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**1987 Senate Bill 203**

Date of enactment: **April 20, 1988**
Date of publication: **April 27, 1988**

# 1987 Wisconsin Act 332

AN ACT *to repeal* 103.29 (2), 103.82 (2), 134.46 (4), 175.20 (2), 940.201, 940.203, 940.225 (1) (d) and (2) (e), 940.29 (6), 940.32, 941.22, the unnumbered subchapter title preceding 944.12, 944.12, 944.17 (2) (b), 944.25, 946.71, 946.715, 947.08, 947.15 and 972.16; *to renumber* 103.29 (1) (b), 940.26, 942.02 and chapter 948; *to renumber and amend* 103.29 (1) (a), 940.27, 940.28, 943.34 (intro.) and (1), 943.35, 946.63 and 946.716; *to amend* 46.95 (1) (a), 48.78 (3), 103.30, 103.31, 103.82 (1) (a), 103.82 (3), 146.01 (3), 151.13 (2), 161.49, 165.70 (1) (b), 939.22 (intro.), 939.74 (2) (a), 940.225 (4) (intro.), 944.15 (2), 944.32, 946.82 (4), 949.03 (1) (b), 968.255 (1) (a) 2, 969.035 (1), 969.08 (10) (b) and 973.073; *to repeal and recreate* 939.45 (5); and *to create* 118.13 (4), 893.587, 939.32 (1) (d), 939.74 (2) (c), chapter 948 and 971.19 (8) of the statutes, *relating to* crimes and civil offenses against children, incest and providing penalties.

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

SECTION 1. 46.95 (1) (a) of the statutes is amended to read:

46.95 (1) (a) "Domestic abuse" means physical abuse, including a violation of s. 940.225 (1), (2) or (3), or any threat of physical abuse between adult family or household members or by a minor family or household member against an adult family or household member. "Domestic abuse" does not mean physical abuse, including a violation of s. ~~940.225 (1), (2) or (3)~~ 948.02 or 948.03, or any threat of physical abuse against a minor family or household member by an adult family or household member.

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NOTE: Deletes, in the domestic abuse grants statute, a cross-reference to the sexual assault statute, and inserts a reference to provisions relating to sexual assault of a child and physical abuse of a child under ch. 948, created by this bill.

SECTION 7. 48.78 (3) of the statutes is amended to read:

48.78 (3) If a child adjudged delinquent on the basis of a violation of s. 941.10, 941.11, 941.20, 941.21, ~~941.22,~~ 941.23, 941.235, 941.24, 941.26, 941.28, ~~942.295 [941.295]~~ 941.295, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a) ~~or~~, 943.32 (2) 948.02, 948.03, 948.05, 948.60 or 948.61 or any crime specified in ch. 940 has escaped or has been allowed to leave a secured juvenile correctional facility for a specified time period and in the case of an authorized leave the child is absent from the facility for more than 12 hours after the expiration of the specified period, the department may release the child's name and any information about the child the department determines to be necessary for the protection of the public or to secure the child's return to the facility. The department shall promulgate rules establishing guidelines for the release of the child's name or information about the child to the public.

NOTE: This SECTION makes necessary cross-reference changes.

SECTION 8. 103.29 (1) (a) of the statutes is renumbered 103.29 (1) and amended to read:

103.29 (1) Any employer who employs or permits the employment of any minor in street trades in violation of ss. 103.21 to 103.31 or of any order issued thereunder or who hinders or delays the department or any ~~truant~~ school attendance or police officer in the performance of their duties under ss. 103.21 to 103.31 may be required to forfeit not less than $25 nor more than $1,000 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.21 to 103.31 within 5 years, as measured from the dates the violations initially occurred, may be fined not less than ~~$10~~ $250 nor more than ~~$100~~ $5,000 for each day of the 2nd or subsequent offense~~,~~ or imprisoned not more than 30 days~~. Every day during which the violation continues constitutes a separate offense~~ or both.

NOTE: Creates new penalties for violations of regulatory offenses relating to the employment of minors in street trades and general standards for the employment of minors.

Under this SECTION, monetary penalties applicable to the first offense of employers who violate child employment laws are increased to not less than $25 nor more than $1,000 per each day of the offense and changed to civil forfeitures, rather than fines. Second and subsequent offenses occurring within 5 years of a previous offense are punishable by criminal fines of not less than $250 nor more than $5,000 for each day of the offense, or imprisonment for not more than 30 days or both.

SECTION 9. 103.29 (1) (b) of the statutes is renumbered 103.29 (2).

SECTION 10. 103.29 (2) of the statutes is repealed.

NOTE: Repeals s. 103.29 (2), providing that the state may enforce the penalties for violations of the employment of minors in street trades statutes either by criminal prosecution or by bringing a civil action. This provision is repealed because it is replaced by the amendments to s. 103.29 (1) (a), which provide for civil forfeitures for first offenses and criminal penalties for 2nd and subsequent offenses.

SECTION 11. 103.30 of the statutes is amended to read:

**103.30 Penalty on newspapers for allowing minors to loiter around premises.** A newspaper publisher or printer or person having for sale newspapers or magazines shall not permit any minor under 18 years of age to loiter or remain around any premises where the newspapers or magazines are printed, assembled, prepared for sale or sold when the minor is required under s. 118.15 to attend school. Any person violating this section is ~~guilty of a misdemeanor, and~~ subject to the penalties specified in s. 103.29.

NOTE: Deletes language made inappropriate by changes in s. 103.29 in this bill.

SECTION 12. 103.31 of the statutes is amended to read:

**103.31 Penalty on parent or guardian.** Any parent or guardian who ~~suffers or~~ permits a minor under his or her control to be employed in violation of ss. 103.21 to 103.31 or of any order of the department issued thereunder may be ~~fined~~ required to forfeit not less than ~~$5~~ $10 nor more than ~~$25~~ $250 for each day of the first offense~~, or imprisoned not more than 30 days~~ and, for the 2nd or subsequent violation of ss. 103.21 to 103.31 within 5 years, as measured from the dates the violations initially occurred, may be required to forfeit not less than $25 nor more than $1,000 for each day of the 2nd or subsequent offense.

NOTE: Revises the penalty applicable to a parent or guardian for permitting a minor to be employed in violation of the employment of minors in street trades statutes by: 1) making a violation a civil forfeiture, rather than a criminal fine with optional imprisonment; 2) increasing the dollar amounts from not less than $5 nor more than $25 to not less than $10 nor more than $25 per day for the first offense and to not less than $250 nor more than $1,000 per day for a 2nd or subsequent offense within 5 years; and 3) clarifying that the parent or guardian may violate the employment of minors statutes only with regard to a minor under the control of the parent or guardian. Imprisonment may not be imposed against parents or guardians for 2nd or subsequent offenses. It is an option for 2nd or subsequent offenses committed by employers under this bill.

SECTION 13. 103.82 (1) (a) of the statutes is amended to read:

103.82 (1) (a) Any employer who employs or permits any minor to work in any employment in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, or who hinders or delays the department or school attendance officers in the performance of their duties, or who refuses to admit or locks out the officer from any place required to be inspected under ss. 103.64 to 103.82 may be required to forfeit not less than $25 nor more than $1,000 for each day of the first offense and, for the 2nd or subsequent violation of ss. 103.64 to 103.82 within 5 years, as measured from the dates the violations initially occurred, may be fined not less than ~~$10~~ $250 nor more than ~~$100~~ $5,000 for each day of the 2nd or subsequent offense~~,~~ or imprisoned not more

than 30 days~~. Every day during which the violation continues constitutes a separate offense~~ or both.

NOTE: Increases the monetary penalties applicable under current s. 103.82 to first offenses by persons who employ minors in violation of the general standards for the employment of minors to not less than $25 nor more than $1,000 for each day of the offense; the penalty for a first offense is changed to a civil forfeiture, rather than a fine. Criminal fines and imprisonment are retained for 2nd and subsequent offenses occurring within 5 years of a previous offense and the fines are increased to not less than $250 nor more than $5,000 per day of the offense for 2nd and subsequent offenses.

SECTION 14. 103.82 (2) of the statutes is repealed.

NOTE: Repeals a provision relating to the options of the state to enforce the general employment of minors standards, either by criminal prosecution or civil action, because it is replaced by the penalties in s. 103.82 (1) (a), as amended by this bill.

SECTION 15. 103.82 (3) of the statutes is amended to read:

103.82 (3) Any parent or guardian who permits a minor under his or her control to be employed or to work in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, may be ~~fined~~ required to forfeit not less than ~~$5~~ $10 nor more than ~~$25~~ $250 for each day of the first offense~~, or imprisoned not more than 30 days~~ and, for the 2nd or subsequent violation of ss. 103.64 to 103.82 within 5 years, as measured from the dates the violations initially occurred, may be required to forfeit not less than $25 nor more than $1,000 for each day of the 2nd or subsequent offense.

