LC Staff Brief

Review of Crimes Against Children

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Review of Crimes Against Children

INTRODUCTION

Chapter 948 of the Wisconsin Statutes entitled "Crimes Against Children," contains the majority of the criminal offenses designed to protect minors. The offenses included in this chapter are intended to protect children from mental, physical, and sexual abuse; abandonment; neglect; abduction; and other harm. Other crimes designed to protect minors found outside of ch. 948 are listed in s. 948.015, Stats.

This Staff Brief provides a general description of the sex-related crimes against children in the order that they appear in ch. 948. Several acts passed during the 2005-06 Legislative Session made changes to these crimes. These changes are briefly described in this Staff Brief. Also included are selected statutes from other chapters relating to ch. 948 offenses.

- ***Part I*** summarizes current sex-related crimes against children, as affected by legislation enacted in the 2005-06 session.

- ***Part II*** summarizes the maximum penalties for felony and misdemeanor classes relevant to child sex offenses, the penalties for each specific child sex offense, and mandatory and presumptive minimum prison terms applicable to certain child sex offenses.

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PART I

SUMMARY OF STATUTORY PROVISIONS IN CH. 948, STATS.

Key Definitions

Sexual Contact

One of the key statutory terms in ch. 948 is "sexual contact" which is defined as any of the following:

1. Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant.

   - Intentional touching by the defendant or, upon the defendant's instruction, by another person, of the complainant's intimate parts, by the use of any body part or object.

   - Intentional touching by the complainant of the defendant's intimate parts, by the use of any body part or object or, if done upon the defendant's instructions, the intimate parts of another person.

2. Intentional penile ejaculation or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person upon any clothed or unclothed part of the complainant's body if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

3. For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.

   [s. 948.01 (5), Stats.]

2005 Wisconsin Act 435 expanded the definition of "sexual contact" to include contact by a third party upon the defendant's instruction in items 1. and 2., above. **2005 Wisconsin Act 273** expanded the definition to include the language set forth in item 3., above.

Sexual Intercourse

Another key term is "sexual intercourse" which is generally defined as follows:

> "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. [s. 948.01 (6), Stats.]

2005 Wisconsin Act 430 created a separate definition of sexual intercourse for the offense of first-degree sexual assault of a child, as affected by Act 430. The new definition is similar to the general definition of "sexual intercourse" but does not include any intrusion, however slight, of any part of a

person's body. In addition, "object" is qualified by "inanimate." Under prior law, the general definition of "sexual intercourse" applied to first-degree sexual assault of a child.

For provisions of ch. 948, Stats., other than first-degree sexual assault of a child the definition of "sexual intercourse" is not affected by Act 430. Therefore, for the purposes of the offenses of second-degree sexual assault of a child, incest with a child, child enticement, use of a computer to facilitate a child sex crime, sexual assault of a child placed in substitute care, sexual intercourse with a child age 16 or older, and sexual assault by a school staff person, the general definition of "sexual intercourse" applies. In addition, the new definition does not apply to the offense of first-degree sexual assault as affected by Act 437.

Sexually Explicit Conduct

"Sexually explicit conduct" means actual or simulated:

- Sexual intercourse.
- Bestiality.
- Masturbation.
- Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture, or bondage.
- Lewd exhibition of intimate parts.

[s. 948.01(7), Stats.]

Sections 948.02 and 948.025 - Sexual Assault of a Child

First-Degree Sexual Assault of a Child

Under current law, sexual contact or sexual intercourse with a child less than 13 years old is first-degree sexual assault of a child. [s. 948.02 (1), Stats.] This offense is generally a Class B felony. If great bodily harm to the child results, this crime is Class A felony.[1]

2005 Wisconsin Act 437 increased the penalty to a Class A felony where great bodily harm results. Under previous law, all sexual assault of a child under the age of 13 was a Class B felony.

Section 948.02 (1) was also changed by **2005 Wisconsin Act 430**. The Revisor of Statutes has determined that the changes made by Act 430 are inconsistent with the changes made by Act 437. Therefore, the Act 430 changes are currently listed in a revisor's note after s. 948.02, Stats., but are still current law. Under Act 430, first-degree sexual assault of a child is any of the following:

- Sexual intercourse with a person who has not attained the age of 12 years.
- Sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence.
- Sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence if the actor is at least 18 years of age when the sexual contact occurs.
- Sexual contact with a person who has not attained the age of 13 years.

