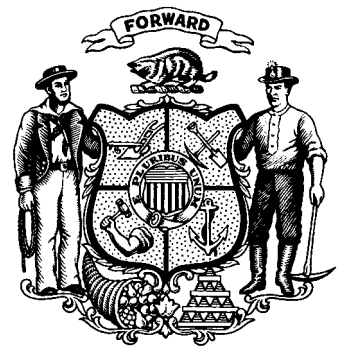


# Sex Crimes and Penalties in Wisconsin

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# SEX CRIMES AND PENALTIES IN WISCONSIN

## SUMMARY

This bulletin reviews Wisconsin laws pertaining to sex crimes, including legislation passed by the 1999 Legislature in 1999-2000. Part I focuses on Wisconsin's "sexual predator" law, the sex offender registry maintained by the Department of Corrections, and community notification when sex criminals are released from confinement. Part II summarizes all sex crimes defined by Wisconsin law and includes key definitions of the elements of the crimes and the penalties related to specific offenses.

## PART I – SEXUAL OFFENDERS AND PUBLIC PROTECTIONS

### I. INVOLUNTARY CIVIL COMMITMENT OF SEXUALLY VIOLENT PERSONS

Significant research indicates that many persons who commit sex-related crimes may suffer from mental illness or be driven by difficult-to-control compulsive behavior. Furthermore, treatment programs seem to have limited success rates in the long run. Because sexual criminals, as a group, exhibit a high incidence of repeat offenses, it may be dangerous to release them at the expiration of their sentences.

Wisconsin's involuntary civil commitment law for sexual offenders was enacted as 1993 Wisconsin Act 479 and took effect on June 2, 1994. It is similar to an existing Wisconsin law that provides custodial treatment for certain mentally ill persons who present an immediate danger of physical harm to themselves or others. The act, commonly known as the "Sexual Predator Law", created Chapter 980, Wisconsin Statutes, titled "Sexually Violent Person Commitments".

**Commitment Procedure.** When a sex offender nears the end of the initial period of confinement, the law permits involuntary civil commitment to a secure mental institution or other supervised care if the court determines the person continues to suffer from a mental disorder and is likely to commit further sexually violent acts upon release. This civil commitment, which can only be imposed after a probable cause hearing and a trial in circuit court, is designed to protect the public while offering the sex offender treatment for the mental disorder. Control, care, and treatment must be provided in the least restrictive manner consistent with the person's requirements and the court's commitment order. The person's status must be reviewed periodically, and, once the offender is determined to be no longer dangerous, he or she becomes eligible for release. If the offender is released to a halfway house or other supervised community living arrangement, the Department of Corrections (DOC) or, in some cases, the district attorney must notify the local police and sheriff, as well as the crime victim or family of the victim.

The sexual predator law is sometimes known as the “Gerald Turner Law” after the man who was convicted in 1973 for the sexual assault and murder of a Fond du Lac girl, who disappeared while Halloween trick-or-treating. The legislature passed the law in response to controversy surrounding Turner’s impending release from prison after he had served less than half of his 38-year sentence.

**Predator Law Upheld by Supreme Court.** Opponents of the law have asserted that it is primarily punitive in nature and violates the constitutional ban on “double jeopardy” by imposing additional punishment on persons who have served their original sentences. They argue that sex criminals are singled out for special detention while other violent offenders are released. They also express concern that the law must provide sufficient due process protection before a person is indefinitely consigned to a mental health institution.

On December 8, 1995, the Wisconsin Supreme Court upheld the sexual predator law as constitutional. In simultaneously deciding two separate cases by identical 6-1 margins, the court ruled that the primary purpose of the law was not punitive. The court determined that the objective of the law is to provide treatment while protecting the public from future sex crimes. It concluded the law did not violate the constitutional prohibitions against double jeopardy and *ex post facto* laws. It should be noted that prior to the Supreme Court’s decision, about half of the 35 cases challenging the law had resulted in lower court rulings that the law was unconstitutional.

