope, in the future, you might consider adding requirements for training, required reference checks. Other prevention actions that research has indicated is likely to prevent or uncover sexual misconduct.

Thank you for your work in making schools safer for children.

Honored Wisconsin Legislators,

My name is Faith Colson, and I am writing in support of SB 333 (Senate Amendment 1) and AB 341, both of which introduce criminal statute regarding sexual misconduct toward students. I represent myself, and the reason I wanted to share my support is because of my lived experience as the survivor of educator sexual misconduct.

When I entered my junior year of high school, I was a straight-A student with two parents at home. Halfway through the year, my physics teacher asked me to stay after school to discuss college and careers. I met with him that day, and it started what I thought was a mentor relationship. I saw him as a safe adult to whom I could confide in. For example, one day I went to his room during a passing period because another student made me cry.

As it turns out, what actually was going on was that he was grooming me. In fact, one day he kissed me, and within weeks of that, he assaulted me. But by that time, he had blurred the boundaries so methodically that I thought he loved me more than anyone else. He had slowly gotten me to trust him more than my parents, to confide in him more than to my friends, to lean on his emotional support instead of anyone else's. I was trapped, and it took me four years to leave him.

What people may not realize is that educator sexual misconduct is very prevalent. Not all misconduct involves physical contact, but verbal harassment can also be traumatic. When a student enters a K-12 school, they are minors, under the power and authority of educators, who stand in loco parentis. These pseudo-parental relationships involve a huge power differential, and attendance is not optional. Besides the developmental gap in understanding between a child and an adult, there is the literal power of grades, discipline, college letters, and even permission to use the toilet that educators have over children.

That is why standards must be set and followed to ensure that children are safe in schools—because they are trapped there, legally and emotionally, under the care of their educators. While the vast majority of teachers are there for the right reasons, institutional dynamics often set up roadblocks when misconduct or harassment occurs. Students may be so confused and emotionally scarred that they don't speak up for years, and whether they make a delayed or a more timely outcry to the school, the school may seek to handle the problem internally.

Years after my abuse, after making a delayed outcry to police and going through the criminal justice process, I found out that several educators knew that my abuser said he was in a relationship with me—yet none of them made an outside report. He had vocalized to coworkers for years his sexualized comments about students, yet none of us knew that when we stepped into his classroom, he saw us as pieces of meat. We just saw him as our teacher, someone trusted by the school to lead us, unsupervised, and whom we were to respect and obey.

Outside reporting of educator sexual misconduct is necessary to ensure that trained investigators from outside the institution can properly look into allegations of wrong doing. This protects innocent students who may be trapped in an awful situation, and it protects innocent teachers from unfounded allegations surrounding them with a cloud of implied guilt. Transparency helps all parties and allows the school to focus on educating students. Outside investigating removes

the conflict of interest of a school investigating one of its own, which naturally pits the potential student victim against the school itself.

Students have the right to attend school free from harassment, and because the state requires school attendance, it has the authority and the ethical obligation to ensure school safety. Students cannot learn when they fear sexual misconduct. Students already being sexually harassed by educators—whether verbally or with physical contact involved—are often trapped and cannot remove themselves from the situation. I remember what it feels like to be alone, with no way out, and with no one to turn to. No student should have to feel that way, and unless action is taken, some students will be left with no path to justice, and some offending educators may have free rein to continue to cause harm.

Again, most teachers would never harm a student in this way, but the ones who do leave a path of destruction. Successful adulthoods are paved through K-12 classrooms, and it's time to take action so that those classrooms are free of sexual misconduct. Students deserve no less.



WISCONSIN LEGISLATIVE REFERENCE BUREAU

MEMORANDUM

TO: Representative Tad Ohnstad
FROM: Richard Loeza, legislative analyst
DATE: October 7, 2022
SUBJECT: Sexual harassment and mandatory reporting in schools

Per your request, this memorandum discusses several aspects of the laws relating to sexual harassment and abuse of children. The memorandum begins by reviewing the statutes on sexual harassment and abuse of minors that don't involve physical touch or direct bodily harm. This review includes pupil discrimination laws, including laws in nearby states that prohibit pupil sexual harassment specifically. Although Wisconsin does not have a law explicitly targeting sexual harassment in schools, federal law prohibits sexual harassment of students in schools that receive federal education funding. Then, the memorandum looks at the statutes of limitations for crimes involving the sexual harassment or abuse of minors. Finally, the memorandum reviews the mandatory reporting process in the context of private schools and public schools.

