

## Child Sexual Assault Laws

This fact sheet lists several sexual assault crimes against children. This list is not exhaustive and other sex offenses and crimes involving children can be found in WCASA's Information Sheet: "Wisconsin Crimes Against Children" and Wis. Stat. ch. 948.

This fact sheet reflects the law as of June 11, 2012. Some of these crimes are relatively new and may not be charged if the offense occurred before the law went into effect. For more information on when these crimes became effective, please contact your DA or a local sexual assault service provider, a list of which can be found at [www.wcasa.org](http://www.wcasa.org). Please note that not all statutes have been printed in their entirety due to space restrictions.

### 948.02 SEXUAL ASSAULT OF A CHILD

#### 948.02(1) 1st DEGREE SEXUAL ASSAULT

Whoever does the following is guilty of a Class A felony, and subject to a mandatory minimum sentence of 25 years in prison.

(am) Has sexual contact or sexual intercourse with a person who has not attained the age of 13 years and causes great bodily harm to the person.

Whoever does any of the following is guilty of a Class B felony and subject to a mandatory minimum sentence of 25 years in prison:

(b) Has sexual intercourse with a person who has not attained the age of 12 years

(c) Has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence.

Whoever does the following is guilty of a Class B felony and subject to a mandatory minimum sentence of 5 years in prison:

(d) Has sexual contact with a person who has not attained the age of 16 years by use of threat or threat of force or violence if the actor is at least 18 years of age when the sexual contact occurs.

*Note:* The above mandatory minimum sentences do not apply to an offender who was under 18 years of age when the violation occurred.

Whoever does the following is guilty of a Class B felony (there is no mandatory minimum prison sentence attached to this provision):

(e) Has sexual contact or sexual intercourse with a person who has not attained the age of 13 years.

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### **948.02(2) 2nd DEGREE SEXUAL ASSAULT**

“Whoever has sexual contact or intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony.” Note: This statute contains a ‘failure to act’ provision criminalizing the failure of certain individuals to prevent the assault. For more information on these provisions, please contact WCASA or your local sexual assault service provider, a listing of which is contained at [www.wcasa.org](http://www.wcasa.org).

### **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.”

### **948.025 ENGAGING IN REPEATED ACTS OF SEXUAL ASSAULT OF THE SAME CHILD**

This crime applies whenever a defendant commits 3 or more violations under s. 948.02(1) or (2) within a specified period of time involving the same child. Depending on the violations, different penalties apply. For more information see s. 948.025.

### **948.05 SEXUAL EXPLOITATION OF A CHILD**

“Whoever does any of the following with the knowledge of the character and content of the sexually explicit conduct involving the child may be found guilty of a Class C Felony if the offender is an adult or a Class F Felony if the offender was under 18 at the time of the offense.

- (a) Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct.
- (b) Records or displays in any way a child engaged in sexually explicit conduct

Additionally, “whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct may be penalized if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.”

This statute also allows an affirmative defense if the defendant had reasonable cause to believe the child was 18 years or older. See 948.05(2p)(3) for more information.

### **948.051 TRAFFICKING OF A CHILD**

It is a Class C felony for a person to knowingly recruit, entice, provide, obtain, or harbor, or knowingly attempt to recruit, entice, provide, obtain, or harbor, any child for the purpose of commercial sex acts or sexually explicit performance. It is also a Class C felony for any person to benefit from such acts.

### **948.051 INCEST WITH A CHILD**

It is a Class C felony for a person to either marry, have sexual contact, or sexual intercourse with a child to whom s/he is a stepparent or related by blood or adoption. Related means a degree of kinship closer than second cousin. Note: this crime also includes a failure to act provision. For more information on the details of this crime contact WCASA or your local sexual assault service provider.