Defense attorneys still contend the law is unconstitutional because persons are not receiving the appropriate level of treatment or are being confined unnecessarily due to a lack of halfway houses or because of public opposition to sex criminals residing in the community. These objections may be met by the state’s new Sand Ridge Secure Treatment Center, a 300-bed secure mental health facility in Mauston. The center, which will serve as the primary facility for the custody and care of sexual predators, is scheduled to open in April 2001. (Currently, those ordered into institutional care are confined to the Wisconsin Resource Center near Oshkosh.)

## II. REGISTRATION, NOTIFICATION, AND TESTING

Sex offenders released from prison are typically placed in the community that was their last residence prior to conviction, often in a halfway house or other setting which facilitates monitoring and treatment efforts. This is the source of heated debates. The U.S. Constitution protects a person’s right to live wherever he or she chooses, and this civil liberty extends to those who have served their sentences for committing even the most heinous crimes. On the other hand, residents of the community often are understandably concerned about having a convicted sex offender living in their neighborhood, especially if the individual has preyed upon children. Faced with these conflicting interests, a consensus has emerged that public safety is best served if offenders register with the authorities and notification is provided to victims, police, and certain others when sex criminals move into a community.

**Offenses Requiring Registration.** Section 301.45, Wisconsin Statutes, requires that persons who have been convicted of, or otherwise determined in court to have committed, certain serious sex crimes must register once each calendar year with DOC after release from custody or when they are placed on probation or parole or other supervised status.

Crimes which mandate inclusion in the sex offender registry are:

1. first, second, or third-degree sexual assault of an adult;
2. incest;
3. sexual exploitation by a therapist;
4. first or second-degree sexual assault of a child;
5. engaging in repeated acts of sexual assault of the same child;
6. sexual exploitation of a child;
7. forcing a child to view or listen to sexual activity;
8. incest with a child;
9. child enticement;
10. soliciting a child for prostitution;
11. sexual assault of a student by a school instructional staff person;
12. exposing a child to harmful material;
13. possession of child pornography;
14. abduction of another's child; and
15. false imprisonment or kidnapping if the victim was a minor and the person who committed the violation was not the victim's parent.

Registration is also required for any person found to be a sexually violent person under Chapter 980. In addition, a court may order registration if a person has committed certain nonsexual serious felony offenses if the court finds that the offense was sexually motivated. 1999 Wisconsin Act 89 requires that those convicted in other states or in a federal, military, or tribal court of any of the listed crimes must register if they live, work, or attend school in Wisconsin.

**Information Required for Registry.** The offender must provide the following information:

1. the offender's name, including any aliases;
2. information sufficient to identify the person, including date of birth, gender, race, height, weight, and hair and eye color;
3. detailed information about the offense the person committed, the disposition of the case, and the terms of probation, supervision, conditional transfer, or supervised release;
4. the address at which the person will be residing;
5. the supervising agency;
6. a description of any motor vehicle that the person owns or that is registered in the person's name; and
7. the name and location of the person's employer or the school the person will be attending.

In most cases, updated information must be provided to DOC within 10 days after a change occurs, but 1999 Wisconsin Act 156 requires that DOC be notified of an imminent change of address before the offender moves to a different residence. DOC may also require an offender to provide fingerprints and a recent photograph.

**Duration of Registration Requirements.** A person generally must continue to register as a sex offender for 15 years after the date of discharge from sentence, commitment, or other

type of supervision. Lifetime registration is required in the case of first or second-degree sexual assault of a child, repeated sexual assault of a child, a person found to be a sexually violent person, and any person convicted of a sex offense on two or more separate occasions. A court may order lifetime registration when a person has been convicted of a sexually motivated serious felony or placed on lifetime supervision due to conviction of a serious sex offense.