[s. 948.02 (1), as affected by 2005 Wisconsin Act 430.]

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[1] See the table in Part II for maximum penalties associated with felony and misdemeanor classes addressed in this Staff Brief.

Each of these acts is punishable as a Class B felony. As noted above, Act 430 also created a separate definition of "sexual intercourse" for purposes of these offenses.

Second-Degree Sexual Assault of a Child

Sexual contact or sexual intercourse with a person under the age of 16 is second-degree sexual assault of a child, a Class C felony. [s. 948.02 (2), Stats.]

Repeated Acts of Sexual Assault of the Same Child

Section 948.025, Stats., prohibits repeated (three or more) acts of sexual assault of the same child. The penalties under this section are generally the same as the penalties for a single act of sexual assault of a child. However, this section allows conviction of an offender who repeatedly sexually assaulted the same child even if jurors cannot agree on which particular acts constituted sexual assault.

This section was revised by **2005 Wisconsin Acts 430 and 437** to reflect the changes that these two acts made to s. 948.02 (1), Stats. Therefore, there are similar inconsistencies in this section.

Other Provisions of the Offense of Sexual Assault of a Child

Under the sexual assault of a child statute, a person who is responsible for the welfare of a child less than 16 years old is guilty of a Class F felony if that person: (a) has knowledge that another person intends to have, is having, or has had sexual intercourse or sexual contact with the child; (b) is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place 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. [s. 948.02 (3), Stats.]

Current law also specifies that a defendant is not precluded from prosecution for sexual assault of a child if the defendant is married to the victim. [s. 948.02 (4), Stats.] Lastly, a defendant may be prosecuted for sexual assault of a child regardless of whether the victim was alive at the time of the assault. [s. 948.02 (5), Stats.]

Mandatory Minimum Sentences

As explained above, **2005 Wisconsin Act 430** created new subcategories for the crime of first-degree sexual assault of a child. Act 430 also created mandatory minimum periods of prison confinement for the most severe of these new categories of sexual assault of a child and repeated sexual assault of a child. Therefore, for offenses committed on or after June 6, 2006, the court must impose at least a 25-year prison term for a person convicted under s. 948.02 (1) (b) (sexual intercourse with a child under 12), 948.02 (1) (c) (sexual intercourse with a child under 16 by use or threat of force or violence), or 948.025 (1) (a) (at least three acts of sexual assault of the same child under s. 948.02 (1) (b) or (c)). [s. 939.616 (1), Stats.] A conviction under s. 948.02 (1) (d) (sexual contact with a child under 16 by use or threat of force or violence if the offender is over 18) or 948.025 (1) (ag) (at least three acts of sexual assault of the same child under s. 948.02 (1) (b), (c) or (d), with less than three of those acts in violation of (b) or (c)) carries a minimum prison sentence of five years. [s. 939.616 (2), Stats.]

These mandatory minimum sentences do not apply to s. 948.02 (1) or 948.025 (1) as affected by **2005 Wisconsin Act 437**, because of the inconsistencies between Act 437 and Act 430 noted above. As a result, the most severe category of first-degree sexual assault of a child, s. 948.02 (1) (a), as affected by Act 437 (sexual contact or sexual intercourse with a child under 13 resulting in great bodily harm), is not currently subject to a mandatory minimum sentence. However, because the offense is a Class A felony, the person is required to serve at least 20 years in prison.

Section 948.05 - Sexual Exploitation of a Child

A person is guilty of sexual exploitation of a child if the person does any of the following:

- Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying the conduct in any way, if the person has knowledge of the character and content of the sexually explicit conduct. [s. 948.05 (1) (a), Stats.]
- Records or displays in any way a child engaged in sexually explicit conduct, if the person has knowledge of the character and content of the sexually explicit conduct. [s. 948.05 (1) (b), Stats.]
- Knowingly permits, allows or encourages a child to engage in sexually explicit conduct for one of the purposes listed above if the person is responsible for a child's welfare. [s. 948.05 (2), Stats.]

