

1 **AN ACT** *to renumber and amend* 939.616 (1); *to amend* 301.48 (1) (e) 1., 939.616 (2)
 2 and 939.616 (3); *to repeal and recreate* 948.02 (1), 948.025 (1) and 948.025 (2); and
 3 *to create* 301.48 (1) (e) 2. d. and 939.616 (1g) of the statutes; **relating to:**
 4 reconciling 2005 Wisconsin Acts 430, 431, and 437; mandatory terms of
 5 confinement for certain child sex offenses, sexual assault of a child, global
 6 positioning system tracking for certain sex offenders, and providing penalties

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Review of Crimes Against Children.

The bill draft reconciles 2005 Wisconsin Acts 430, 431, and 437. The Revisor of Statutes has determined that provisions of these acts are mutually inconsistent.

2005 Wisconsin Act 430 (“Act 430”), commonly referred to as “Jessica’s Law”, modified the offense of 1st-degree sexual assault of a child as follows:

- Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony and is subject to a mandatory minimum term of confinement in prison of 25 years.
- Whoever has sexual intercourse with a person who has not attained the age of 16 years by the use or threat of force or violence is guilty of a Class B felony and is subject to a mandatory minimum term of confinement in prison of 25 years.
- Whoever has sexual contact with a person who has not attained the age of 16 years by the use or threat of force or violence if the actor is at least 18 years of age when the sexual contact occurs is guilty of a Class B felony and is subject to a mandatory minimum term of confinement in prison of 5 years.
- Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony.

Act 430 also created a new definition of “sexual intercourse” for purposes of the offense of 1st-degree sexual assault of a child. Under the act, “sexual intercourse” means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of an inanimate object into the genital or anal opening either by the defendant or upon the defendant’s instruction. The emission of semen is not required. Under prior law, “sexual intercourse” for purposes of the offense of 1st-degree sexual assault of a child also included the intrusion, however slight, of any part of a person’s body into the genital or anal opening either by the defendant or upon the defendant’s instruction.

2005 Wisconsin Act 431 (“Act 431”), effective July 1, 2007, requires global positioning system (GPS) tracking for persons found to have committed 1st-degree sexual assault of a child as follows: (a) the person had sexual intercourse with a person under 12 years of age; (b) the person had sexual intercourse by use or threat of force or violence with a person under 16 years of age; or (c) the person had sexual contact by use or threat of force or violence with a person under 16 years of age and the person was 18 years of age or older at the time of the offense.

2005 Wisconsin Act 437 (“Act 437”) modified the offense of 1st-degree sexual assault of a child so that it is a Class B felony to have sexual contact or sexual intercourse with a person who is under 13 years of age and it is a Class A felony to have sexual contact or sexual intercourse with a person who is under 13 years of age if the sexual contact or sexual intercourse resulted in great bodily harm.

The bill draft does make some substantive changes to make the statutes consistent. These changes are described in the notes following each section.

The draft also includes the following substantive changes:

- Under the bill draft, mandatory minimum terms of confinement in prison for first-degree sexual assault of a child do not apply if the offender was under 18 years of age at the time of the violation.
- The bill draft modifies the offense created by 2005 Wisconsin Act 437 to clarify that the great bodily harm need not result from the sexual intercourse or contact.
- The bill draft eliminates the definition of “sexual intercourse” that applies only to the offense of first-degree sexual assault of a child.

1 **SECTION 1.** 301.48 (1) (e) 1. of the statutes, as created by 2005 Wisconsin Act 431, is
2 amended to read:

1 301.48 (1) (e) 1. Section 948.02 (1) (am), (b), (c), or (d) or 948.025 (1) (a), (b), or ~~(ag)~~
2 (c).

NOTE: This SECTION expands the GPS tracking requirements so that they also apply to a person found to have committed 1st-degree sexual assault of a child if the offender caused great bodily harm to the child.

3 **SECTION 2.** 301.48 (1) (e) 2. d. of the statutes is created to read:

4 301.48 (1) (e) 2. d. The actor has sexual contact or sexual intercourse with a person who
5 has not attained the age of 13 years and causes great bodily harm, as defined in s. 939.22 (14),
6 to the person.

NOTE: This SECTION requires GPS tracking for a person found to have committed 1st-degree sexual assault of a child under the 2003 statutes if the actor had sexual contact or sexual intercourse with a person under the age of 13 years and the offender caused great bodily harm to the person.

7 **SECTION 3.** 939.616 (1) of the statutes, as created by 2005 Wisconsin Act 430, is
8 renumbered 939.616 (1r) and amended to read:

9 939.616 (1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or 948.025
10 (1) ~~(a)~~ (b), the court shall impose a bifurcated sentence under s. 973.01. The term of
11 confinement in prison portion of the bifurcated sentence shall be at least 25 years. Otherwise
12 the penalties for the crime apply, subject to any applicable penalty enhancement.

