CHAPTER 944
CRIMES AGAINST SEXUAL MORALITY

SUBCHAPTER I
LEGISLATIVE INTENT

944.01 Intent. The state recognizes that it has a duty to encourage high moral standards. Although the state does not regulate the private sexual activity of consenting adults, the state does not condone or encourage any form of sexual conduct outside the institution of marriage. Marriage is the foundation of family and society. Its stability is basic to morality and civilization, and of vital interest to society and this state. 

History: 1983 a. 17.

SUBCHAPTER II
SEXUAL CRIMES WHICH AFFECT THE FAMILY

944.05 Bigamy. (1) Whoever does any of the following is guilty of a Class I felony:

(a) Contracts a marriage in this state with knowledge that his or her prior marriage is not dissolved; or

(b) Contracts a marriage in this state with knowledge that the prior marriage of the person he or she marries is not dissolved; or

(c) Cohabits in this state with a person whom he or she married outside this state with knowledge that his or her own prior marriage had not been dissolved or with knowledge that the prior marriage of the person he or she married had not been dissolved.

(2) In this section “cohabit” means to live together under the representation or appearance of being married.


944.06 Incest. Whoever marries or has nonmarital sexual intercourse, as defined in s. 948.01 (6), with a person he or she knows is a blood relative and such relative is in fact related in a degree within which the marriage of the parties is prohibited by the law of this state is guilty of a Class F felony.


Lawrence v. Texas, 539 U.S. 558 (2003), did not announce a fundamental right of adults to engage in all forms of private consensual sexual conduct. There was no clearly established federal law in 2001 that supported defendant’s claim that he had a fundamental right to engage in incest free from government proscription. Muth v. Frank, 412 F.3d 808 (2005).

944.15 Public fornication. (1) In this section, “in public” means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual intercourse.

(2) Whoever has sexual intercourse in public is guilty of a Class A misdemeanor.


944.16 Adultery. Whoever does either of the following is guilty of a Class I felony:

(1) A married person who has sexual intercourse with a person not the married person’s spouse; or

(2) A person who has sexual intercourse with a person who is married to another.


944.17 Sexual gratification. (1) In this section, “in public” means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual gratification.

(2) Whoever commits an act of sexual gratification in public involving the sex organ of one person and the mouth or anus of another is guilty of a Class A misdemeanor.

(3) Subsection (2) does not apply to a mother’s breast-feeding of her child.


944.18 Bestiality. (1) Definitions. In this section:

(a) “Animal” means any creature, either alive or dead, except a human being.

(b) “Obscene material” has the meaning given in s. 944.21 (2) (c).

(c) “Photograph or film” means the making of a photograph, motion picture film, video tape, digital image, or any other recording.