Laws on sexual harassment and abuse of minors not involving physical touch or bodily harm

There are several statutes that prohibit or criminalize the sexual harassment and abuse of minors. A selection of those statutes create penalties and other consequences relating to actions other than sexual contact or intercourse or other forms of bodily harm:

1. Wis. Stat. § 948.04—*Causing mental harm to a child*. This offense is committed when a person exercising temporary or permanent control of a child “causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child.” This crime is also committed if a person has knowledge that another person has caused, is causing, or will cause mental harm to a child, the person is able to prevent the harm to a child, and fails to take action to prevent the harm.¹
 - a. Examples of actions that courts and juries found to cause mental harm to a child include intentional sexual contact,² contacting a child whom that person had been

¹ “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” (Wis. Stat. § 948.01 (2)).

² *State v. Thornberry*, 2019 WI App 65.

charged with sexually assaulting,³ taking a photo of a minor while she was partially nude,⁴ and forcing a child to sleep on a basement floor without a mattress or access to a toilet.⁵

2. Wis. Stat. § 948.055—*Causing a child to view or listen to sexual activity*. This offense is committed when a person intentionally causes a child less than 18 years of age to “view or listen to sexually explicit conduct . . . if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child or individual.”
3. Wis. Stat. § 948.07—*Child enticement*. This offense occurs when a person causes a child to “go into any vehicle, building, room or secluded place” for the purpose of committing certain acts. These acts include exposing the perpetrator’s or victim’s genitals and “causing mental harm to the child.”
4. Wis. Stat. § 948.11—*Exposing a child to harmful material or harmful descriptions or narrations*. This offense is committed when a person intentionally exposes a child to “harmful material” or a “harmful description or narrative account.”⁶ No employee of a public or private school, an institution of higher education, or a publicly-funded library can be found liable for this crime.⁷
5. Wis. Stat. § 948.21—*Neglecting a child*. This offense occurs when “[a]ny person who is responsible for a child's welfare who, through his or her action or failure to take action, for reasons other than poverty, negligently fails to” provide certain essentials “so as to seriously endanger the physical, mental, or emotional health of the child.” Emotional damage that constitutes neglect means “harm to a child's psychological or intellectual functioning.”⁸
6. Wis. Stat. § 948.40—*Contributing to the delinquency of a child*. This offense occurs when a person intentionally encourages, contributes to an act of, or, through disregard for the child’s welfare, contributes to the delinquency of a child.⁹

³ State v. Taylor, 2017 Wisc. App. LEXIS 1056, 2018 WI App 8.

⁴ State v. Herrera, 2008 Wis. App. LEXIS 585, 2008 WI App 135.

⁵ Stephen Kelley, “Jury finds Menomonee woman guilty of causing mental harm to a child,” *WQOW*, August 24, 2022, <https://www.wqow.com/>.

⁶ “Harmful to children” is defined as “that quality of any description, narrative account or representation, in whatever form, of nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it . . . predominantly appeals to the prurient, shameful or morbid interest of children;. . . [i]s patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and . . . [i]acks serious literary, artistic, political, scientific or educational value for children, when taken as a whole” (Wis. Stat. § 948.11 (1) (b)).

⁷ Wis. Stat. § 948.11 (4).

⁸ Wis. Stat. §§ 48.02 (5j) and 948.21 (1) (b).

⁹ Actions that could constitute contributing to delinquency of a minor include encouragements to drink alcohol (State v. Faust, 1997 Wisc. App. LEXIS 576, 211 Wis. 2d 891), to fight with another child (State v. Von Ruden,

7. Wis. Stat. § 944.25—*Sending obscene or sexually explicit electronic messages*. This offense occurs when a person “sends an unsolicited electronic mail solicitation to a person that contains obscene material or a depiction of sexually explicit conduct without including the words ‘ADULT ADVERTISEMENT’ in the subject line.”
8. Wis. Stat. § 947.01—*Disorderly conduct*. This offense occurs when a person, in a public or private place, engages in abusive or indecent conduct under circumstances in which the conduct tends to cause or provoke a disturbance.
9. Wis. Stat. § 947.012 and 947.0125—*Unlawful use of telephones and computerized communication systems*. This offense occurs when a person, “with intent to frighten, intimidate, threaten or abuse,” calls or sends a computerized message that “uses any obscene, lewd or profane language or suggests any lewd or lascivious act.”
10. Wis. Stat. § 947.013—*Harassment*. This offense occurs when a person engages “in a course of conduct or repeatedly [commits] acts which harass or intimidate [a] person and which serve no legitimate purpose.”
11. Wis. Stat. § 118.13—*Pupil discrimination*. This statute prohibits public schools from denying a student admission to a school, or from denying participation or the benefits of a curricular, extracurricular, or other program or activity, because of the student’s sex or sexual orientation. Offenders can be fined, in addition to any discipline imposed by the school district. Pupil discrimination is considered an offence against children.¹⁰
12. Wis. Stat. § 115.31—*License or permit revocation*. This statute allows the state superintendent to revoke a license that was issued by the Department of Public Instruction (DPI) for incompetence or “immoral conduct.” “Immoral conduct” is defined as “conduct or behavior that is contrary to commonly accepted moral or ethical standards and that endangers the health, safety, welfare, or education of any pupil.”¹¹
13. Wis. Stat. subch. IV of ch. 48 and several surrounding statutes deal with the circumstances under which the state and county agencies can intervene, following a finding that a child is subject to abuse, including emotional abuse.