NOTE: Revises the penalty applicable to a parent or guardian for permitting a minor to be employed in violation of the general employment standards for minors by: 1) making a violation a civil forfeiture, rather than a criminal fine with optional imprisonment; 2) increasing the dollar amounts from not less than $5 nor more than $25 to not less than $10 nor more than $250 per day for the first offense and to not less than $25 nor more than $1,000 per day for a 2nd or subsequent offense within 5 years; and 3) clarifying that the parent or guardian may violate this provision only with regard to a minor under the control of the parent or guardian. Imprisonment may not be imposed against parents or guardians for 2nd or subsequent offenses. It is an option for 2nd or subsequent offenses committed by employers under this bill.

SECTION 16. 118.13 (4) of the statutes is created to read:

118.13 (4) Any public school official, employe or teacher who intentionally engages in conduct which discriminates against a person or causes a person to be denied rights, benefits or privileges, in violation of sub. (1), may be required to forfeit not more than $1,000.

NOTE: Creates a specific civil penalty provision applicable to a violation of the prohibition against pupil discrimination. In the absence of a specific penalty, a civil forfeiture of up to $200 applies to this unlawful conduct under the general penalty provision of the criminal code, s. 939.61 (1).

SECTION 17. 134.46 (4) of the statutes is repealed.

NOTE: Repeals a provision permitting the attorney general or the district attorney to bring a civil action to declare explicit sexual material at outdoor theaters harmful to minors. This change is consistent with the repeal of civil declaratory judgment procedures applicable to the crime of exposing a child to harmful materials [see item 7 of the NOTE following s. 948.11].

SECTION 18. 146.01 (3) of the statutes is amended to read:

146.01 (3) Any person who violates this section ~~shall~~ may be ~~fined~~ required to forfeit not more than ~~one hundred dollars~~ $1,000.

NOTE: Decriminalizes the current penalty for a violation of s. 146.01 which: 1) requires an attending physician or licensed midwife to use a prophylactic agent for the prevention of infant blindness; 2) under certain circumstances, requires a nurse, parent or other person in charge of an infant to report inflamed, swollen and red eyes or eyes that show an unnatural discharge to a local health officer; and 3) requires the officer to immediately warn the person of the danger of such symptoms. The higher maximum monetary penalty reflects the seriousness of violations of the statutory requirements and the general decline in the value of the dollar over time.

SECTION 19. 151.13 (2) of the statutes is amended to read:

151.13 (2) PENALTY. Any person who violates this chapter may be ~~fined~~ required to forfeit not more than ~~$300 or imprisoned not more than 3 months or both~~ $1,000. Each day of continued violation constitutes a separate offense.

NOTE: Decriminalizes the current penalty for a violation of s. 151.03 (1), prohibiting any person from: 1) applying lead-bearing paints to exposed surfaces on the inside of a dwelling or structure used for the care of children or to any fixture or other object placed in or upon any exposed surface of a dwelling and ordinarily accessible to children; or 2) selling or transferring a fixture or other object intended to be placed upon any surface on the inside of a dwelling, containing a lead-bearing paint and ordinarily accessible to children. The higher maximum monetary penalty reflects the seriousness of violations of the statutory prohibitions and the general decline in the value of the dollar over time.

SECTION 20. 161.49 of the statutes is amended to read:

**161.49** (title) **Distribution of a controlled substance on school premises.** If any person violates s. 161.41 (1) ~~(c)~~ by distributing a controlled substance ~~included under s. 161.16 (2) (b)~~ while within 1,000 feet of any private or public school ~~building~~ premises, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years.

NOTE: Amends current s. 161.49, permitting enhanced prison terms for distributing cocaine or ecgonine within 1,000 feet of any school building, to apply to the distribution of any controlled substance [i.e., any drug or substance listed in schedules I to V in ch. 161] within 1,000 feet of any school premises. The special committee determined that there is no substantial reason for differentiating between cocaine and other controlled substances for purposes of this penalty enhancement statute. The substitution of "premises" for "building" expands the area to which the prohibition is applicable to school premises other than buildings (e.g., playgrounds, athletic fields).

SECTION 21. 165.70 (1) (b) of the statutes is amended to read:

165.70 (1) (b) Enforce chs. 161 and 945 and ss. 940.20 (3), 941.25 to 941.27, 943.01 (2) (c), 943.27, 943.28, 943.30, 944.30, 944.31, 944.32, 944.33, 944.34, 946.65 ~~and~~, 947.02 (3) and (4)~~;~~ and 948.08.

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NOTE: Inserts a cross-reference to the crime of soliciting a child for prostitution, created under this bill, into a provision relating to the enforcement authority of the department of justice.

SECTION 22. 175.20 (2) of the statutes is repealed.

NOTE: Repeals s. 175.20 (2) which prohibits a dance hall proprietor from allowing the presence in the dance hall of: 1) intoxicated persons; or 2) if alcohol beverages are available for consumption in the dance hall, any person under the age of 18 years unless accompanied by a "parent, lawful guardian or adult spouse". The subsection is repealed because it, in part, repeats and is inconsistent with the prohibitions in the more recently enacted s. 125.07 (3), which applies to the presence of persons under the legal drinking age (in general, age 21) on any premises licensed to sell alcohol beverages, not just dance halls. In addition, the more recently enacted s. 125.07 (2) prohibits any person, including any person with an alcohol beverage license or permit, from furnishing alcohol beverages to an intoxicated person. Although this provision does not directly prohibit the presence of intoxicated persons on licensed premises, its effect is substantially the same as that of s. 175.20 (2).

SECTION 22m. 893.587 of the statutes is created to read:

**893.587 Incest; limitation.** An action to recover damages for injury caused by incest shall be commenced within 2 years after the plaintiff discovers the fact and the probable cause, or with the exercise of reasonable diligence should have discovered the fact and the probable cause, of the injury, whichever occurs first.

SECTION 23. 939.22 (intro.) of the statutes is amended to read:

**939.22 Words and phrases defined.** (intro.) In chs. 939 to 948 <u>and 951</u>, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction <u>or the word or phrase is defined in s. 948.01 for purposes of ch. 948</u>:

NOTE: Amends the introductory clause to the definition section applicable, in general, to the criminal code to reflect the addition of the specific definitions in s. 948.01 applicable in new ch. 948.

SECTION 24. 939.32 (1) (d) of the statutes is created to read:

939.32 (1) (d) Whoever attempts to commit a crime under s. 948.07 is subject to the penalty provided in that section for the completed act.

NOTE: Creates a new exception to the current provision that attempted criminal acts are punishable by a fine or imprisonment not to exceed one-half the maximum penalty for the completed act. Under the bill, both the act of attempted child enticement and the completed act of child enticement are Class C felonies.

SECTION 25. 939.45 (5) of the statutes is repealed and recreated to read:

939.45 (5) (a) In this subsection:

1. "Child" has the meaning specified in s. 948.01 (2).

2. "Great bodily harm" has the meaning specified in s. 948.01 (4).

3. "Person responsible for the child's welfare" includes the child's parent or guardian; an employe of a public or private residential home, institution or agency in which the child resides or is confined or that provides services to the child; or any other person legally responsible for the child's welfare in a residential setting.

(b) When the actor's conduct is reasonable discipline of a child by a person responsible for the child's welfare. Reasonable discipline may involve only such force as a reasonable person believes is necessary. It is never reasonable discipline to use force which is intended to cause great bodily harm or death or creates an unreasonable risk of great bodily harm or death.

NOTE: Revises current s. 939.45 (5), recognizing the privilege to reasonably discipline a child as a defense to criminal liability, to:

1. Clarify who may exercise this privilege. The bill replaces the phrase "parent or a person in place of a parent" with the term "person responsible for the child's welfare" and defines that term.

2. Clarify the degree of force constituting reasonable discipline which is privileged. The bill specifically declares that it is never reasonable discipline to use force which is intended to cause great bodily harm, as defined in s. 948.01 (4) of the bill, or death or creates an unreasonable risk of great bodily harm or death.

SECTION 26. 939.74 (2) (a) of the statutes is amended to read:

939.74 (2) (a) A prosecution for murder may be commenced at any time~~;~~.

SECTION 27. 939.74 (2) (c) of the statutes is created to read:

939.74 (2) (c) A prosecution for violation of s. 948.02, 948.03, 948.04, 948.05, 948.06 or 948.08 may be commenced within the time period specified in sub. (1) or by the time the victim reaches the age of 21 years, whichever is later.

NOTE: Extends the statute of limitations for prosecutions of certain crimes involving a child victim to the later of 6 years or the day before the victim's 21st birthday. The crimes included are sexual assault [s. 948.02], child abuse [s. 948.03], causing emotional harm [s. 948.04], sexual exploitation [s. 948.05], incest [s. 948.06] and soliciting a child for prostitution [s. 948.08].

SECTION 28. 940.201 of the statutes is repealed.

SECTION 29. 940.203 of the statutes is repealed.

SECTION 30. 940.225 (1) (d) and (2) (e) of the statutes are repealed.