NOTE: This SECTION changes a cross-reference to reflect the renumbering of s. 948.025 (1) in the bill draft.

13 **SECTION 4.** 939.616 (1g) of the statutes is created to read:

14 939.616 (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or 948.025 (1)
15 (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make an extended
16 supervision eligibility date determination on a date that will occur before the person has served
17 a 25-year term of confinement in prison.

NOTE: This SECTION provides that if a person is convicted of having sexual intercourse or sexual contact with a person who is under 13 years

of age and causing great bodily harm to the person or having repeatedly committed such an act, the court must order a term of confinement in prison of at least 25 years. The underlying offense is a Class A felony.

1 **SECTION 5.** 939.616 (2) of the statutes, as created by 2005 Wisconsin Act 430, is
2 amended to read:

3 939.616 (2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025 (1)
4 (~~ag~~) (c), the court shall impose a bifurcated sentence under s. 973.01. The term of confinement
5 in prison portion of the bifurcated sentence shall be at least 5 years. Otherwise the penalties
6 for the crime apply, subject to any applicable penalty enhancement.

NOTE: This SECTION changes a cross-reference to reflect the renumbering of s. 948.025 (1) in the bill draft.

7 **SECTION 6.** 939.616 (3) of the statutes, as created by 2005 Wisconsin Act 430, is
8 amended to read:

9 939.616 (3) This section does not apply if the offender was under 18 years of age when
10 the violation occurred or if s. 939.62 (2m) (c) applies.

NOTE: This SECTION provides that mandatory minimum terms of prison confinement for first-degree sexual assault of a child do not apply if the offender was under 18 years of age when the violation occurred.

11 **SECTION 7.** 948.02 (1) of the statutes, as affected by 2005 Wisconsin Acts 430 and 437,
12 is repealed and recreated to read:

13 948.02 (1) FIRST DEGREE SEXUAL ASSAULT. (am) Whoever has sexual contact or sexual
14 intercourse with a person who has not attained the age of 13 years and causes great bodily harm
15 to the person is guilty of a Class A felony.

16 (b) Whoever has sexual intercourse with a person who has not attained the age of 12
17 years is guilty of a Class B felony.

18 (c) Whoever has sexual intercourse with a person who has not attained the age of 16
19 years by use or threat of force or violence is guilty of a Class B felony.

1 (d) Whoever has sexual contact with a person who has not attained the age of 16 years
2 by use or threat of force or violence is guilty of a Class B felony.

3 (e) Whoever has sexual contact with a person who has not attained the age of 13 years
4 is guilty of a Class B felony.

NOTE: This SECTION recreates the offense of 1st-degree sexual assault of a child to reflect the changes made in Acts 430 and 437.

The wording par. (am) is amended to remove a requirement under Act 430 that the great bodily harm result from the sexual contact or sexual intercourse. This change is intended to allow conviction under par. (am) even if the great bodily harm was caused by the defendant during the course of conduct that immediately preceded, was concurrent with, or immediately followed the act of sexual assault. See, *State v. Schambow*, 176 Wis. 2d 286, 500 N.W.2d 362 (Ct. App. 1993).

5 **SECTION 8.** 948.025 (1) of the statutes, as affected by 2005 Wisconsin Acts 430 and 437,
6 is repealed and recreated to read:

7 948.025 (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within
8 a specified period of time involving the same child is guilty of:

9 (a) A Class A felony if at least 3 of the violations were violations of s. 948.02 (1) (am).

10 (b) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am),
11 (b), or (c).

12 (c) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am),
13 (b), (c), or (d).

14 (d) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1).

15 (e) A Class C felony if at least 3 of the violations were violations of s. 948.02 (1) or (2).

NOTE: This SECTION restructures the offense of engaging in repeated acts of the same child. Under current law, for example, par. (c) requires a showing that the defendant committed at least 3 violations of sub. (1) (am), (b), (c), or (d), but that fewer than 3 of the violations were of sub. (am), (b), or (c).

1 **SECTION 9.** 948.025 (2) of the statutes, as affected by 2005 Wisconsin Acts 430 and 437,
2 is repealed and recreated to read:

3 948.025 (2) If an action under sub. (1) is tried to a jury, in order to find the defendant
4 guilty the members of the jury must unanimously agree that the requisite number of violations
5 occurred within the specified period of time, but need not agree on which acts constitute the
6 requisite number or which of the requisite types of violations is violated by a particular act.

NOTE: This SECTION sets forth the findings that must be made by a jury to find a defendant guilty of repeated acts of sexual assault of the same child. The SECTION combines the paragraphs under current s. 948.025 (2) into a single provision. No substantive changes to current law are intended to be made by this SECTION.

7 **SECTION 10. Effective date.**

8 (1) The treatment of section 301.48 (1) (e) 1. and 2. d. of the statutes takes effect on July
9 1, 2007.

NOTE: This SECTION provides that the treatment of the statutes relating to GPS tracking take effect on July 1, 2007, the effective date of Act 431.

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(END)