### **948.051 INCEST WITH A CHILD**

“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 D felony:

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- (1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02 or 948.095.
- (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) Recording 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 or controlled substance analog in violation of ch. 961"

### **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 D felony."

### **948.085 SEXUAL ASSAULT OF A CHILD PLACED IN SUBSTITUTE CARE**

It is a Class C felony for a person to have "sexual contact or sexual intercourse with a child for whom the actor is a foster parent" or have "sexual contact or sexual intercourse with a child placed at any of the following facilities if the actor works or volunteers at the facility or is directly or indirectly responsible for managing it: 1. A shelter care facility licensed under s. 48.66 (1)(a); 2. A group home licensed under 48.625 or 48.66(1); or 3. A facility described in 940.295(2)(m)."

### **948.095 SEXUAL ASSAULT OF A CHILD BY A SCHOOL STAFF PERSON OR A PERSON WHO WORKS OR VOLUNTEERS WITH CHILDREN**

"Whoever has sexual contact or sexual intercourse with a child 16 or older" (not a spouse) is guilty of a Class H felony if "[t]he child is enrolled as a student in a school or a school district" AND "[t]he defendant is a member of the school staff of the school or school district in which the child is enrolled as a student." "A person who has attained the age of 21 years and who engages in an occupation or participates in a volunteer position that requires him or her to work or interact directly with children may not have sexual contact or sexual intercourse with a child who has attained the age of 16, who is not the person's spouse, and with whom the person works or interacts through that occupation or volunteer position." School staff and school are defined in the statute. Certain types of professions are presumed to fall within this statute.

### **948.10 EXPOSING GENITALS, PUBIC AREA, OR INTIMATE PARTS**

(1) Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals, pubic area, or intimate parts or exposes genitals, pubic area, intimate parts to a child is found guilty of the following:

- (a) Class I felony except in par. (b).
- (b) When the actor is a child when the violation occurs or the actor has not attained the age of 19 years when the violation occurs and is not more than four years older than the child victim, the actor is guilty of a Class A misdemeanor.

(2) Subsection (1) does not apply under any of the following circumstances:

- (a) The child is the defendant's spouse.
  - (b) A mother's breast-feeding of her child.
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### **948.13 CHILD SEX OFFENDER WORKING WITH CHILDREN**

“...whoever has been convicted of a serious child sex offense and subsequently engages in an occupation or participates in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age is guilty of a Class F felony.” Paragraphs (b) and (c) of this section list exceptions.

### **146.35 FEMALE GENITAL MUTILATION PROHIBITED**

It is a class H felony for a person to “circumcise, excise or infibulate the labia majora, labia minora or clitoris of a female minor.” Note: This prohibition contains an exception that allows physicians to perform this work for the health of the minor or to correct an abnormality. (s. 146.35(1))

### **DEFINITIONS: (Wis. Stat. s. 948.01)**

*Child* (when referring to a victim) is a person who has not attained the age of 18 years.

*Sexual Contact* means any of the following:

a. Any of the following types of intentional touching either directly or through clothing, if the touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant:

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

b. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant (or on defendant’s instruction) upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

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

*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.

*Sexually explicit conduct* means actual or simulated: (a) Sexual intercourse, (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 intimate parts.

### **PENALTIES:**

- A felony = Life imprisonment.
  - B felony = imprisonment not to exceed 60 years.
  - C felony = fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both.
  - D felony = fine not to exceed \$100,000 or imprisonment not to exceed 25 years, or both.
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- F felony = fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both.
- H felony = fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both.
- A misdemeanor = fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

*Note:* Wis. Stat. 939.635 allows for the addition of up to five years to the maximum term of imprisonment for violations of 948.02 and 948.025 when the perpetrator is a child care provider who is compensated for care of the victim. The Wisconsin Legislature created 939.635 via 2011 Wisconsin Act 82.

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WCASA is a membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 56 sexual assault service provider (SASP) agencies throughout the state that offer support, advocacy and information to victims of sexual assault and their families. For information sheets on other topics and for more information about sexual assault, please visit our website. This sheet may be reproduced in its original format only.

**This information does not constitute legal advice.**

**Please note that this is an abridged information sheet; the statutes have not been printed in their entirety due to space restrictions.**