A defendant may present an affirmative defense against prosecution if the defendant had reasonable cause to believe that the child was at least 18 years old at the time of the offense. [s. 948.05 (3), Stats.]

A person is also guilty of sexual exploitation of a child if the person does the following :

- Produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct if the person knows the character and content of the sexually explicit conduct and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years. [s. 948.05 (1m), Stats.]

Sexual exploitation of a child is generally a Class C felony. If the defendant is under 18 years old when committing the offense, it is a Class F felony. [s. 948.05 (2p), Stats.] This crime carries a presumptive minimum prison sentence of five years. The court may impose a sentence less than the minimum or impose probation if it finds that the best interests of the community will be served and that the public will not be harmed. This minimum sentence does not apply to offenders who were less than 18 years of age at the time the violation occurred. [s. 939.617, Stats.]

A person convicted of this crime must pay a mandatory "child pornography surcharge" of $500 for each image or copy of an image associated with the crime. Images include video recordings, visual representations, images on exposed film, and data representing a visual image. The court determines the number of images associated with the crime for purposes of calculating a surcharge. The surcharge does not apply to crimes committed when the offender was less than 18 years of age. [s. 973.042, Stats.]

2005 Wisconsin Act 433 created the presumptive minimum prison sentence applicable to this crime and raised the general penalty for violation of this section from a Class F felony to a Class C felony for offenses committed by a person 18 years of age or older. This act also created the child pornography surcharge.

Section 948.055 - Causing a Child to View or Listen to Sexual Activity

Section 948.055, Stats., prohibits a person from causing a child to view or listen to sexually explicit conduct, if the purpose of causing the child to do so is to sexually arouse or gratify the person or to humiliate or degrade the child. If the victim is less than 13 years old, this violation is a Class F felony. If the victim is between 13 and 18 years old, it is a Class H felony.

Section 948.06 - Incest with a Child

It is considered incest for a person to marry, have sexual intercourse with or have sexual contact with a child that is related to the person in a degree of kinship closer than second cousin, whether by blood or adoption. [s. 948.06 (1), Stats.] This offense also includes having sexual contact or sexual intercourse with a child if the offender is the child's stepparent. [s. 948.06 (1m), Stats.]

If a person is responsible for a child's welfare, the person also commits incest if the person meets all of the following conditions:

- Has knowledge that another person who is related to the child by blood or adoption in a degree of kinship closer than second cousin or who is a child's stepparent has had or intends to have sexual intercourse or sexual contact with the child.
- Is physically and emotionally capable of taking action that will prevent the intercourse or contact from occurring or being repeated.
- Fails to take that action.
- 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.

[s. 948.06 (2), Stats.]

The offense of incest with a child is a Class C felony. **2005 Wisconsin Act 277** expanded this crime to include sexual contact or sexual intercourse between a stepchild and a stepparent. [s. 948.06 (1m), Stats.] Under previous law, the crime only applied if the child was related to the offender by blood or adoption.

Section 948.07 - Child Enticement

A person is guilty of child enticement if the person causes or attempts to cause a child to go into a vehicle, building, room, or other secluded place with the intent to do any of the following:

- Sexually assault the child in violation of s. 948.02, 948.085, or 948.095.
- Cause the child to engage in prostitution.
- Expose a sex organ to the child or cause the child to expose a sex organ.
- Record the child engaging in sexually explicit conduct.
- Cause bodily or mental harm to the child.
- Give or sell to the child a controlled substance or controlled substance analog in violation of the Uniform Controlled Substances Act (ch. 961, Stats.).

[s. 948.07, Stats.]

Child enticement is a Class D felony. **2005 Wisconsin Act 277** added the new crime of "sexual assault of a child in substitute care" under s. 948.085, Stats., to the list of intended acts for purposes of child enticement.

Section 948.075 - Use of a Computer to Facilitate a Child Sex Crime

A person is guilty of using a computer to facilitate a child sex crime if the person uses a computerized communication system to communicate with an individual who the offender believes or has reason to believe is less than 16 years old, with intent to commit first- or second-degree sexual assault of a child. [s. 948.075, Stats.] If the actor reasonably believed that the child was no more than two years younger than the actor at the time of the communication, this offense does not apply.

Conviction for this offense requires proof that the actor did another act, in addition to communicating using a computer, to give effect to the actor's intent to commit sexual assault of a child.