(d) “Sexual contact” means any of the following types of contact that is not an accepted veterinary medical practice, an accepted animal husbandry practice that provides care for animals, an accepted practice related to the insemination of animals
for the purpose of procreation, or an accepted practice related to
conformation judging:
1. An act between a person and an animal involving physical
contact between the sex organ, genitals, or anus of one and the
mouth, sex organ, genitals, or anus of the other.
2. Any touching or fondling by a person, either directly or
through clothing, of the sex organ, genitals, or anus of an animal
or any insertion, however slight, of any part of a person’s body or
any object into the vaginal or anal opening of an animal.
3. Any insertion, however slight, of any part of an animal’s
body into the vaginal or anal opening of a person.
(2) PROHIBITED CONDUCT. No person may knowingly do any
of the following:
(a) Engage in sexual contact with an animal.
(b) Advertise, offer, accept an offer, sell, transfer, purchase, or
otherwise obtain an animal with the intent that it be used for sexual
contact in this state.
(c) Organize, promote, conduct, or participate as an observer
of an act involving sexual contact with an animal.
(d) Permit sexual contact with an animal to be conducted on
any premises under his or her ownership or control.
(e) Photograph or film obscene material depicting a person
engaged in sexual contact with an animal.
(f) Distribute, sell, publish, or transmit obscene material
depicting a person engaged in sexual contact with an animal.
(g) Possess with the intent to distribute, sell, publish, or trans-
mit obscene material depicting a person engaged in sexual contact
with an animal.
(h) Force, coerce, entice, or encourage a child who has not
attained the age of 13 years to engage in sexual contact with an
animal.
(i) Engage in sexual contact with a child who has not attained the age of 13 years.
(j) Force, coerce, entice, or encourage a child who has attained
the age of 13 years but who has not attained the age of 18 years
to engage in sexual contact with an animal.
(k) Engage in sexual contact with an animal in the presence of
a child who has attained the age of 13 years but who has not attained the age of 18 years.
(3) PENALTIES. (a) Any person who violates sub. (2) (a) to (g)
is guilty of a Class H felony for the first violation and is guilty of a
Class F felony for a 2nd or subsequent violation or if the act
results in bodily harm to or the death of an animal. Any person
who violates sub. (2) (h) or (i) is guilty of a Class F felony for the
first violation and is guilty of a Class D felony for a 2nd or subse-
quent violation. Any person who violates sub. (2) (j) or (k) is
guilty of a Class G felony for the first violation and is guilty of a
Class E felony for a 2nd or subsequent violation.
(c) If a person has been convicted under sub. (2), the sentenc-
ing court shall order, in addition to any other applicable penalties,
all of the following:
1. That the person may not own, possess, reside with, or exer-
   cise control over any animal or engage in any occupation, whether
paid or unpaid, at any place where animals are kept or cared for,
for not less than 5 years or more than 15 years. In computing the
time period, time which the person spent in actual confinement
serving a criminal sentence shall be excluded.
2. That the person shall submit to a psychological assessment
and participate in appropriate counseling at the person’s expense.
3. That the person shall pay restitution to a person, including
any local humane officer or society or county or municipal pound
or a law enforcement officer or conservation warden or his or her
designee, for any pecuniary loss suffered by the person as a result of
the crime. This requirement applies regardless of whether the
person is placed on probation under s. 973.09. If restitution is
ordered, the court shall consider the financial resources and future
ability of the person to pay and shall determine the method of pay-
ment. Upon application of an interested party, the court shall
schedule and hold an evidentiary hearing to determine the value of
any pecuniary loss, as defined in s. 951.18 (4) (a) 1., under this
subdivision.
(4) SEVERABILITY. The provisions of this section are sev-
erable, as provided in s. 990.001 (11).

SUBCHAPTER IV
OBSCENITY

944.20 Lewd and lascivious behavior. (1) Whoever does
any of the following is guilty of a Class A misdemeanor:
(a) Commits an indecent act of sexual gratification with
another with knowledge that they are in the presence of others; or
(b) Publicly and indecently exposes genitals or pubic area.
(2) Subsection (1) does not apply to a mother’s breast-feeding
of her child.