**Exemption.** If the court feels registration is not necessary for public protection, it may exempt an offender provided the individual was less than 19-years-old at the time of the violation and the victim was a child not more than four years younger or four years older than the perpetrator. This exemption typically relates to consensual sex between teenagers. It is not available if the sexual assault involved sexual intercourse with a child under the age of 12 or if it involved the use or threat of force or violence.

**Penalties for Failure to Register.** Intentional failure to comply with the registration requirements may result in a maximum fine of \$10,000 or a prison term of not more than nine months or both. A second or subsequent failure carries a penalty of a maximum fine of \$10,000 or imprisonment for not more than five years or both.

**Federal Mandates.** The federal Violent Crime Control and Law Enforcement Act of 1994 generally mandated states to establish sex offender registration and community notification procedures by September 1997 or risk losing 10% of their federal law enforcement aid. Modifications contained in 1999 Wisconsin Act 89 were made, in part, to conform with the federal law and preserve about \$1 million in anticrime grants.

**Community Notification.** Wisconsin law allows law enforcement agencies to notify communities about registered sex offenders who move into a neighborhood. The notification law, contained in Section 301.46, Wisconsin Statutes, was modeled after 1994 New Jersey legislation known as "Megan's Law", which requires community notification when a convicted sex offender moves into a neighborhood. That law was named for Megan Kanka, a seven-year-old girl who was sexually assaulted and murdered by a man who had served a prison sentence for sexually molesting another child before taking up residence across the street from the Kanka house upon his release. On February 23, 1998, the U.S. Supreme Court declined to review a challenge, thus sustaining the law, which had been upheld as constitutional by the New Jersey Supreme Court and the U.S. Circuit Court of Appeals. A federal law (Public Law 104-145), passed in 1996, encouraged all states to require police agencies to alert a community's residents when a convicted sex offender moves into the area.

**Bulletins to Police.** When the offender is released from confinement or institutional care, DOC or the supervising agency may notify local law enforcement agencies that the offender will be residing, working, or attending school in the area if notification is considered necessary to protect the public. Notification is required if the person is a repeat offender or has been determined to be a sexually violent person. In addition, a crime victim or eligible family member may request to receive notification. Trial courts, district attorneys, and witnesses will also be given certain notifications.

**Notification of Community Organizations.** DOC must provide certain information regarding a specific sex offender (name, date, and location of conviction, as well as automobile make, model, and license number) if requested by specified agencies and organizations. Those eligible to receive this information include public or private schools, day care providers, licensed child welfare agencies, licensed group homes, licensed shelter care facilities, licensed

foster homes or treatment foster homes, county child welfare departments, and other agencies providing child welfare services. Other eligible agencies are the Department of Justice, the Department of Public Instruction, the Department of Health and Family Services, Boy Scouts of America, Boys Clubs of America, Girl Scouts of America, Camp Fire Girls, as well as sheltered workshops or any other community-based public or private, nonprofit organization that DOC determines should have access. A neighborhood watch program may request the names and information concerning all offenders in the registry who reside, are employed, or attend school in the program's area.

**Police Notification of the General Public.** A police chief or sheriff may provide registry information for a specific offender upon the request of any other resident if the law officer decides the information is necessary to protect the public. The request does not have to be in writing, but the officer may require that the requester state a reason for wanting the information. In addition, law enforcement officers may, on their own initiative, notify the general public about sex offenders if they believe that it is necessary for public protection.

**Internet Access to the Sex Offender Registry.** 1999 Wisconsin Act 89 requires that, beginning June 1, 2001, DOC must make data from the sex offender registry and any other information it determines is necessary for public protection available on the Internet and by any other means the department decides appropriate.

### III. TESTING SEX OFFENDERS

**DNA Testing.** Persons judicially determined to have committed sexual assault must provide a biological sample to the state crime laboratories for inclusion in the state's DNA database. Being adjudged a sexually violent person also triggers the sampling requirement. In addition, the court may order DNA sampling if a person is placed on probation for most sex crime convictions.