The use of a computer and communication system to facilitate a child sex crime is a Class C felony. This crime carries a presumptive minimum prison term of five years. The court may impose a prison term that is shorter than the minimum or impose probation if it finds that the best interests of the community will be served and that the public will not be harmed. This minimum sentence does not apply to offenders who were less than 18 years of age at the time the violation occurred. [s. 939.617, Stats.]

2005 Wisconsin Act 433 created the presumptive minimum prison sentence applicable to this crime and raised the penalty for violation of this section from a Class D felony to a Class C felony.

Section 948.08 - Soliciting a Child for Prostitution

It is a crime to intentionally solicit or cause any child to practice prostitution or establish any child in a place of prostitution. [s. 948.08, Stats.] This offense is a Class D felony.

Section 948.085 - Sexual Assault of a Child Placed in Substitute Care

Under current law, a person is guilty of sexual assault of a child placed in substitute care if the person does either of the following:

- Has sexual contact or sexual intercourse with a child for whom the person is a foster parent or treatment foster parent. [s. 948.085 (1), Stats.]
- Works or volunteers at or is directly responsible for management of a shelter care facility, group home, or a residential care facility and has sexual contact or sexual intercourse with a child placed in such a facility. [s. 948.085 (2), Stats.]

Sexual assault of a child placed in substitute care is a Class C felony. This crime was created by **2005 Wisconsin Act 277**.

Section 948.09 - Sexual Intercourse With a Child Age 16 or Older

This section prohibits a person from having sexual intercourse with a child between the age of 16 and 18 years old who is not the defendant's spouse. [s. 948.09, Stats.] A violation of this crime is a Class A misdemeanor.

Section 948.095 - Sexual Assault of a child by a School Staff Person or a Person Who Works or Volunteers with Children

Section 948.095, Stats., prohibits a school staff person from having sexual contact or intercourse with a child who is at least 16 years old who is enrolled in the school or school district in which the staff person works. "School staff" includes "any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract." [s. 948.095 (1) (b), Stats.]

This section also prohibits a person who is at least 21 years old who has a job or a volunteer position that requires the person to work or interact directly with children from having sexual contact or intercourse with a child with whom the person works or interacts in the course of the person's job or volunteer position. This prohibition only applies to children who are at least 16 years old, and does not apply if the school-related offense above applies. [s. 948.095 (3), Stats.]

If a person's job or volunteer position relates to any of the following, it is assumed the person is required to work or interact directly with children: teaching children, child care, youth counseling, youth organization, coaching children, parks or playground recreation, or school bus driving.

These offenses are Class H felonies, and do not apply if the defendant is married to the child. The prohibition against sexual assault by a person who works or volunteers with children was added to this section by **2005 Wisconsin Act 274**.

Section 948.10 - Exposing Genitals or Pubic Area to a Child

This section prohibits a person from exposing the person's genitals or pubic area to a child or causing a child to expose his or her genitals or pubic area, if done for the purpose of sexual arousal or sexual gratification. This prohibition does not apply if the defendant is married to the child or to a mother breast-feeding a child. This offense is a Class A misdemeanor.

Section 948.11 - Exposing a Child to Harmful Material or Harmful Descriptions or Narrations

It is a violation of s. 948.11 (2) (a), Stats., for a person to sell, rent, exhibit, play, distribute, or loan to a child any harmful material, with or without monetary consideration. A person at least 17 years old may not verbally communicate, by any means, a harmful description or narrative account to a child, with or without monetary consideration. [s. 948.11 (2) (am), Stats.] These offenses are Class I felonies.

This section also prohibits the possession of harmful material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child. [s. 948.11 (2) (b), Stats.] This crime is a Class A misdemeanor.

To be guilty of these offenses, a person must have knowledge of the character and content of the material, description, or narrative account. The person must also know or reasonably should know that the victim is a child or have face-to-face contact with the child before or during the sale, rental, exhibit, playing, distribution, loan, or communication. If the person does have face-to-face contact, has reasonable cause to believe the child was at least 18 years old, and the child presented the person with a false source of identification, the person can present an affirmative defense to that effect.