NOTE: The preceding 3 SECTIONS repeal ss. 940.201, prohibiting child abuse, 940.203, relating to sexual exploitation of children, 940.225 (1) (d), relating to sexual contact or sexual intercourse with a person 12 years of age or younger, and 940.225 (2) (e), relating to sexual contact or sexual intercourse with a person who is over the age of 12 years and under the age of 16 years. These provisions are transferred to and revised in new ch. 948, created in this bill.

SECTION 31. 940.225 (4) (intro.) of the statutes is amended to read:

940.225 (4) CONSENT. (intro.) "Consent", as used in this section, means 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. Consent is not an issue in alleged violations of ~~subs. (1) (d) and~~ sub. (2) (c)~~,~~ and (d) ~~and (e)~~. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

NOTE: Deletes references to provisions of the sexual assault statute involving children because these provisions are transferred to and revised in new ch. 948, created in this bill.

SECTION 32. 940.26 of the statutes is renumbered 948.51.

NOTE: Renumbers current s. 940.26, relating to student hazing, to place the provision in new ch. 948, created in this bill.

SECTION 33. 940.27 of the statutes is renumbered 948.22, and 948.22 (6) and (6m), as renumbered, are amended to read:

948.22 (6) Before January 1, 1990, under this section, affirmative defenses include but are not limited to inability to provide child, grandchild or spousal support. A person may not demonstrate inability to provide child, grandchild or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(6m) After December 31, 1989, under this section, affirmative defenses include but are not limited to inability to provide child or spousal support. A person may not demonstrate inability to provide child or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

NOTE: Clarifies the affirmative defense provision in the current criminal failure to support statute by specifying that the burden of proving an affirmative defense under that statute is on the defendant and that the defense must be proved by a preponderance of the evidence.

SECTION 34. 940.29 (6) of the statutes is repealed.

NOTE: Repeals s. 940.29 (6), relating to the abuse of child residents of certain facilities, because the abusive conduct dealt with in this statute is covered by the comprehensive physical and emotional child abuse statutes in new ch. 948, created in this bill.

SECTION 35. 940.28 of the statutes is renumbered 948.20 and amended to read:

**948.20** (title) **Abandonment of a child.** Whoever, with intent to abandon the child, leaves any child ~~under the age of 6 years~~ in a place where the child may suffer because of neglect is guilty of a Class D felony.

NOTE: Amends current s. 940.28, prohibiting intentional abandonment of a child under 6 years of age, to make the prohibition applicable to the abandonment of any child (i.e., any person under 18 years of age) and not just a child under 6 years of age. The special committee determined that there is no substantial reason for distinguishing between children under the age of 6 and other children for purposes of this crime.

SECTION 36. 940.32 of the statutes is repealed.

SECTION 37. 941.22 of the statutes is repealed.

NOTE: The preceding 2 SECTIONS repeal ss. 940.32, relating to child abduction, and 941.22, relating to possession of a pistol by and transfer of a pistol to a minor, because those provisions are transferred to and revised in new ch. 948, created in this bill.

SECTION 38. 942.02 of the statutes is renumbered 948.50.

NOTE: Renumbers s. 942.02, relating to strip searches by school employes, to place the provision in new ch. 948, created in this bill.

SECTION 39. 943.34 (intro.) and (1) of the statutes are amended to read:

**943.34 Receiving Stolen Property.** (intro.) ~~Whoever~~ Except as provided under s. 948.62, whoever intentionally receives or conceals stolen property is guilty of:

(1) A Class A misdemeanor, if the value of the property does not exceed $500 ~~but if the property is received from a person under the age of 18 years, the person is guilty of a Class E felony~~.

NOTE: Amends s. 943.34, relating to receipt of stolen property, to delete references to receipt of stolen property from a person under the age of 18 years, to reflect the creation in this bill of the crime of receiving stolen property from a child.

SECTION 40. 943.35 of the statutes is renumbered 948.63, and 948.63 (title), (1) and (2), as renumbered, are amended to read:

**948.63** (title) **Receiving Property From a Child.**

(1) As a dealer in secondhand articles or junk, purchases any personal property, except old rags and waste paper, from any ~~minor~~ child, without the written consent of his or her parent or guardian; or

(2) As a pawnbroker or other person who loans money and takes personal property as security therefor, receives personal property as security for a loan from any ~~minor~~ child without the written consent of his or her parent or guardian.

NOTE: Restates current s. 943.35, prohibiting certain persons from receiving property from a child without the consent of his or her parent or guardian, except that the term "child", which is defined in this chapter, replaces the term "minor".

SECTION 41. The unnumbered subchapter title preceding 944.12 of the statutes is repealed.

SECTION 42. 944.12 of the statutes is repealed.

NOTE: Repeals s. 944.12, prohibiting child enticement. That section is transferred to and revised in new ch. 948, created in this bill.

SECTION 43. 944.15 (2) of the statutes is amended to read:

944.15 (2) Whoever has sexual intercourse in public ~~or whoever has sexual intercourse with a minor who is 16 years old or older but younger than 18 years old and who is not his or her spouse~~ is guilty of a Class A misdemeanor.

SECTION 44. 944.17 (2) (b) of the statutes is repealed.

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NOTE: The 2 preceding SECTIONS repeal provisions in the fornication and sexual gratification statutes [ss. 944.15 (2) and 944.17 (2) (b), respectively], relating to sexual conduct with children, to reflect the creation in this bill of the crime of sexual intercourse with a child age 16 or over.

SECTION 45. 944.25 of the statutes is repealed.

NOTE: Repeals s. 944.25, relating to exposing minors to harmful materials, because that section is transferred to and revised in new ch. 948, created in this bill.

SECTION 46. 944.32 of the statutes is amended to read:

**944.32 Soliciting prostitutes.** ~~Whoever~~ Except as provided under s. 948.08, whoever intentionally solicits or causes any person to practice prostitution or establishes any person in a place of prostitution is guilty of a Class D felony. ~~If the person is under the age of 18, the defendant is guilty of a Class C felony.~~

NOTE: Deletes that portion of current s. 944.32, relating to soliciting prostitutes, that provides for an increased penalty for soliciting persons under the age of 18 because that provision is transferred to new ch. 948, created in this bill.

SECTION 47. 946.63 of the statutes is renumbered 948.23 and amended to read:

**948.23 Concealing death of child.** Any ~~woman~~ person who conceals the corpse of any issue of ~~her~~ a woman's body with intent to prevent a determination of whether it was born dead or alive is guilty of a Class E felony.

NOTE: Amends current s. 946.63 to apply to any person who conceals the corpse of any issue of a woman's body with intent to prevent a determination of whether it was born dead or alive. The current law applies only to a woman who conceals the corpse of any issue of her body with that intent.

SECTION 48. 946.71 of the statutes is repealed.

SECTION 49. 946.715 of the statutes is repealed.

NOTE: The 2 preceding SECTIONS repeal ss. 946.71 and 946.715, prohibiting interference with child custody rights by a parent or other person. Those sections have been transferred to and revised in a single section [s. 948.31] in new ch. 948, created in this bill.

SECTION 50. 946.716 of the statutes is renumbered 948.24, and 948.24 (1) (intro.), as renumbered, is amended to read:

948.24 (1) (intro.) Whoever does any of the following is guilty of a Class ~~E~~ D felony:

NOTE: Increases the penalty under s. 946.716 (1), prohibiting the unauthorized placement or receipt of a child for adoption, from a Class E felony to a Class D felony. The special committee considered the current penalty level to be inadequate in light of the seriousness of the offense.

SECTION 51. 946.82 (4) of the statutes is amended to read:

946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission of any of the felonies specified in: chs. 161 and 945 and ss. 49.49, 134.05, 139.44 (1), 180.88, 181.69, 184.09 (2), 185.82 (4), 215.12, 221.17, 221.31, 221.39, 221.40, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (2) and (3), 940.20, ~~940.203,~~ 940.21, 940.30, 940.305, 940.31, ~~940.32,~~ 941.20 (2), 941.26, 941.28, 941.31, 941.32, 943.01 (2), 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (b) to (d), 943.23 (1), 943.24 (2), 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (2) and (3), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4) (b) and (c), 943.60, 943.70, 944.32, 944.33 (2), 944.34, 945.03, 945.04, 945.05, 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76 ~~and~~, 947.015, 948.05, 948.08, 948.12 and 948.30.

NOTE: This SECTION makes necessary cross-reference changes.

SECTION 52. 947.08 of the statutes is repealed.

NOTE: Repeals s. 947.08, relating to the commercial distribution of crime comics to children and the possession of crime comics with the intent to commercially distribute them to a child. Under that section, "crime comic" is defined as "any book, magazine or other printed matter consisting of narrative material in pictorial form, commonly known as a comic book and which depicts, in substantial part, acts of indecency, horror, terror, physical torture or brutality". Although s. 947.08 is repealed, the depiction of physical torture or brutality is added to those types of depicted conduct which may constitute the more general category of material that is harmful to children under newly created s. 948.11.