**HIV Testing.** Upon request of the district attorney, the court may order a defendant charged with, or convicted of, sexual assault to undergo tests for sexually transmitted diseases and the HIV virus associated with AIDS if the court determines in a hearing that there is probable cause to assume the defendant has exposed the victim to a sexually transmitted disease. However, if the tests are not requested before the trial, current law does not provide for the testing if the defendant has been found not guilty or not responsible by reason of mental illness.

**Lie Detector Testing.** DOC may require a sex offender to submit to a lie detector test while in confinement or as a condition of probation, parole, or extended supervision.

## PART II – A SUMMARY OF SEX CRIMES AND PENALTIES

In the early days of statehood, sexual activity was considered legal only within the confines of married, heterosexual relationships. The codes of sexual conduct were often strictly enforced and violations severely punished. Over time, particularly in recent years, laws relating to sexual activity have been modified so that most types of private sexual conduct between consenting adults are not prohibited and many other types of behavior that are nominally illegal, such as adultery, are generally not prosecuted by law enforcement authorities. Nevertheless, certain reprehensible sex crimes remain subject to stringent

penalties and vigorous enforcement, and the official public policy of the state, as expressed in Section 944.01, Wisconsin Statutes, is to promote only “good” sexual behavior:

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.

Through the years, both the terminology and substance of the laws relating to sexual activity have been extensively modified. Major alterations include: the revision of the criminal code instituted by Chapter 696, Laws of 1955; the change from the term “rape” to “sexual assault” in Chapter 184, Laws of 1975; and 1983 Wisconsin Act 17, which decriminalized most types of private (that which is not conducted “in public”) sexual activity between consenting adults, including homosexual activity.

## I. KEY DEFINITIONS

Important statutory terminology relating to sex crimes is summarized below and the related section of the Wisconsin Statutes is cited:

**Intimate Parts** – “the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being” – Section 939.22 (19).

**Sexual Contact** – “the intentional touching of the clothed or unclothed intimate parts of another person with any part of the body clothed or unclothed or with any object or device, or the intentional touching of any part of the body clothed or unclothed of another person with the intimate parts of the body clothed or unclothed, or the intentional penile ejaculation of ejaculate or intentional emission of urine or feces upon any part of the body clothed or unclothed of another person, if that intentional touching, ejaculation or emission is for the purpose of sexual humiliation, sexual degradation, sexual arousal or gratification” – Section 939.22 (34).

**Sexual Intercourse** – “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.” – Section 948.01 (5).

**Sexually Explicit Conduct** – “actual or simulated sexual intercourse; sodomy; bestiality; necrophilia; human excretion; masturbation; fellatio; cunnilingus; sexual sadism or sexual masochistic abuse including flagellation, torture or bondage; or lewd exhibition of human genitals, breast, buttock or anus and any intentional touching of intimate parts for sexually related reasons” – Section 948.01 (7).

**Consent** – “words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact.” Minors, persons suffering from mental illness or defect, and sleeping or unconscious persons are presumed unable to give consent. Failure to resist does not indicate consent. – Section 940.225 (4).

## II. SEX CRIMES AGAINST ADULTS

**First-degree Sexual Assault.** Section 940.225 (1), Wisconsin Statutes, prohibits sexual contact or sexual intercourse without consent in any of the following situations: 1) the assault

causes pregnancy or great bodily harm; 2) use or threat of use of a dangerous weapon, or what appears to be one; 3) the perpetrator is aided or abetted by one or more other persons and the assault involves the use or threat of use of force or violence. Marriage is not a bar to prosecution in any case of sexual assault. This constitutes a Class B felony. (See Appendix for the penalties associated with a particular class of crime.)