You indicated that you are particularly interested in laws that may prohibit sexual harassment or emotional and verbal abuse by a school employee. Wisconsin’s conventional sexual harassment laws do not apply to students in public or private schools. Sexual harassment is typically handled under Wis. Stat. §§ 111.31 to 111.395, the laws prohibiting employment discrimination, which includes sexual harassment.¹² Sexual harassment laws govern relationships between employees,

1998 Wisc. App. LEXIS 794, 221 Wis. 2d 222w), to gamble (*State v. Williams*, 253 Wis.2d 99), and to engage in sexual activity before the age of consent (*State v. Gasser*, 1990 Wisc. App. LEXIS 846, 158 Wis. 2d 353).

¹⁰ Wis. Stat. § 948.015 (2).

¹¹ Wis. Stat. § 115.31 (1) (c) 1.

¹² Wis. Stat. § 111.36.

supervisors, and coworkers, not students and school employees. Wisconsin's pupil discrimination law (Wis. Stat. § 118.13, listed above) does prohibit discrimination against pupils on the basis of sex, but does not specifically mention sexual harassment. The state's pupil discrimination law applies to public schools, and only applies to private schools if they contract with the Milwaukee School District to provide educational services.¹³ In addition, the state superintendent is empowered to revoke DPI-issued licenses of school employees who engage in "immoral conduct" (Wis. Stat. § 115.31, see above). However, not all school staff have DPI-issued licenses (e.g., custodians). While public schools are required to employ licensed teachers and administrators, private schools are not.¹⁴

There are other states where sexual harassment in educational circumstances is explicitly and specifically prohibited. In Minnesota's human rights statute, "discrimination" is defined to include sexual harassment, and discrimination is prohibited in the utilization and admission of educational institutions.¹⁵ Illinois defines and prohibits "sexual harassment in elementary, secondary, and higher education."¹⁶ That definition includes "unwelcome sexual advances or requests for sexual favors" and "conduct of a sexual nature . . . when such conduct has the purpose of substantially interfering with the student's education performance or creating an intimidating, hostile, or offensive educational environment."¹⁷ In addition to specifically mentioning sexual harassment, Minnesota's and Illinois's statutes cover private schools in addition to public schools.¹⁸

In addition to state laws, Title IX of the federal Education Amendments of 1972 prohibits schools from discriminating against pupils on the basis of sex.¹⁹ Title IX protections apply to schools receiving federal funding, which covers all public schools but does not include all private schools. Sex discrimination explicitly includes sexual harassment, defined as "unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity."²⁰ Schools covered by Title IX must disseminate a policy on sex nondiscrimination, including publishing procedures for the resolution of student sexual harassment complaints. Once a school has actual knowledge of a sexual harassment, the school must "respond promptly in a manner that is not deliberately indifferent."²¹ Each school covered by Title IX must designate a Title IX coordinator.²² That coordinator is responsible for receiving

¹³ Wis. Stat. § 119.235. Private schools participating in school choice programs must accept eligible students if there are available spots, and cannot discriminate in those admissions (Wis. Stat. §§ 118.60 (2) (a) and 119.23 (2) (a)).

¹⁴ Wis. Stat. § 115.28 (7) (b).

¹⁵ Minn. Stat. §§ 363A.03 43, and 363A.13.

¹⁶ 775 Ill. Comp. Stat. 5/5A-101 (E).

¹⁷ *Id.*

¹⁸ Minn. Stat. § 363A.03 14, 775 Ill. Comp. Stat. 5/5A-101 (A) (2).

¹⁹ 20 U.S.C. § 1681 (a).

²⁰ 34 C.F.R. § 106.30 (a).

²¹ 34 C.F.R. § 106.44 (a).