SECTION 53. 947.15 of the statutes is repealed.

NOTE: Repeals s. 947.15, relating to contributing to the delinquency or neglect of a child, because that section is transferred to and revised in new ch. 948, created in this bill.

SECTION 54. Chapter 948 of the statutes is renumbered chapter 951.

NOTE: Renumbers ch. 948, relating to crimes against animals, in order to provide an appropriate place for the new crimes against children chapter created in this bill.

SECTION 55. Chapter 948 of the statutes is created to read:

## CHAPTER 948
## CRIMES AGAINST CHILDREN

NOTE: The following is a table of contents to new ch. 948:

948.01 Definitions.
948.015 Other offenses against children.
948.02 Sexual assault of a child.
948.03 Physical abuse of a child.
948.04 Causing emotional harm to a child.
948.05 Sexual exploitation of a child.
948.06 Incest with a child.
948.07 Child enticement.
948.08 Soliciting a child for prostitution.
948.09 Sexual intercourse with a child age 16 or older.
948.10 Exposing a sex organ.
948.11 Exposing a child to harmful material.
948.12 Possession of child pornography.
948.20 Abandonment of a child.
948.21 Neglecting a child.
948.22 Failure to support.
948.23 Concealing death of child.
948.24 Unauthorized placement for adoption.
948.30 Abduction of another's child; constructive custody.
948.31 Interference with custody by parent or others.
948.40 Contributing to the delinquency of a child.
948.50 Strip search by school employe.
948.51 Hazing.
948.60 Possession of a dangerous weapon by a child.
948.61 Dangerous weapons on school premises.
948.62 Receiving stolen property from a child.
948.63 Receiving property from a child.

**948.01 Definitions.** In this chapter, the following words and phrases have the designated meanings

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unless the context of a specific section manifestly requires a different construction:

(1) "Child" means a person who has not attained the age of 18 years.

(2) "Mental harm" means substantial harm to a child's psychological or intellectual functioning which may be evidenced by a substantial degree of certain characteristics of the child including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior. "Mental harm" may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(3) "Person responsible for the child's welfare" includes the child's parent; guardian; foster parent; an employe of a public or private residential home, institution or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child.

(4) "Sadomasochistic abuse" means the infliction of force, pain or violence upon a person for the purpose of sexual arousal or gratification.

(5) "Sexual contact" means any intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant.

(6) "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.

(7) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, meaning 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 a person or upon the person's instruction. The emission of semen is not required;

(b) Bestiality;

(c) Masturbation;

(d) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or

(e) Lewd exhibition of the genitals or pubic area.

NOTE: Creates definitions applicable throughout new ch. 948. Where necessary, the definitions are discussed in further detail in the NOTES to the sections in which they appear.

**948.015 Other offenses against children.** In addition to the offenses under this chapter, offenses against children include, but are not limited to, the following:

(1) Sections 103.19 to 103.32 and 103.64 to 103.82, relating to employment of minors.

(2) Section 118.13, relating to pupil discrimination.

(3) Section 125.07, relating to furnishing alcohol beverages to underage persons.

(4) Section 146.01, relating to infant blindness.

(5) Section 151.03, relating to lead poisoning.

(6) Sections 161.01 (6) and 161.49, relating to distributing controlled substances to children.

(7) Section 444.09 (4), relating to boxing.

NOTE: Creates a cross-reference section to identify most, but not all, of the provisions outside of the criminal code [chs. 939 to 948 and 951] which set forth offenses against children.

**948.02 Sexual Assault of a Child.** (1) FIRST DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class B felony.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony.

(3) FAILURE TO ACT. A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and 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.

(4) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(5) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

NOTE: This SECTION:

1. Creates in sub. (1) a provision comparable to current s. 940.225 (1) (d) relating to first degree sexual assault against children, but clarifies the current victim age category. The current age category, "12 years of age or younger", may be interpreted to apply to a person who has reached, but has not gone beyond, his or her 12th birthday, or it may be interpreted to apply to a person who has not reached his or her 13th birthday. The phrase, "has not attained the age of 13 years" eliminates this ambiguity.

2. Creates in sub. (2) a provision comparable to current s. 940.225 (2) (e), relating to 2nd degree sexual assault against children, but eliminates the lower age category of "over 12 years of age" in the current statute. This change is intended to afford the district attorney greater flexibility in his or her charging decision. That is, under the revised language, the district attorney is authorized to charge 2nd degree sexual assault in a case involving a victim who is not over the age of

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12 years (the current lower age category), if the circumstances warrant.

3. Creates a provision not contained in the current sexual assault statute recognizing that a parent or other "person responsible for the child's welfare" is responsible for protecting the child from assault by others. Under this provision, a parent or other responsible person is guilty of a Class C felony if that person is aware of a possible assault on the child and, although capable of doing so, fails to prevent it. The phrase "person responsible for the child's welfare" is defined in s. 948.01 (3), which is created by this bill, to include a child's parent and any person legally responsible for the child's welfare in a residential setting.

Subsections (4) and (5) restate provisions found in current s. 940.225 (6) and (7), respectively.

The revised definition of "sexual intercourse" in s. 948.01 (6) substitutes the term "vulvar penetration" for a cross-reference to the general criminal code definition of "sexual intercourse", which specifically defines sexual intercourse to mean "vulvar penetration".

**948.03 Physical Abuse of a Child.** (1) DEFINITIONS. In this section, "recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.

(2) INTENTIONAL CAUSATION OF BODILY HARM. (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class C felony.

(b) Whoever intentionally causes bodily harm to a child is guilty of a Class D felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class C felony.

(3) RECKLESS CAUSATION OF BODILY HARM. (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class D felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class E felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class D felony.

(4) FAILING TO ACT TO PREVENT BODILY HARM. (a) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that is caused by the other person.

(b) A person responsible for the child's welfare is guilty of a Class D felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.

(5) PENALTY ENHANCEMENT; ABUSE BY CERTAIN PERSONS. If a person violates sub. (2) or (3) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

(6) TREATMENT THROUGH PRAYER. A person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under s. 48.981 (3) (c) 4 or 448.03 (6) in lieu of medical or surgical treatment.

NOTE: Revises the child abuse statute [s. 940.201] to:

1. Address the criticism that the current statute contains ambiguous terminology. In particular, the meaning of the phrase in the current statute, "subjects a child to cruel maltreatment", has been subjected to judicial scrutiny. [See *State v. Killory*, 75 Wis. 2d 400, 243 N.W. 2d 475 (1976), and *State v. Campbell*, 102 Wis. 2d 243, 306 N.W. 2d 273, 277 (Ct. App. 1981; review denied by Wisconsin supreme court.] The revised statute replaces the ambiguous language with clear prohibitions and comprehensive definitions of key terms which are set forth in the revised statute and in s. 948.01, the definitional section of new ch. 948.

2. Address the criticism that the current statute fails to adequately address the problem of child abuse resulting from the failure of a responsible person to take action to prevent child abuse when capable of doing so. Although the statute has been judicially construed to apply to the failure to prevent abuse [*State v. Williquette*, 129 Wis. 2d 239, 385 N.W. 2d 145 (1986)], the statutory language does not specifically deal with this subject. The revision specifically corrects this current statutory deficiency in sub. (4).

3. Prohibit the reckless causation of child abuse. This conduct is not covered in the current statute.

4. Recognize the distinction between bodily harm and great bodily harm by language in subs. (2) (c) and (3) (c) which prohibits the intentional or reckless causation of bodily harm by conduct which creates a high probability of great bodily harm.

5. Provide for a penalty enhancer of up to 5 years additional imprisonment for a "person responsible for the child's welfare" [defined in s. 948.01 (3) in this bill] who intentionally or recklessly causes bodily harm to a child in violation of sub. (2) or (3). "Person responsible for the child's welfare" is defined with sufficient breadth to encompass operators or employes of the institutions identified in s. 940.29 (6), which is repealed in this bill, as well as nonresidents of these facilities (e.g., daytime clients) and day care providers.

**948.04** CAUSING MENTAL HARM TO A CHILD. (1) Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child is guilty of a Class C felony.

(2) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the

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mental harm to the child that is caused by the other person.

NOTE: Creates a new criminal statute relating to causing mental harm to a child. Although the current child abuse statute has been construed to apply to nonphysical abuse [*State v. Campbell*, 102 Wis. 2d 243, 306 N.W. 2d 272 (Ct. Apps., 1981)], emotional or mental abuse is not specifically covered in statutory language.

This provision deals with mental child abuse by prohibiting persons, who are exercising control over the child, from causing mental harm to the child by conduct which demonstrates substantial disregard for the mental well-being of the child.

The provision also criminalizes the failure of a person, who is responsible for a child's welfare, to take action to prevent mental harm to the child, if he or she has knowledge that another person has caused, is causing or will cause mental harm to the child and is physically and emotionally capable of taking action to prevent the harm. This is consistent with the construction given to the current child abuse statute by the state supreme court in *State v. Williquette*, 129 Wis. 2d 239, 385 N.W. 2d 145 (1986).