**Second-degree Sexual Assault.** Section 940.225 (2), Wisconsin Statutes, prohibits sexual contact or sexual intercourse without consent in situations involving: 1) use of or threat of force or violence; 2) injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim; 3) assault upon a person who suffers from a mental illness or deficiency that renders the person temporarily or permanently incapable of appraising the assault and the defendant knows of such condition; 4) assault upon a person who the defendant knows is unconscious; 5) assault is abetted by one or more other persons; 6) assault upon a patient or resident of a health or treatment facility or program by an employee of that facility or program; 7) assault upon a person that the perpetrator knows is under the influence of an intoxicant to a degree which renders the victim incapable of appraising his or her conduct, an act popularly known as a “date rape” (Class BC felony). 1997 Wisconsin Act 220 criminalized the use of certain “date rape” drugs and prohibits a perpetrator convicted of taking advantage of an intoxicated victim under the age of 18 years from working or volunteering with children under 16 years of age.

**Third-degree Sexual Assault.** Section 940.225 (3), Wisconsin Statutes, prohibits sexual intercourse without consent. It also prohibits nonconsensual sexual contact involving intentional ejaculation or emission of urine or feces if such conduct is either for the purposes of sexual degradation or humiliation or sexual arousal or gratification (Class D felony).

**Fourth-degree Sexual Assault.** Section 940.225 (3m), Wisconsin Statutes, prohibits nonconsensual sexual contact involving the intentional touching of clothed or unclothed intimate body parts (Class A misdemeanor).

**Sexual Exploitation by a Therapist.** Section 940.22 (2), Wisconsin Statutes, prohibits intentional sexual contact by any person who is or who holds himself or herself out to be a therapist with a patient or client during any ongoing therapist-patient or therapist-client relationship, regardless of whether it is or is not consensual and whether it occurs during any treatment, consultation, interview, or examination. “Therapist” is defined in Section 940.22 (1) (i) as “a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.” As provided by Section 940.22 (3), a therapist who suspects that a patient or client has been sexually exploited by another therapist may, with the patient’s or client’s consent, report the sexual contact to the appropriate regulating body or the district attorney (Class C felony).

### III. SEX CRIMES AGAINST CHILDREN

**First-degree Sexual Assault of a Child.** Section 948.02 (1), Wisconsin Statutes, prohibits sexual contact or sexual intercourse with a child under 13 years of age (Class B felony).

**Second-degree Sexual Assault of a Child.** Section 948.02 (2), Wisconsin Statutes, prohibits sexual contact or sexual intercourse with a child who is at least age 13 but under 16

years of age (Class BC felony). Engaging in repeated acts (defined as three or more violations) with the same child within a specified period of time may result in prosecution as a Class B felony under Section 948.025.

**Sexual Assault of a Child – Failure to Act.** Section 948.02 (3), Wisconsin Statutes, states a person responsible for the welfare of a child under 16 years of age must take action to prevent sexual intercourse or sexual contact if such an assault has occurred or is likely to be repeated (Class C felony).

**Sexual Intercourse with a Child Age 16 or Older.** Section 948.09, Wisconsin Statutes, prohibits sexual intercourse with a child who is at least 16 but less than 18 years of age and who is not the defendant’s spouse (Class A misdemeanor).

**Sexual Assault of a Student by a School Instructional Staff Member.** Section 948.095, Wisconsin Statutes, prohibits sexual contact or sexual intercourse by a member of the instructional staff of a school district with a child enrolled in the school who is 16 years of age or older (Class D felony).

**Sexual Exploitation of a Child (Child Pornography).** Section 948.05, Wisconsin Statutes, prohibits knowingly employing, using, persuading, inducing, enticing, or coercing any child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of the conduct, or displaying the conduct in any way. It also prohibits the production, sale, distribution, or display of child pornography and holds liable a person who is responsible for the child’s welfare for permitting or encouraging the activity. 1999 Wisconsin Act 3 provides that the prosecution has the burden of proving that the defendant knew or had reason to know that the child is under the age of 18 (Class C felony).

**Forced Viewing of or Listening to Sexual Activity.** Section 948.055, Wisconsin Statutes, prohibits intentionally causing a child to view or listen to sexually explicit conduct for the purpose of sexually arousing or gratifying the violator or for humiliating or degrading the child (Class C felony if the child is under 13 years of age; Class D felony if the child is at least 13 but less than 18 years of age).