Section 948.11 (3), Stats., promotes the extradition to this state of defendants convicted under this section. Libraries and educational institutions are generally exempt from prosecution under this section. [s. 948.11 (4), Stats.]

Some of the key definitions of words and phrases used in this section include the following:

- "Harmful description or narrative account" means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture, or brutality that, taken as a whole, is harmful to children. [s. 948.11 (1) (ag), Stats.]
- "Harmful material" is defined as any of the following under s. 948.11 (1) (ar), Stats.:
    - Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, physical torture, or brutality and that is harmful to children.
    - Any book, pamphlet, magazine, printed matter however reproduced, or recording that contains any of the above depictions, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture, or brutality and that, taken as a whole, is harmful to children.
- "Harmful to children" means that the description, narrative account or representation, in whatever form, of nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture, or brutality, has any of the following qualities:
    - Predominantly appeals to the prurient, shameful, or morbid interest of children.
    - Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children.
    - Lacks serious literary, artistic, political, scientific, or educational value for children, when taken as a whole.

[s. 948.11 (1) (b), Stats.]

- "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. [s. 948.11 (1) (d), Stats.]
- "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal. [s. 948.11 (1) (f), Stats.]

Section 948.12 - Possession of Child Pornography

A person is guilty of possession of child pornography if the person possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct. The person must know that he or she possesses the material and the character and the content of the sexually explicit conduct in the material. The person must also know or reasonably should know that the child was less than 18 years old. [s. 948.12 (1m), Stats.]

A person is also guilty of this offense if the person exhibits or plays a recording of a child engaged in sexually explicit conduct. The person must know that he or she has exhibited or played the recording and must have known the character and content of the sexually explicit conduct before doing so. The person must also have known or reasonably should have known that the child engaged in sexually explicit conduct was less than 18 years old before exhibiting or playing the recording. [s. 948.12 (2m), Stats.]

Possession of child pornography is generally a Class D felony. If the defendant was under 18 years old when the offense occurred, it is a Class I felony. This crime carries a presumptive minimum prison term of three years. The court may impose a term that is shorter than the minimum or impose probation if it finds that the best interests of the community will be served and that the public will not be

harmed. This prison term sentence does not apply to offenders who were less than 18 years of age at the time the violation occurred. [s. 939.617, Stats.]

A person convicted of this crime must pay a mandatory "child pornography surcharge" of $500 for each image or copy of an image associated with the crime. Images include video recordings, visual representations, images on exposed film, and data representing a visual image. The court determines the number of images associated with the crime for purposes of calculating a surcharge. The surcharge does not apply to crimes committed when the offender was less than 18 years of age. [s. 973.042, Stats.]

2005 Wisconsin Act 433 created the presumptive minimum prison sentence applicable to this crime and raised the penalty for violation of this section from a Class I felony to a Class D felony for persons who commit this offense when 18 years of age or older. This Act also created the child pornography surcharge.

Section 948.13 - Child Sex Offender Working With Children

Prohibition

A person who has been convicted of a serious child sex offense is prohibited from engaging in an occupation or participating in a volunteer position that requires the person to work or interact primarily and directly with children under 16 years of age. If a person's job or volunteer position relates to any of the following, it is presumed the person is required to work or interact directly with children: teaching children, child care, youth counseling, youth organization, coaching children, parks or playground recreation, or school bus driving. [s. 948.13, Stats.]

"Serious child sex offenses" under s. 948.13 (1), Stats., include sexual exploitation of a child by a therapist, sexual assault of a child with a mental illness or deficiency, sexual assault of a child who is under the influence of an intoxicant, first- and second-degree sexual assault of a child, repeated acts of sexual assault of the same child, sexual exploitation of a child, incest with a child, child enticement, use of a computer to facilitate a child sex crime, or sexual assault of a child placed in substitute care. Comparable laws existing before May 7, 1996 are also considered serious sex crimes, along with comparable crimes in federal law or the laws of other states.

This offense is a Class F felony.

Petition for Exemption

Certain persons convicted of a limited list of child sex crimes[2] may petition the court for an order of exemption from this prohibition, allowing the person to work or volunteer with children. [s. 948.13 (2m), Stats.] The exemption applies to a person who was less than 19 years old at the time of the offense and was no more than four years older or younger than the child. The child must also have been between the ages of 13 and 16 at the time of the offense, and the court must find that it is not necessary, in the interest of public protection, to require the person to be prohibited from such work or volunteer activity.