The definition of "mental harm" in s. 948.01 (2) has no counterpart in the current criminal code, but is comparable to the definition of "emotional damage" in the current abused or neglected children reporting law [s. 48.981 (1) (cm)].

**948.05 Sexual Exploitation of a Child.** (1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is guilty of a Class C felony:

(a) Employs, uses, persuades, induces, entices or coerces any child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying in any way the conduct.

(b) Photographs, films, videotapes, records the sounds of or displays in any way a child engaged in sexually explicit conduct.

(c) Produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes or possesses with intent to sell or distribute, any undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of a child engaging in sexually explicit conduct.

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a), (b) or (c) is guilty of a Class C felony.

(3) It is an affirmative defense to prosecution for violation of this section if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant, or the defendant's agent or client, a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

NOTE: Revises the sexual exploitation of children statute [s. 940.203] to:

1. Conform stylistically to other statutes in the criminal code.

2. Add the phrase "into this state" in sub. (1) (c) to clarify that the term "imports" refers to the importation into the state of the material described in the provision.

3. Eliminate the knowledge of the age of the child as an element of the crime of child sexual exploitation, which the prosecution has the burden of proving, and recognize, instead, an affirmative defense based on knowledge of the age of the child, which the defendant must raise and prove. Under sub. (3), the defendant has a defense to criminal liability for violation of the statute, if he or she had reasonable cause to believe that the child victim of sexual exploitation was 18 years of age or older and the child exhibited to the defendant, or the defendant's agent or client, a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. As an affirmative defense, the defendant has the burden of raising the defense and of proving the defense by a preponderance of the evidence. This affirmative defense is comparable to the affirmative defense recognized in the exposing a child to harmful material statute, as revised in s. 948.11 of this bill.

The bill does retain, as an element of the crime, "knowledge of the character and content of the sexually explicit conduct involving the child". Under the criminal code, knowledge requires only that the actor believes that a specified fact exists [s. 939.23 (2)]. The inclusion of this knowledge element recognizes that criminal responsibility may not be imposed for the acts prohibited by this statute "...without some element of scienter [criminal intent or knowledge] on the part of the defendant" [see *New York v. Ferber*, 458 U.S. 747, 102 S. Ct. 3348, 3358 (1982)], which upheld the constitutionality of the New York child sexual exploitation statute [N.Y. McKinney's penal law art. 263].

The definition of "sexually explicit conduct" in s. 948.01 (7) in this bill is comparable to the definition of that term in the current sexual exploitation of children statute [s. 940.203].

**948.06 Incest with a Child.** Whoever does any of the following is guilty of a Class C felony:

(1) Marries or has sexual intercourse or sexual contact with a child he or she knows is related, either by blood or adoption, and the child is related in a degree of kinship closer than 2nd cousin; or

(2) Is a person responsible for the child's welfare and:

(a) Has knowledge that another person related to the child by blood or adoption in a degree of kinship closer than 2nd cousin has had or intends to have sexual intercourse or sexual contact with the child;

(b) Is physically and emotionally capable of taking action that will prevent the intercourse or contact from occurring 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.

NOTE: Creates an incest with a child statute which:

1. Includes relation by adoption, as well as relation by blood, where a child victim is involved. The current general incest statute, s. 944.06, is retained, which applies only to incest involving persons related by blood.

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2. Includes sexual contact where a child victim is involved, in addition to the current provision applying to sexual intercourse.

3. Creates a new provision making it a crime to fail to take action to prevent an act of incest involving a child victim. Under this provision, a person commits a violation if that person: 1) has knowledge that another person has had or intends to have sexual intercourse or sexual contact with a child, where such action would be incest under the statute; 2) is capable of taking action that would prevent the act of incest from recurring or being repeated; 3) fails to take that action; and 4) the failure to act exposes the child to unreasonable risk.

4. Makes the offense a Class C felony, the same penalty that is applicable to the current general incest statute, s. 944.06.

**948.07 Child Enticement.** Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class C felony:

(1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02.

(2) Causing the child to engage in prostitution.

(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.

(4) Taking pictures of the child engaging in sexually explicit conduct.

(5) Causing bodily or mental harm to the child.

(6) Giving or selling to the child a controlled substance in violation of ch. 161.

NOTE: This SECTION:

1. Deletes the words "persuades or entices" contained in the current child enticement statute [s. 944.12] and, instead, characterizes the crime of child enticement as "causing or attempting to cause" a child to go into any vehicle, building, room or secluded place with the intent to commit a criminal act or acts. The substitution of "causes" for "persuades or entices", eliminates as an element of the crime the state of mind of the child being enticed. The language "attempts to cause" is added to further clarify that the crime of child enticement includes the attempted act of enticement, consistent with s. 939.32 (1) (d), as created by this bill.

2. Deletes the provision under current law limiting the applicability of the child enticement statute to offenders 18 years of age or over. Under the bill, any person can be charged with and convicted of enticing a child, even if the offender is also a child. Consequently, under the bill, an offender who is a child would be treated as a juvenile offender, as is done with other crimes committed by minors.

3. Enumerates specific intended purposes as those for which enticing a child would be a criminal act (e.g., having sexual contact, including sexual intercourse, with the child). These enumerated purposes are substituted for the current language requiring an intent to commit "a crime against sexual morality".

**948.08 Soliciting a child for prostitution.** Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a Class C felony.

NOTE: Restates, without substantive change, the provisions of current s. 944.32, relating to soliciting persons under the age of 18 for prostitution.

**948.09 Sexual intercourse with a child age 16 or older.** Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor.

NOTE: Combines the provisions in the current fornication and sexual gratification statutes relating to sexual intercourse with a child where the child is 16 years old or older but younger than 18 years old and is not the defendant's spouse [ss. 944.15 (2) and 944.17 (2) (b), respectively].

**948.10 Exposing a sex organ.** Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose a sex organ or exposes a sex organ to a child is guilty of a Class A misdemeanor. This section does not apply if the child is the defendant's spouse.

NOTE: Creates a new crime making it a Class A misdemeanor to expose a sex organ to a child, or to cause the child to expose a sex organ, for the purpose of sexual arousal or gratification of the defendant. This prohibition applies only where the child is not the defendant's spouse.

**948.11 Exposing a child to harmful material.** (1) DEFINITIONS. In this section:

(a) "Harmful material" means:

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, sadomasochistic abuse, physical torture or brutality and which is harmful to children; or

2. Any book, pamphlet, magazine, printed matter however reproduced or sound recording which contains any matter enumerated in subd. 1, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, sadomasochistic abuse, physical torture or brutality and which, taken as a whole, is harmful to children.

(b) "Harmful to children" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of children;

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for children; and

3. Lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole.

(c) "Knowledge of the nature of the material" means knowledge of the character and content of any material described herein.

(d) "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.

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(2) CRIMINAL PENALTIES. (a) Whoever, with knowledge of the nature of the material, sells, exhibits, transfers or loans to a child any material which is harmful to children, with or without monetary consideration, is guilty of a Class E felony.

(b) Whoever, with knowledge of the nature of the material, possesses material which is harmful to children with the intent to sell, exhibit, transfer or loan the material to a child is guilty of a Class A misdemeanor.

(c) It is an affirmative defense to prosecution for violation of this section if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by evidence that is clear, satisfactory and convincing.

(3) EXTRADITION. If any person is convicted under sub. (2) and cannot be found in this state, the governor or any person performing the functions of governor by authority of the law shall, unless the convicted person has appealed from the judgment of contempt or conviction and the appeal has not been finally determined, demand his or her extradition from the executive authority of the state in which the person is found.

NOTE: Revises the current crime of exposing minors to harmful materials [s. 944.25] by:

1. Creating 2 penalty levels for the crime of exposing children to harmful materials. Under the bill, it is: (a) a Class E felony to transfer harmful material to a child; and (b) a Class A misdemeanor to possess material which is harmful to children, with the intent of transferring the material to a child. Under current law, it is a Class A misdemeanor to transfer harmful material to a child, but it is not a crime to *possess* harmful material with intent to transfer the material to a child.

2. Adding the language, "physical torture or brutality" to the current language describing the types of conduct depicted in material which may be harmful to children. The language "physical torture or brutality" is derived from s. 947.08, relating to the prohibition against distributing crime comics to minors; that section is repealed in this bill.

3. Substituting a new criterion for determining whether the material is harmful to children. Under the bill, material is harmful to children if, among other things, it lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole. Under current law, this criterion is expressed as "utterly without redeeming social importance to minors". The language added in this bill is consistent with the language suggested by the U.S. supreme court in *Miller v. California*, 413 U.S. 15 (1973), in determining whether material is obscene.

4. Creating a new definition of sadomasochistic abuse, defined in s. 948.01 (6), as it relates to the determination of whether the material is harmful to children. Under the bill, sadomasochistic abuse is defined as "the infliction of force, pain or violence upon a person for the purpose of sexual arousal or gratification". Under current law, sadomasochistic abuse is defined as "flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed".

