

Wisconsin Child Pornography Laws

This fact sheet lists Wisconsin's child pornography laws. The Wisconsin Legislature has made recent changes that reflect the prevalence of new technology and the challenges it poses for preventing child pornography. For more information, please contact the Wisconsin Coalition Against Sexual Assault or your District Attorney's office.

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. Please note that not all statutes have been printed in their entirety due to space restrictions.

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 sexual exploitation of a child]:

- (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.

(1m) 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 [is guilty of sexual exploitation of a child] 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.

(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 described above [is guilty of sexual exploitation of a child].

(3) It is an affirmative defense to prosecution for violation of sub. (1) (a) or (b) or (2) if the defendant had reasonable cause to believe 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. (s.948.05)

Penalties: If the actor convicted of sexual exploitation of a child was 18 or over at the time of the offense, the actor is guilty of a Class C felony. If the actor was under 18 years of age, he or she is guilty of a Class F felony.

948.12 POSSESSION OF CHILD PORNOGRAPHY

(1m) Whoever possesses, or accesses in any way with intent to view, any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances is guilty of [possession of child pornography]:

- (a) The person knows that he or she possesses or has accessed the material.
- (b) The person knows or reasonably should know that the material that is possessed or accessed contains depictions of sexually explicit conduct.
- (c) The person knows or reasonably should know that the child depicted in the material who is engaged in sexually explicit conduct has not attained the age of 18 years.

(2m) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct [is guilty of this crime] if all of the following apply:

- (a) The person knows that he or she has exhibited or played the recording.
- (b) Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct.
- (c) Before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years.

Penalties: If the person convicted of this crime was 18 or over at the time of the offense, s/he is guilty of a Class D felony. If the person convicted was under 18, s/he is guilty of a Class I felony.

Child means a person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law child does not include a person who has attained the age of 17 years.

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 intimate parts.

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

948.11 EXPOSING A CHILD TO HARMFUL MATERIAL OR HARMFUL DESCRIPTIONS OR NARRATIONS

(a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.
2. The person has face -to- face contact with the child before or during the sale, rental, exhibit, playing, distribution, or loan.

(am) Any person who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18
2. The person has face-to-face contact with the child.

(c) It is an affirmative defense to a prosecution for a violation of pars. (a) 2., (am) 2., and (b) 2. 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 a preponderance of the evidence.

Harmful description or narrative account means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children.

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

PENALTIES:

- C felony = fine not to exceed \$100,000 or imprisonment not to exceed 40 yrs, or both.
- D felony = fine not to exceed \$100,000 or imprisonment not to exceed 25 yrs, or both.
- F felony = fine not to exceed \$25,000 or imprisonment not to exceed 12 yrs. 6 mos, or both.
- H felony = fine not to exceed \$10,000 or imprisonment not to exceed 6 yrs, or both.
- I felony (s.939.50(3)(i)) = a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.
- A misdemeanor = fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

WCASA is a membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 60 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.