**Incest with a Child.** Section 948.06, Wisconsin Statutes, prohibits marriage or sexual intercourse or sexual contact with a child related by blood or adoption in a degree of kinship closer than second cousin. A person responsible for the child’s welfare must take action to prevent such incest (Class BC felony).

**Child Enticement.** Section 948.07, Wisconsin Statutes, prohibits causing or enticing a child into any vehicle, building, room, or secluded place with the intent to: commit an act of first or second-degree sexual assault; cause the child to engage in prostitution; expose a sex organ to the child or cause the child to expose a sex organ; or take pictures or make audio recordings of the child engaging in sexually explicit conduct (Class BC felony).

**Soliciting a Child for Prostitution.** Section 948.08, Wisconsin Statutes, prohibits intentionally soliciting or causing any child to practice prostitution or establishing a child in a place of prostitution (Class BC felony).

**Exposing Genitals or Pubic Area.** Section 948.10, Wisconsin Statutes, prohibits a person from causing a child to expose genitals or pubic area or the person’s exposing genitals or pubic area to a child for purposes of sexual arousal or sexual gratification, except in cases where the child is the person’s spouse (Class A misdemeanor).

**Exposing a Child to Harmful Material, Descriptions or Narrations.** Section 948.11, Wisconsin Statutes, prohibits knowingly selling, renting, exhibiting, transferring, or loaning to a child any material of a sexual nature that is harmful to a child. It also prohibits exposing a child to a harmful description or narrative account (Class E felony).

“Harmful material” includes any picture, photograph, drawing, sculpture, book, pamphlet, magazine, printed matter however reproduced, sound recording, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture, or brutality that is harmful to children. “Harmful description or narrative account” is defined as any explicit and detailed description or narrative account or sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture, or brutality that, if taken as a whole, is harmful to children. A material, description or narration is considered harmful if three elements are present: 1) it predominantly appeals to the prurient, shameful, or morbid interest of children; 2) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for children; and 3) it lacks serious literary, artistic, political, scientific, or educational value for children, when taken as a whole.

Possession of harmful material with intent to sell, rent, exhibit, transfer, or loan them to a child is a Class A misdemeanor. An affirmative defense exists if the child presents apparently official documentation of legal age. Libraries and educational institutions are exempted from liability. Section 134.46 prohibits exhibition of explicit sexual material harmful to minors at an outdoor theater if the material is visible from a public street, sidewalk, thoroughfare, or other public place or from private property where it may be observed by minors and provides a forfeiture not to exceed \$1,000.

**Possession of Child Pornography.** Section 948.12, Wisconsin Statutes, prohibits intentional possession of any audio recording, photograph, motion picture, videotape, film, negative, or other pictorial reproduction of a child engaged in sexually explicit conduct (Class E felony).

#### IV. CRIMES AGAINST SEXUAL MORALITY

**Adultery.** Section 944.16, Wisconsin Statutes, prohibits a married person from having sexual intercourse with a person other than his or her spouse or a person having sexual intercourse with a person who is married to another. (Class E felony)

**Incest.** Section 944.06, Wisconsin Statutes, prohibits nonmarital sexual intercourse with a blood relative related in a degree within which the marriage of the parties is prohibited (generally a kinship of first cousins or closer). (Class C felony)

**Fornication.** Section 944.15, Wisconsin Statutes, prohibits sexual intercourse in public. “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. (Class A misdemeanor)

**Sexual Gratification.** Section 944.17 (2), Wisconsin Statutes, prohibits acts of sexual gratification in public involving the sex organ of one person and the mouth or anus of another. It also prohibits any sexual acts with animals, whether in public or private. (Class A misdemeanor)

**Lewd and Lascivious Behavior.** Section 944.20, Wisconsin Statutes, prohibits acts of indecent sexual gratification with another with knowledge that they are in the presence of others or publicly and indecently exposing genitals or pubic area. (Class A misdemeanor)