5. Deleting the exemptions from criminal prosecution for exposing children to harmful materials currently provided for children accompanied by a parent or guardian and for library materials.

6. Clarifying the affirmative defense to the crime of transferring harmful materials to a child. Under current law, it is a defense to the crime of exposing children to harmful materials that the defendant had reasonable cause to believe that the child was 18 years of age or older. However, because the current statute does not specify that the defendant has the burden of proving the defense, the prosecution must *disprove* the defense, once raised by the defendant, by evidence beyond a reasonable doubt. Under the bill, the defendant has a defense if he or she had reasonable cause to believe that the child was, at the time of the transfer, 18 years of age or older. The bill specifies that the defendant has the burden of raising and proving the defense by evidence that is clear, satisfactory and convincing.

7. Repealing the requirement for a civil declaratory judgment procedure prior to a criminal action for exposing minors to harmful materials. Under the bill, a criminal action may be brought immediately against a person who has transferred to a child material alleged to be harmful to a child. The issue of whether the material in question is harmful becomes an element of the offense to be proven by the prosecution.

**948.12 Possession of child pornography.** Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape or other pictorial reproduction of a child engaged in sexually explicit conduct under all of the following circumstances is guilty of a Class E felony:

(1) The person knows that he or she possesses the material.

(2) The person knows the character and content of the sexually explicit conduct shown in the material.

(3) The person knows or reasonably should know that the child engaged in sexually explicit conduct has not attained the age of 18 years.

NOTE: Creates a new criminal statute prohibiting possession of a film, photograph, videotape or other pictorial reproduction of a child engaged in sexually explicit conduct.

Under the sexual exploitation of a child statute, as revised in this bill [s. 948.05], it is unlawful to be involved in the production or distribution of child pornography, but mere possession, without intent to sell or distribute, is not unlawful. In recognition that pedophiles and other users of child pornography (the "fruits" of child sexual exploitation) often acquire, transfer and exchange these materials outside the commercial marketplace, in ways not fully covered by the child sexual exploitation statute, the new statute contains a total ban on the intentional possession of child pornography. This prohibition against possession is intended to supplement the restrictions in the child sexual exploitation statute and thereby more effectively deter and penalize the sexual abuse of children than is possible under current law.

Under the new statute, if the defendant knowingly possesses the pornographic material, with knowledge of its character and content and under circumstances in which the defendant knew or should have known that the child was younger than 18 years of age, the defendant is guilty of a Class E felony. Criminal intent, as an element of the crime, is indicated by the "knowledge" requirement. Under the criminal code, knowledge requires only that the actor believes that a specified fact exists [s. 939.23 (2)].

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**948.21 Neglecting a child.** (1) Any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of a Class A misdemeanor or, if death is a consequence, a Class C felony.

(2) Under sub. (1), a person responsible for the child's welfare contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.

NOTE: For the sake of clarity, the bill separates the 2 aspects of current s. 947.15, contributing to the delinquency of a child and neglecting a child, and places them in separate statutory sections [ss. 948.21 and 948.40].

In s. 948.21, which applies only to neglecting a child:

1. Subsection (1) revises that part of current s. 947.15 (1) (a) which relates to intentionally encouraging or contributing to the neglect of any child to:

a. Make the prohibition applicable only to "a person who is responsible for the child's welfare", as defined in the bill. The current contributing to neglect provision applies to any person 18 years of age or older, whether or not the person is responsible for the child's welfare.

b. Clarify that a person may violate this prohibition both by his or her actions or his or her failure to take action. Current law does not specifically state that this prohibition may be violated by a person's failure to take action as well as by his or her actions.

c. Increase the penalty where death is a consequence of the neglect from a Class D felony to a Class C felony.

2. Subsection (2) restates, without substantive change, that part of s. 947.15 (2) which relates to contributing to the neglect of a child.

**948.30 Abduction of another's child; constructive custody.** (1) Any person who, for any unlawful purpose, does any of the following is guilty of a Class C felony:

(a) Takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) Detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(2) Any person who, for any unlawful purpose, does any of the following is guilty of a Class B felony:

(a) By force or threat of imminent force, takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) By force or threat of imminent force, detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(3) For purposes of subs. (1) (a) and (2) (a), a child is in the custody of his or her parent, guardian or legal custodian if:

(a) The child is in the actual physical custody of the parent, guardian or legal custodian; or

(b) The child is not in the actual physical custody of his or her parent, guardian or legal custodian, but the parent, guardian or legal custodian continues to have control of the child.

NOTE: Revises the current abduction of a child statute [s. 940.32] to:

1. Specify that the prohibition applies only to a person who abducts a child who is not his or her own child by birth or adoption. The current statute applies to any person who abducts a child, including a parent who abducts his or her child. There are other statutory provisions which more appropriately deal with a parent who takes or conceals his or her child from the other parent or other legal custodian of the child [see s. 948.31 in this bill, relating to custody interference by parents and others].

2. Create 2 levels of penalties for abduction, based on whether force or threat of imminent force is an element of the crime. If the child is taken or detained and no element of force or threat of imminent force is involved, the crime is a Class C felony, the same penalty level as the current abduction statute. However, if force or threat of imminent force is involved, the crime is a Class B felony. This parallels the penalty for kidnapping [s. 940.31] which also has the element of force or threat of imminent force.

3. Eliminate the prohibition in the current abduction statute against *enticing* a child from his or her home or the custody of his or her parent or guardian. This provision is unnecessary since current law and this bill contain a specific prohibition relating to child enticement [s. 948.07 in this bill].

4. Specify that the prohibition against taking a child away from the custody of his or her parent, guardian or legal custodian does not require that the child be in the actual physical custody of that person at the time the child is taken. That is, the prohibition applies in a "constructive custody" situation where the child is away from the actual physical custody of the parent, guardian or legal custodian, but that person continues to have control of the child (e.g., where the child is taken from a neighbor's home or from the physical custody of a relative or a babysitter). This change is consistent with the interpretation of the current law in *Wisconsin Jury Instructions--Criminal*, Numbers 1285 and 1286.

**948.31 Interference with custody by parent or others.** (1) (a) In this subsection, "legal custodian of a child" means:

1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, custody, paternity, guardianship or habeas corpus.

2. The department of health and social services or any person, county department under s. 46.215, 46.22 or 46.23 or licensed child welfare agency, if custody of the child has been transferred under ch. 48 to the department, person or agency.

(b) Except as provided under ch. 48, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court-approved visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class E felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child.

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents, or the child's mother in the

case of a nonmarital child where parents do not subsequently intermarry under s. 767.60, without the consent of the parents or the mother, is guilty of a Class E felony. This subsection is not applicable if custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class E felony:

(a) Intentionally conceals a child from the child's other parent.

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining custody rights to a child, takes the child or causes the child to leave with intent to deprive the other parent of physical custody as defined in s. 822.02 (9).

(c) After issuance of a temporary or final order specifying joint custody rights, takes a child from or causes a child to leave the other parent in violation of the custody order or withholds a child for more than 12 hours beyond the court-approved visitation period.

(4) (a) It is an affirmative defense to prosecution for violation of this section if the action:

1. Is taken by a parent or by a person authorized by a parent to protect his or her child from imminent physical harm or sexual assault;

2. Is taken by a parent fleeing from imminent physical harm to himself or herself;

3. Is consented to by the other parent or any other person or agency having legal custody of the child; or

4. Is otherwise authorized by law.

(b) A defendant who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(5) The venue of an action under this section is prescribed in s. 971.19 (8).

(6) In addition other penalties provided for violation of this section, a court may order a violator to pay restitution, regardless of whether the violator is placed on probation under s. 973.09, to provide reimbursement for any reasonable expenses incurred by any person or any governmental entity in locating and returning the child. Any such amounts paid by the violator shall be paid to the person or governmental entity which incurred the expense on a prorated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

NOTE: Combines current ss. 946.71 and 946.715, prohibiting interference with child custody rights, into one section and amends those statutes to:

1. Make the provisions in those statutes which currently apply only to children under the age of 14 [i.e., ss. 946.71 (3) and (4) and 946.715 (1) (c)] applicable to children of any age (i.e., persons under 18 years of age).

2. Delete the requirement in ss. 946.71 (2) and 946.715 (1) (b) that a child be taken or enticed *outside* of the state before a violation of these statutory prohibitions can occur.

3. As a defense to criminal liability, expand the category of persons who may consent to the taking of a child to include other entities, besides a parent, having legal custody of a child.

4. Create, in sub. (4) (a) 1, an additional defense to criminal liability for a custody interference violation for a parent who takes a child in order to protect the child from sexual assault. Current s. 946.715 (2) (a) permits the parent to take the child in order to protect the child from "imminent physical harm". Subsection (4) also clarifies that these defenses are affirmative defenses, that the burden of proving a defense is on the defendant and that a defense must be proved by a preponderance of the evidence.