The court may request an examination of the petitioner by a physician, psychologist, or other expert approved by the court before deciding the petition. If the person refuses to submit to the examination, the court is required to deny the petition without prejudice. [s. 948.13 (2m) (e), Stats.] The statutes include detailed requirements for the execution of such an examination, including restrictions on confidentiality, notification of the petitioner, required findings and opinions, and allocation of cost of the examination.

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[2] Second-degree sexual assault of a child, repeated acts of sexual assault of the same child, or sexual assault of a child placed in substitute care.

In deciding whether granting the petition is in the interest of public protection, the court may consider, among other factors, the ages of the petitioner and the victim, their relationship, whether the crime resulted in bodily harm to the victim and whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions. The court may also consider the probability that the petitioner will commit other serious child sex offenses in the future and any report from a court-requested examination of the petitioner. [s. 948.13 (2m) (f), Stats.]

A petitioner is required to send a copy of the petition to the district attorney (DA) who prosecuted the person. The DA must make a reasonable attempt to contact the victim and inform the victim of his or her right to make or provide a statement to the court. The court may hold a hearing within 30 days of the filing of a complete petition and the DA may appear at such a hearing. [s. 948.13 (2m) (b), (c) and (d), Stats.]

90-Day Delayed Application

The prohibition against working or volunteering with children does not apply until 90 days after the person receives written notice of this prohibition from a law enforcement agency, if the only serious child sex offense that the person was convicted of was second-degree sexual assault of a child, the person was convicted of that offense before May 7, 2002, and the person is eligible to petition for an exemption from the prohibition as explained above. [s. 948.13 (2) (b), Stats.] If the petitioner specifies that he or she qualifies for this 90-day delay, that a law enforcement agency has provided the required written notice to the person, and that the person is seeking an exemption under this subsection before the expiration of the 90–day period, the court must decide a petition no later than 45 days after the petition is filed. [s. 948.13 (2m) (em), Stats.]

Section 948.14 - Registered Sex Offender Photographing Minors

A registered sex offender under s. 301.45, Stats., is prohibited from intentionally taking a photograph, making a motion picture, videotape, or other visual representation, or recording or storing in any medium data that represents a visual image of any child under 17 years of age without the written consent of the minor's parent, legal custodian, or guardian. The written consent is required to state that the person seeking the consent is required to register as a sex offender with the Department of Corrections. This restriction does not apply to a sex offender capturing a representation of a child to which he or she is a parent, legal custodian, or guardian. [s. 948.14, Stats.]

A violation of this section is a Class I felony. This crime was created by **2005 Wisconsin Act 432**.

PART II

CHAPTER 948 PENALTY TABLES

This Part contains tables summarizing the maximum penalties for felonies and misdemeanors relevant to child sex offenses, the penalties for the specific child sex offenses, and mandatory and presumptive minimum prison terms applicable to certain child sex offenses.

Felony and Misdemeanor Classifications Table

The following table sets forth the maximum fines, terms of imprisonment, and the maximum terms of prison confinement and extended supervision for each felony and misdemeanor classification addressed in Part I.

Felony Class	**Fine**	**Imprisonment (Confinement Plus Extended Supervision**	**Prison Confinement/Extended Supervision**
Class A	------	Life Imprisonment	
Class B	------	60 years	40 years/20 years
Class C	$100,000	40 years	25 years/15 years
Class D	$100,000	25 years	15 years/10 years
Class F	$25,000	12.5 years	7.5 years/5 years
Class H	$10,000	6 years	3 years/3 years
Class I	$10,000	3.5 years	1.5 years/2 years
Misdemeanor Class	**Fine**	**Imprisonment**	**Prison Confinement - Extended Supervision**
Class A	$10,000	9 months	n/a

Chapter 948 Child Sex Crime Penalty Table

The following table lists the felony or misdemeanor classification for each child sex crime under ch. 948, Stats.:

Reference	Crime	Penalty
948.02 (1)	First-degree sexual assault of a child	Class A felony if the sexual assault results in great bodily harm
		Class B felony if no great bodily harm
948.02 (2)	Second-degree sexual assault of a child	Class C felony
948.02 (3)	Failure to act to prevent sexual assault of a child	Class F felony
948.025	Engaging in repeated acts of sexual assault of the same child	Class A, B, or C felony depending upon the penalty for the acts of sexual assault committed
948.05	Sexual exploitation of a child	Class C felony if defendant was an adult at the time of the offense
		Class F felony if the defendant was under 18 at the time of the offense
948.055	Causing a child to view or listen to sexual activity	Class F felony if the child had not attained the age of 13 years
		Class H felony if the child was between 13 and 18 years of age
948.06	Incest with a child	Class C felony
948.07	Child enticement	Class D felony
948.075	Use of a computer to facilitate a child sex crime	Class C felony
948.08	Soliciting a child for prostitution	Class D felony

Reference	Crime	Penalty
948.085	Sexual assault of a child placed in substitute care	Class C felony
948.09	Sexual intercourse with a child age 16 or older	Class A misdemeanor
948.095	Sexual assault of a child by a school staff person or a person who works or volunteers with children	Class H felony
948.10	Exposing genitals or pubic area	Class A misdemeanor
948.11	Exposing a child to harmful material or harmful descriptions or narrations	Class I felony if the defendant sells, rents, exhibits, plays, distributes, or loans material to a child
		Class A misdemeanor if the defendant possess material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child
948.12	Possession of child pornography	Class D felony if defendant was an adult at the time of the offense
		Class I felony if defendant was under 18 at the time of the act
948.13	Child sex offender working with children	Class F felony
948.14	Registered sex offender photographing a child	Class I felony

Minimum Prison Term Table

The following table lists the crimes under ch. 948 which have mandatory or presumptive minimum sentences, their penalty classes, and whether there are restrictions on the age of the offender for minimum term.

Offense	**Minimum Prison Term**	**Presumptive Mandatory**	**Age of Offender for Minimum**	**Citation for Minimum Term**
Sexual intercourse with a child under 12 (s. 948.02 (1) (b), Stats., as affected by 2005 Wisconsin Act 430)	25 years	Mandatory	Any	s. 939.616 (1)
Sexual intercourse with a child under 16 by use or threat of force or violence (s. 948.02 (1) (c), Stats., as affected by 2005 Wisconsin Act 430)	25 years	Mandatory	Any	s. 939.616 (1)
At least three acts of sexual assault of the same child under s. 948.02 (1) (b) or (c) (s. 948.025 (1) (a), Stats., as affected by 2005 Wisconsin Act 430)	25 years	Mandatory	Any	s. 939.616 (1)
Sexual intercourse or sexual contact with a child under 13 resulting in great bodily harm (s. 948.02 (1) (a), Stats., as affected by 2005 Wisconsin Act 437)	20 years	Mandatory	Any	s. 973.014
Sexual contact with a child under 16 by use or threat of force or violence by a person over 18 (s. 948.02 (1) (d), Stats., as affected by 2005 Wisconsin Act 430)	5 years	Mandatory	Offense only applies to adults	s. 939.616 (2)

Offense	Minimum Prison Term	Presumptive Mandatory	Age of Offender for Minimum	Citation for Minimum Term
At least three acts of sexual assault of the same child under s. 948.02 (1) (b), (c), or (d), with less than three of those acts in violation of (b) or (c) (s. 948.025 (1) (ag), Stats., as affected by 2005 Wisconsin Act 430)	5 years	Mandatory	Any	s. 939.616 (2)
Sexual exploitation of a child	5 years	Presumptive	18 +	s. 939.617
The use of a computer to facilitate a child sex crime	5 years	Presumptive	18 +	s. 939.617
Possession of child pornography	3 years	Presumptive	18 +	s. 939.617
Repeat offense of a serious child sex offense*	Life	Mandatory if convicted as a persistent repeater	Any	s. 939.62 (2m) (b) 2.

*Under this provision, "serious child sex offense" is defined as sexual assault of a child, repeated acts of sexual assault of the same child, sexual exploitation of a child, causing a child to view or listen to sexual activity, incest with a child, child enticement, soliciting a child for prostitution, sexual assault of a child in substitute care, sexual assault of a child by a school instructional staff person or a person who works or volunteers with children, or child abduction.