944.21 Obscene material or performance. (1) The legis-
lature intends that the authority to prosecute violations of this
section shall be used primarily to combat the obscenity industry
and shall never be used for harassment or censorship purposes
against materials or performances having serious artistic, literary,
political, educational or scientific value. The legislature further
intends that the enforcement of this section shall be consistent
with the first amendment to the U.S. constitution, article 1, section
3, of the Wisconsin constitution and the compelling state interest
in protecting the free flow of ideas.
(2) In this section:
(a) “Community” means this state.
(b) “Internal revenue code” has the meaning specified in s.
71.01 (6).
(c) “Obscene material” means a writing, picture, film, or other
recording that:
1. The average person, applying contemporary community
standards, would find appeals to the prurient interest if taken as a
whole;
2. Under contemporary community standards, describes or
shows sexual conduct in a patently offensive way; and
3. Lacks serious literary, artistic, political, educational or sci-
entific value, if taken as a whole.
(d) “Obscene performance” means a live exhibition before an
audience which:
1. The average person, applying contemporary community
standards, would find appeals to the prurient interest if taken as a
whole;
2. Under contemporary community standards, describes or
shows sexual conduct in a patently offensive way; and
3. Lacks serious literary, artistic, political, educational or sci-
entific value, if taken as a whole.
(e) “Sexual conduct” means the commission of any of the fol-
lowing: sexual intercourse, sodomy, bestiality, necrophilia,
human excretion, masturbation, sadism, masochism, fellatio,
cunnilingus or lewd exhibition of human genitals.
(f) “Wholesale transfer or distribution of obscene material”
means any transfer for a valuable consideration of obscene mate-
rial for purposes of resale or commercial distribution; or any dis-
tribution of obscene material for commercial exhibition. “Whole-
sale transfer or distribution of obscene material” does not require
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b. Is exempt from taxation under section 501 (c) (3) of the internal revenue code.

d. Any institution of higher education that is accredited, as described in s. 39.30 (1) (d), and is exempt from taxation under section 501 (c) (3) of the internal revenue code.

5. A library that receives funding from any unit of government.

(9) In determining whether material is obscene under sub. (2) (c) 1. and 3., a judge or jury shall examine individual pictures, recordings of images, or passages in the context of the work in which they appear.

(10) The provisions of this section, including the provisions of sub. (8), are severable, as provided in s. 990.001 (11).

944.30 Prostitution. (1m) Any person who intentionally does any of the following is guilty of a Class A misdemeanor:

(a) Has or offers to have or requests to have nonmarital sexual intercourse for anything of value.

(1) Making lewd, obscene or indecent drawings. Whoever makes any lewd, obscene or indecent drawing or writing in public or in a public place is guilty of a Class C misdemeanor.

944.23 Making lewd, obscene or indecent drawings. Whoever makes any lewd, obscene or indecent drawing or writing in public or in a public place is guilty of a Class C misdemeanor.

History: 1977 c. 173.

944.25 Sending obscene or sexually explicit electronic messages. (1) In this section:

(a) “Electronic mail solicitation” means an electronic mail message, including any attached program or document, that is sent for the purpose of encouraging a person to purchase property, goods, or services.

(b) “Obscene material” has the meaning given in s. 944.21 (2) (e).

(c) “Sexually explicit conduct” has the meaning given in s. 948.01 (7).

(2) Whoever 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 of the electronic mail solicitation is guilty of a Class A misdemeanor.

History: 2001 a. 16.

SUBCHAPTER V

PROSTITUTION
(b) Commits or offers to commit or requests to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another for anything of value.

(c) Is an inmate of a place of prostitution.

(d) Masturbates a person or offers to masturbate a person or requests to be masturbated by a person for anything of value.

(e) Commits or offers to commit or requests to commit an act of sexual contact for anything of value.

(2m) If the person under sub. (1m) has not attained the age of 18 years and if the court determines that the best interests of the person are served and society will not be harmed, the court may enter a consent decree under s. 948.081, or a deferred prosecution agreement in accordance with s. 948.08,

944.36 Solicitation of drinks prohibited. Any licensee, permittee or bartender of a retail alcohol beverage establishment covered by a license or permit issued under ch. 125 who permits an entertainer or employee to solicit a drink of any alcoholic beverage, as defined in s. 20.02 (1), or any other drink from a customer on the premises, or any entertainer or employee who solicits such drinks from any customer, is guilty of a Class B misdemeanor.

History: 1975 c. 39 s. 675x; 1975 c. 199; Stats. 1975 s. 944.36; 1977 c. 173; 1981 c. 79.

Legislative Council Note, 1981: The amendment to s. 944.36 reflects the combining of s. 66.054 and ch. 176 into one chapter, ch. 125, and the definition of “alcoholic beverage” in that chapter. [Bill 300–A]