5. Create, in sub. (6), a provision permitting the court to order a person convicted of a custody interference offense to reimburse any expenses incurred by the other parent or any state or local government agency in locating and returning a child who was unlawfully taken or concealed. Any funds collected from the offender must be paid to the person or agency which paid the expenses.

**948.40 Contributing to the delinquency of a child.** (1) No person may intentionally encourage or contribute to the delinquency of a child as defined in s. 48.02 (3m). This subsection includes intentionally encouraging or contributing to an act by a child under the age of 12 which would be a delinquent act if committed by a child 12 years of age or older.

(2) No person who is responsible for the child's welfare may, by disregard of the welfare of the child, contribute to the delinquency of the child. This subsection includes disregard which contributes to an act by a child under the age of 12 which would be a delinquent act if committed by a child 12 years of age or older.

(3) Under this section, a person encourages or contributes to the delinquency of a child although the child does not actually become delinquent if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become delinquent.

(4) A person who violates this section is guilty of a Class A misdemeanor, except:

(a) If death is a consequence, the person is guilty of a Class C felony; or

(b) If the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class D felony.

NOTE: For the sake of clarity, the bill separates the 2 aspects of current s. 947.15, contributing to the delinquency of a child and neglecting a child, and places them in separate statutory sections [ss. 948.21 and 948.40].

In s. 948.40, which applies only to contributing to the delinquency of a child:

1. Subsection (1) revises that part of current s. 947.15 (1) (a) which prohibits any person 18 years of age or older from intentionally encouraging or contributing to the delinquency of any child to apply to any person, regardless of his or her age.

2. Subsection (2) restates current s. 947.15 (1) (b), without substantive change, except that: (a) the phrase "person who is responsible for the child's welfare", which is defined in the bill, is substituted for "parent, guardian or legal custodian"; and (b) the phrase "by disregard of the welfare of the child" is

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substituted for "by neglect, or disregard of the morals, health or welfare of his or her child".

3. Subsection (3) restates that part of current s. 947.15 (2) which relates to contributing to the delinquency of a child.

4. Subsection (4) revises the penalties for contributing to the delinquency of a child by:

a. Increasing the penalty where death is a consequence of the act which is encouraged or contributed to from a Class D felony to a Class C felony; and

b. Establishing a higher penalty than the current Class A misdemeanor where the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony.

If the child's act is a felony violation, the person is guilty of a Class D felony. If the child's act is not a felony violation, the person is guilty of a Class A misdemeanor.

**948.60 Possession of a dangerous weapon by a child.** (1) In this section, "dangerous weapon" means any firearm having a barrel less than 12 inches long; any electric weapon, as defined in s. 941.295 (4); metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather; a cestus or similar material weighted with metal or other substance and worn on the hand; a shuriken or any similar pointed star-like object intended to injure a person when thrown; or a manrikigusari or similar length of chain having weighted ends.

(2) Any child who possesses or goes armed with a dangerous weapon or any person who intentionally sells, loans or gives a dangerous weapon to a child is guilty of a Class A misdemeanor. A child who has violated this subsection is subject to the provisions of ch. 48 unless jurisdiction is waived under s. 48.18.

(3) This section does not apply to a child who possesses or is armed with a dangerous weapon when the dangerous weapon is being used in target practice under the supervision of an adult or in a course of instruction in the traditional and proper use of the dangerous weapon under the supervision of an adult. This section does not apply to an adult who transfers a dangerous weapon to a child for use only in target practice under the adult's supervision or in a course of instruction in the traditional and proper use of the dangerous weapon under the adult's supervision.

NOTE: Revises the current crime prohibiting possession of a pistol by a minor [s. 941.22] to:

1. Expand the scope of the prohibitions in current s. 941.22 to apply to other dangerous weapons, in addition to pistols. The bill prohibits a child to go armed with, or a person to furnish a child with: 1) any firearm having a barrel less than 12 inches long [the definition of "pistol" in current s. 941.22]; 2) any electric weapon, as defined in s. 941.295 (4); 3) metallic knuckles; or 4) certain martial arts weapons described in the bill (e.g., a nunchaku or a throwing star).

2. Expand the exception to the prohibitions in current s. 941.22, because of the nature of the additional weapons included in the bill, to permit the use of these weapons by a child in, or the transfer of these weapons to a child for use in, a course of instruction in the traditional and proper use of the weapon under the supervision of an adult. Current law and the bill have an exception relating to the use of a pistol in target practice under the supervision of an adult.

3. Delete a provision in current s. 941.22 directing law enforcement officers to seize pistols which are illegally possessed by minors. Under a general statutory provision authorizing law enforcement officers to seize things when a search is made incident to an arrest, pursuant to a search warrant or in some other lawful manner, these officers would be able to seize illegally possessed dangerous weapons [see s. 968.11].

**948.61 Dangerous weapons on school premises.** (1) In this section:

(a) "Dangerous weapon" has the meaning specified in s. 939.22 (10).

(b) "School" means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

(c) "School premises" means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.

(2) Any person who knowingly possesses or goes armed with a dangerous weapon on school premises is guilty of:

(a) A Class A misdemeanor.

(b) A Class E felony, if the violation is the person's 2nd or subsequent violation of this section within a 5-year period, as measured from the dates the violations occurred.

(3) This section does not apply to any person who:

(a) Uses a weapon solely for school-sanctioned purposes.

(b) Engages in military activities, sponsored by the federal or state government, when acting in the discharge of his or her official duties.

(c) Is a law enforcement officer acting in the discharge of his or her official duties.

(d) Participates in a convocation or firearms safety course authorized by school authorities in which firearms or other weapons of collectors or instructors are handled or displayed.

(e) Drives a motor vehicle in which a dangerous weapon is located onto school premises for school-sanctioned purposes or for the purpose of delivering or picking up passengers or property. The weapon may not be removed from the vehicle or be used in any manner.

(f) Possesses an unloaded firearm while traversing school premises for the purpose of gaining access to public or private lands open to hunting if the entry on school premises is authorized by school authorities.

(g) Possesses or uses a firearm for hunting on school premises in accordance with ch. 29, if hunting on the premises is authorized by school authorities.

(4) A child who has violated this section is subject to the provisions of ch. 48, unless jurisdiction is waived under s. 48.18.

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NOTE: Creates a new crime prohibiting any person knowingly possessing or going armed with a dangerous weapon on school premises. The term "dangerous weapon" is defined in current s. 939.22 (10), to mean: 1) any firearm; 2) any device designed as a weapon and capable of producing death or great bodily harm; 3) any electric weapon; or 4) any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

This new provision:

1. Defines "school premises" to mean not only the school building, but also school grounds, recreation areas and administration buildings.

2. Provides for an enhanced penalty for a person who violates this prohibition more than once in a 5-year period (i.e., a Class E felony instead of a Class A misdemeanor).

3. Contains a number of exceptions to the prohibition which permit the possession or use of dangerous weapons on school premises for instructional, ceremonial, hunting and other appropriate purposes.

**948.62 Receiving Stolen Property From a Child.** (1) Whoever intentionally receives stolen property from a child or conceals stolen property received from a child is guilty of:

(a) A Class E felony, if the value of the property does not exceed $500.

(b) A Class D felony, if the value of the property exceeds $500 but does not exceed $2,500.

(c) A Class C felony, if the value of the property exceeds $2,500.

(2) Under this section, proof of all of the following is prima facie evidence that property received from a child was stolen and that the person receiving the property knew it was stolen:

(a) That the value of the property received from the child exceeds $500.

(b) That there was no consent by a person responsible for the child's welfare to the delivery of the property to the person.

NOTE: This SECTION:

1. Incorporates provisions relating to receiving stolen property from a child which were deleted from current s. 943.34.

2. Imposes a higher penalty for receipt of stolen property valued at more than $500, but not more than $2,500, if the property is received from a child rather than from an adult. Current s. 943.34 provides for enhanced penalties only where the value of the property received from a child does not exceed $500. Under the bill, the penalty for receiving stolen property valued at more than $500, but not more than $2,500, from a child is a Class D felony. Under current law, the penalty for that violation is a Class E felony.

3. Creates a provision establishing that proof of the following is *prima facie* evidence (i.e., sufficient evidence to establish a given fact) that property received from a child was stolen and the defendant knew: (a) that the value of the property was more than $500; and (b) that there was no consent to the delivery of the property by the person responsible for the child's welfare. In *State v. Spraggin*, 71 Wis. 2d 604 (1975), the Wisconsin supreme court stated that, in a prosecution for receiving stolen property, the circumstances under which the property is received may be indicative of the knowledge or purpose of the recipient.

SECTION 56m. 949.03 (1) (b) of the statutes, as affected by 1987 Wisconsin Act 90, is amended to read:

949.03 (1) (b) The commission or the attempt to commit any crime specified in s. 346.63 (2), 940.01, 940.02, 940.05, 940.06, 940.07, 940.08, 940.09, 940.19, 940.20, ~~940.201,~~ 940.21, 940.22, 940.225 (1) to (3), 940.23, 940.24, 940.245, 940.25, ~~940.26 (2), 940.28,~~ 940.285, 940.29, 940.30, 940.305, 940.31, ~~940.32,~~ 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.32 ~~or 944.12~~, 948.02, 948.03, 948.04, 948.07, 948.20, 948.30 or 948.51.