**Obscene Material or Performance (Pornography).** Section 944.21, Wisconsin Statutes, relates to obscene material and prohibits its importation, printing, selling, or possession with the intent to sell, publish, exhibit, or transfer any obscene material. The section also prohibits producing or performing in any obscene performance or exhibiting or transferring obscene material to a child. Libraries and educational institutions are exempt, as well as contract printers lacking editorial control over the material. In keeping with the “free speech” provisions of the First Amendment to the U.S. Constitution and Article I, Section 3, of the Wisconsin Constitution, as well as the compelling state interest in protecting the free flow of ideas, the law is intended to combat commercial obscenity and not for censorship purposes. (Class A forfeiture) (The penalty may be upgraded to Class A misdemeanor or Class D felony depending upon the number of prior convictions.)

The definition of “obscene material” includes a written narrative or picture, photograph, drawing, sculpture, book, pamphlet, magazine, printed matter however reproduced, sound recording, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality which the average person, applying contemporary community standards, would find appeals to the prurient interest, describes or shows sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, educational, or scientific value, if taken as a whole. This definition is based on the U.S. Supreme Court’s decision in *Miller v. California*, 413 U.S. 15 (1973).

**Making Lewd, Obscene or Indecent Drawings.** Section 944.23, Wisconsin Statutes, prohibits making lewd, obscene, or indecent drawings or writing in public. (Class C misdemeanor)

**Prostitution.** Section 944.30, Wisconsin Statutes, prohibits having, offering, or requesting nonmarital sexual intercourse, sexual gratification, sexual contact, or masturbation for anything of value. It also prohibits being an inmate of a place of prostitution. (Class A misdemeanor)

**Patronizing Prostitutes.** Section 944.31, Wisconsin Statutes, prohibits entering or remaining in a place of prostitution with the intent to commit a sexual act with a prostitute or engaging in a sexual act with a prostitute. (Class A misdemeanor)

**Soliciting Prostitutes.** Section 944.32, Wisconsin Statutes, prohibits a person from soliciting another person to engage in an act of prostitution either with the first person or with a third party. It also prohibits establishing any person in a place of prostitution. (Class D felony)

**Pandering.** Section 944.33, Wisconsin Statutes, generally applies to an employer of prostitutes. It prohibits a person from proposing that another person patronize a prostitute and prohibits the first person from either directing or transporting another person to a place of prostitution or directing or transporting a prostitute to the person. (Class A misdemeanor; Class C felony if the panderer received compensation from the earnings of the prostitute)

**Keeping Place of Prostitution.** Section 944.34, Wisconsin Statutes, prohibits intentionally keeping a place of prostitution or granting the continued use of such a place. (Class D felony)

**Observing Nudity.** Section 942.09, Wisconsin Statutes, prohibits a person from installing or using a surveillance device or other contrivance, such as a peephole, to observe a nude or partially nude person without the consent of the person observed. (Class A misdemeanor)

## V. STATUTES OF LIMITATIONS

Generally, under Wisconsin law, prosecution of felonies must be commenced within six years of the commission of the crime, and prosecution of misdemeanors and adultery must be begun within three years. However, for certain sex crimes against children, charges may be brought until the time the victim reaches age 31. These include sexual assault of a child or engaging in repeated acts of sexual assault of the same child, sexual exploitation of a child, incest with a child, child enticement if related to sexual activity, soliciting a child for prostitution, and sexual assault of a student by a school instructional staff person. In computing the limitation for sexual exploitation by a therapist, the law makes exception for any time during which the victim is unable to pursue a complaint due to the effects of the prohibited sexual contact or due to threats, instructions, or statements from the therapist.