²² 34 C.F.R. § 106.8 (a).

complaints of sexual harassment.²³ Federal regulations set minimum requirements for handling sexual harassment complaints in schools, including procedures for investigation, hearings, and appeals.²⁴ Complaints that a school or person has violated this federal law can be made to the Office of Civil Rights in the U.S. Department of Education. Federal courts have also recognized an implied right of action to sue schools who violate Title IX in cases related to sexual harassment of a student, under certain conditions.²⁵ Individuals can obtain monetary damages in these cases.²⁶

Statutes of limitations for sexual crimes related to children

In general, prosecutions for felonies in Wisconsin must be commenced within six years of the commission of the act.²⁷ Misdemeanor prosecutions must be commenced within three years.²⁸ However, there are several modifiers that apply to certain sexual crimes and crimes related to children:

- Crimes for which there is no time limit on commencing prosecution:²⁹
 - First degree sexual assault, first degree sexual assault of a child, or repeated acts of sexual assault of the same child.³⁰
- Crimes for which prosecution must be commenced before the victim reaches age 45:³¹
 - Second degree sexual assault of a child (including repeated acts), great bodily harm to a child, child abuse resulting in death, sexual exploitation of a child,³² child trafficking, incest with a child, child enticement, use of a computer to facilitate a child sex crime, soliciting a child for prostitution, patronizing a child, sexual assault of a child in substitute (foster or other institutional) care, and sexual assault of a child by a school staff person or a volunteer.
- Crimes for which prosecution must be commenced before the victim reaches age 26:³³
 - Bodily harm to a child (including conduct likely to create great bodily harm or that recklessly causes bodily harm), failing to act to prevent bodily harm to a child, causing mental harm to a child, child enticement resulting in bodily or

²³ *Id.*

²⁴ 34 C.F.R. § 106.45.

²⁵ Cannon v. University of Chicago, 441 U.S. 677 (1979) and Gebser v. Lago Vista Independent School Dist., 524 U.S. 274 (1998).

²⁶ Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992).

²⁷ Wis. Stat. § 939.74 (1).

²⁸ *Id.*

²⁹ Wis. Stat. § 939.74 (2) (a).

³⁰ Except for repeated acts of second degree sexual assault of a child.

³¹ Wis. Stat. § 939.74 (2) (c).

³² E.g., creating child pornography.

³³ Wis. Stat. § 939.74 (2) (cm).

mental harm to a child, and child enticement involving giving or selling controlled substances.

There is an exception for the time limitations for crimes against children if the state makes a positive DNA match with the person who committed the felony.³⁴ The state has 12 months after a positive match is made to commence a prosecution, even if the DNA match is made after the normal time limit on prosecutions has expired.

Mandatory reporting

The definition of “abuse” in the Children’s Code encompasses several types of actions or violations, including sexual assault of a child (first and second degree) and causing a child to view or listen to sexual activity.³⁵ Abuse also includes “emotional damage for which the child’s parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.”³⁶ If a school employee³⁷ suspects that a child he or she has seen in the course of his or her professional duties has been abused or neglected, threatened with abuse or neglect, or the employee believes that abuse or neglect of the child will occur, that employee must report his or her suspicion. The report must be made to the county department of social or human services, a licensed child welfare agency, the Department of Children and Families, the sheriff, or the local police department.³⁸

Importantly, the term “school” is not defined for the purpose of the mandatory reporting statute. When terms are not defined in the statutes, they “shall be construed according to common and approved usage.”³⁹ Therefore, it appears that private school employees are mandatory reporters, just as public school reporters are. However, “members of the clergy”⁴⁰ are exempt from this requirement when they receive child abuse information through communications made in a private or confessional setting if the “disciplines, tenets, or traditions of his or her religion” require those communications to be kept secret.⁴¹ So, private school employees who are members of the clergy may be exempt from mandatory reporting depending on the circumstances in which they obtained information about the suspected abuse.

³⁴ Wis. Stat. § 939.74 (2d) (c).

³⁵ Wis. Stat. § 48.02 (1).

³⁶ Wis. Stat. § 48.02 (1) (gm). The Children’s Code also defines “emotional damage” as “harm to a child’s psychological or intellectual functioning,” evidenced by “anxiety; depression; withdrawal; outward aggressive behavior; or 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” (Wis. Stat. § 48.02 (5j)).

³⁷ School employees includes teachers, administrators, counselors, and all other school employees (Wis. Stat. § 48.981 (2) (a) 14. to 16m.).

³⁸ Wis. Stat. § 48.981 (3) (a) 1.

³⁹ Wis. Stat. § 990.01 (1).

⁴⁰ Wis. Stat. § 765.002 (1).

⁴¹ Wis. Stat. § 48.981 (2) (bm) 3.

All public school boards must require every employee to receive training in identifying abused and neglected children and in the laws on mandatory reporting.⁴² The employees must receive that training within six months of starting work at the district and at least once every five years thereafter. This requirement does not apply to private schools.⁴³

If you have any questions or require additional information, please feel free to call me at 608-504-5890 or email me at richard.loeza@legis.wisconsin.gov.

⁴² Wis. Stat. § 118.07 (5).

⁴³ The requirement could be argued to apply to private schools participating in parental choice programs (Wis. Stat. §§ 118.60 (2) (a) 5. and 119.23 (2) (a) 5.) but DPI does not appear to require parental choice schools to administer mandatory reporter trainings.