NOTE: This SECTION makes necessary cross-reference changes.

SECTION 57. 968.255 (1) (a) 2 of the statutes is amended to read:

968.255 (1) (a) 2. Arrested for any misdemeanor under s. 167.30, 940.19, 941.20 (1), ~~941.22,~~ 941.23 ~~or~~, 941.24, 948.60 or 948.61.

NOTE: This SECTION makes necessary cross-reference changes.

SECTION 58. 969.035 (1) of the statutes is amended to read:

969.035 (1) In this section, "violent crime" means any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.07, 940.08, 940.19 (2), ~~940.201,~~ 940.21, 940.225 (1) ~~or~~, 940.23, 948.02 (1) or (2) or 948.03.

NOTE: This SECTION makes necessary cross-reference changes.

SECTION 59. 969.08 (10) (b) of the statutes is amended to read:

969.08 (10) (b) "Serious crime" means any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.19 (2), 940.20, ~~940.201,~~ 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.245, 940.25, 940.29, 940.31, ~~940.32,~~ 941.20 (2), 941.26, 941.30, 943.01 (2) (c), 943.02, 943.03, 943.04, 943.06, 943.10, 943.30, 943.32, ~~944.12,~~ 946.01, 946.02, 946.43 ~~or~~, 947.015, 948.02 (1) or (2), 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.

NOTE: This SECTION makes necessary cross-reference changes.

SECTION 60. 971.19 (8) of the statutes is created to read:

971.19 (8) In an action for a violation of s. 948.31, the defendant may be tried in the county where the crime was committed or the county of lawful residence of the child.

NOTE: Creates a special venue provision for criminal custody interference actions, permitting such actions to be tried in either the county where the crime was committed or the county of lawful residence of the child. With certain exceptions, current law requires criminal actions to be tried in the county where the crime was committed. This provision is directed at reducing a child's stress in participating in a criminal custody interference action by permitting the action to be tried in the child's home county, regardless of where the custody interference offense is committed.

SECTION 61. 972.16 of the statutes is repealed.

NOTE: Repeals s. 972.16, relating to a presentence social and psychological examination of persons convicted of child abuse. Under this statute, a court is authorized to commit a person convicted of child abuse to the department of health and social services for a presentence and psychological exami-

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nation. The commitment may be for a maximum period of 60 days and the court is required to consider the findings and recommendations of the department in imposing sentence. The special committee determined that retention of the statute was not warranted because: 1) it has been used only 10 times since its enactment in 1978; and 2) it appears to conflict with the felony sentencing guidelines system currently in effect.

SECTION 62. 973.073 of the statutes, as affected by 1987 Wisconsin Act 3, is amended to read:

**973.073 Restitution; various violations.** A court may require the payment of restitution under s. 97.72 (1), 346.65 (2r), 943.24 (5) ~~or~~, 943.50 (5) or 948.31 (6) regardless of whether the violator is placed on probation under s. 973.09.

NOTE: Amends s. 973.073 to permit the court to require a custody interference offender to pay restitution for the expenses of locating and returning the child, regardless of whether the offender is placed on probation.

SECTION 64. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

(1) IMMEDIATE CHANGES.

| A<br>Statute Sections | B<br>Old Cross-References | C<br>New Cross-References |
|---|---|---|
| 29.05 (1) | 941.22 and 947.047 | 947.047, 948.60 and 948.61 |
| 29.05 (8)(a) | 941.22 or 947.047 | 947.047, 948.60 or 948.61 |
| 46.25 (1) | 946.71 or 946.715 | 948.31 |
| 46.25 (2) | 946.71 or 946.715 | 948.31 |
| 48.45 (3) | 947.15 | 948.40 |
| 48.52 (3) | chs. 939 to 948 | chs. 939 to 951 |
| 48.981 (1)(a) 2 | 940.225 | 940.225 or 948.02 |
| 48.981 (1)(a) 3 | 940.203 | 948.05 |
| 49.02 (7) | 940.225 | 940.225, 948.02 or 948.06 to 948.11 |
| 58.07 (2) | chs. 174 and 948 | chs. 174 and 951 |
| 66.051 (4) | chs. 941 to 947 | chs. 941 to 948 |
| 103.29 (2), as renumbered | par. (a) | sub. (1) |
| 103.78 (2) | 103.82 (1) and (2) | 103.82 (1) |
| 110.07 (2m) | chs. 939 to 947 | chs. 939 to 948 |
| 118.32 | 942.02 | 948.50 |
| 134.46 (1)(d) | 944.25 (1)(h) | 948.01 (6) |
| 174.01 (3)(c) | 948.02 | 951.02 |
| 343.06 (11) | 940.225 and 944.12 | 940.225, 948.02 and 948.07 |
| 343.30 (2d) | 940.225 and 944.12 | 940.225, 948.02 and 948.07 |
| 767.085 (2m) | 946.715 | 948.31 (3) |
| 767.24 (3) | 946.715 | 948.31 (3) |
| 767.265 (1) | 940.27 (7) | 948.22 (7) |
| 767.30 (1) | 940.27 (7) | 948.22 (7) |
| 813.122 (1)(a) 2 | 940.225 | 940.225 or 948.02 |
| 813.122 (1)(a) 3 | 940.203 | 948.05 |
| 901.04 (3)(c) | 940.225 | 940.225 or 948.02 |
| 939.01 | Chapters 939 to 948 | Chapters 939 to 951 |
| 939.01 | chs. 939 to 948 | chs. 939 to 951 |
| 939.10 | chs. 939 to 948 | chs. 939 to 951 |
| 939.20 | chs. 939 to 948 | chs. 939 to 951 |
| 939.23 (1) | chs. 939 to 948 | chs. 939 to 951 |
| 939.50 (1)(intro.) and (2) | chs. 939 to 948 | chs. 939 to 951 |
| 939.51 (1)(intro.) and (2) | chs. 939 to 948 | chs. 939 to 951 |
| 939.52 (1)(intro.) and (2) | chs. 939 to 948 | chs. 939 to 951 |

04/30/13 Underscored, stricken, and vetoed text may not be searchable.
If you do not see text of the Act, SCROLL DOWN.



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|---|---|---|
| 939.63 (1)(c) | chs. 161 and 939 to 948 | chs. 161 and 939 to 951 |
| 939.66 (4m) | 940.27 (3) | 948.22 (3) |
| 939.66 (4m) | 940.27 (2) | 948.22 (2) |
| 939.70 | chs. 939 to 948 | chs. 939 to 951 |
| 949.08 (2)(e) | 940.32 | 948.30 |
| 950.04 (1) | ch. 940 | ch. 940 or s. 948.02, 948.03 or 948.05 |
| 951.162, as renumbered | 948.08 | 951.08 |
| 951.165 (1), (2) and (3)(a), as renumbered | 948.08 | 951.08 |
| 951.165 (1), as renumbered | 948.16 | 951.16 |
| 951.165 (2) and (3)(a), as renumbered | 948.08 (2m) | 951.08 (2m) |
| 951.165 (3)(b), as renumbered | 948.17 | 951.17 |
| 951.17 (1) and (2)(a), as renumbered | 948.16 | 951.16 |
| 951.18 (1), as renumbered | 948.02, 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.09, 948.10, 948.11, 948.13, 948.14 or 948.15 (1) | 951.02, 951.025, 951.03, 951.04, 951.05, 951.06, 951.07, 951.09, 951.10, 951.11, 951.13, 951.14 or 951.15 (1) |
| 951.18 (2), as renumbered | 948.08 (2m) or (3) | 951.08 (2m) or (3) |
| 951.18 (2), as renumbered | 948.08 (1) or (2) | 951.08 (1) or (2) |
| 968.20 (1)(intro.) and (2) | 948.165 | 951.165 |
| 969.035 (2)(a) | 940.01 or 940.225 (1) | 940.01, 940.225 (1) or 948.02 (1) or (2) |
| 970.03 (4) | 940.225 | 940.225, 948.02, 948.05 or 948.06 |
| 971.31 (11) | 940.225 | 940.225 or 948.02 |
| 971.37 (1)(intro.) | 940.203, 940.225 or 944.06 | 940.225, 948.02, 948.05 or 948.06 |
| 972.11 (2)(b)(intro.) | 940.225 | 940.225, 948.02, 948.05 or 948.06 |
| 973.03 (3)(e) 3 | 940.203 | 948.05 |
| 975.01 (2) | 940.225 | 940.225, 948.02 or 948.06 |

SECTION 65. **Initial applicability.** This act applies to offenses occurring on or after the effective date of this SECTION, but does not preclude the counting of other violations as prior violations for sentencing a person.

SECTION 66a. **Effective date.** This act takes effect on July 1, 1989.