## VI. PENALTIES FOR SEX CRIME VIOLATIONS

**Penalty Enhancers:** Section 939.623, Wisconsin Statutes, prescribes a minimum sentence of five years' imprisonment for convicts who have a prior history of one or more serious sex crimes. Section 939.62 also authorizes a further increase over the maximum sentence required for repeat offenders of not more than 10 years for those convicts who have a record of repeated serious sex crimes against children. Sections 948.02 (3m) and 948.025 (2m) provide an additional five-year penalty for crimes involving sexual assault of a child if the violator is a parent, guardian, or other person responsible for the welfare of the child. Section 939.647 increases the maximum term of imprisonment for a violent felony, including a sexual assault, by five years if the offense is committed against an elderly person. Section 939.622 increases the maximum prison term for a serious sex crime by up to five years if the perpetrator knew at the time of the crime that he or she had AIDS, was infected with the HIV virus that can cause AIDS, or had another specified sexually transmitted disease. Section 939.62 (2m) mandates a sentence of life imprisonment without parole if the person is charged and convicted as a "serious repeat offender" for a second serious child sex offense (the so-called "two strikes and you're out" law).

**Lifetime Supervision of Serious Sex Offenders.** Section 939.615, Wisconsin Statutes, authorizes the court to require, in addition to other penalties, that persons convicted of certain serious sex crimes be subject to lifetime supervision by DOC. The person may petition to be released from monitoring after 15 years if he or she has not been convicted of any crime during that period. Violating the conditions of lifetime supervision is a Class A misdemeanor, unless the conduct that violates the supervision is a felony, in which case the violation is a Class E felony.

**Child Sex Offender Prohibited from Working with Children.** Section 948.13, Wisconsin Statutes, prohibits a person who has been convicted of certain serious sex crimes against children and certain other sex crimes from subsequently working or volunteering in a position that involves interacting primarily with children under the age of 16. Crimes triggering the prohibition are first-degree sexual assault of a child, engaging in repeated acts of sexual

assault of the same child, sexual exploitation of a child, incest with a child, child enticement, sexual contact by a therapist, and second-degree sexual assault upon a person who suffers from a mental illness or assault upon a victim age 18 years or younger who is under the influence of intoxicants (so-called "date rape"). Occupations specifically banned to this group of convicts are teaching children, child care, youth counseling, youth organization, coaching children, parks or playground recreation, and school bus driving. Violation of this restriction is a Class C felony.

**Pharmacological Treatment For Certain Child Sex Offenders.** Section 304.06 (1q), Wisconsin Statutes, provides for "chemical castration" of certain sexual offenders as a condition of parole. A person sentenced to prison for sexual assault of a child under the age of 13 may be denied parole unless the person consents to participate in pharmacological treatment using an "antiandrogen drug", a substance that inhibits the effects of male hormones, such as testosterone. The court may also, when deciding whether to place an offender on supervised release, consider the person's possible participation in pharmacological treatment if the person was found to be a sexually violent person ("sexual predator") on the basis of conviction for sexual assault of a child under the age of 13.

**Penalties.** The categories of penalties imposed by the Wisconsin Statutes for sex crime violations are listed below.

**Felonies – Section 939.50 as amended by 1997 Wisconsin Act 283 for crimes committed on or after December 31, 1999**

Class A – life imprisonment.

Class B – imprisonment not to exceed 60 years.

Class BC – fine not to exceed \$10,000 or imprisonment not to exceed 30 years, or both.

Class C – fine not to exceed \$10,000 or imprisonment not to exceed 15 years, or both.

Class D – fine not to exceed \$10,000 or imprisonment not to exceed 10 years, or both.

Class E – fine not to exceed \$10,000 or imprisonment not to exceed 5 years, or both.

**Misdemeanors – Section 939.51**

Class A – fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

Class B – fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both.

Class C – fine not to exceed \$500 or imprisonment not to exceed 30 days, or both.

**Forfeitures – Section 939.52**

Class A – not to exceed \$10,000.

Class B – not to exceed \$1,000.

Class C – not to exceed \$500.

Class D – not to exceed \$200.

Class E – not to exceed \$25.