

Crimes Against Children

This resource refers to criminal acts against children other than first and second degree sexual assault of a child. The Wisconsin statutes listed below reflect the increasing use of new technologies in crimes against children and specifically criminalize various acts related to the creation, sharing, and distribution of certain materials and information. These crimes are generally considered sex offenses and are not an exhaustive list of prohibited acts. For more information about child sexual assault laws, please see WCASA's information sheet: "Wisconsin Child Sexual Assault Laws" and Wis. Stat. Ch. 948.

Penalties vary on the victim's age and on the offender's knowledge of the victim's age

948.05 SEXUAL EXPLOITATION OF A CHILD

Whoever does any of the following with the knowledge of the character and content of the conduct involving the child may be penalized*:

- 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.
- 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.

* The statute also allows an affirmative defense if the defendant had reasonable cause to believe the child was 18 years or older. See 948.05(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, harbor, patronize, solicit, or knowingly attempt to recruit, entice, provide, obtain, 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.

948.055 CAUSING A CHILD TO VIEW OR LISTEN TO SEXUAL ACTIVITY

Whoever intentionally causes a child who has not attained 18 years of age, or the actor believes or has reason to believe has not attained 18 years of age, to view or listen to sexually explicit conduct may be penalized if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child or individual.

Note: An actor who attempts to cause a child to view or listen to sexual activity is subject to the penalty for the completed act.

948.075 USE OF A COMPUTER TO FACILITATE A CHILD SEX CRIME

Whoever uses a computerized communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent to have sexual contact or sexual intercourse with the individual is guilty of a Class C felony.

This section does not apply if the actor reasonably believed the person he or she was communicating with was no more than 24 months of age younger than the actor.

Additionally, proof of an act to effect the actor's intent is necessary; communication alone is insufficient to prove intent.

Note: An actor who attempts to use a computer to facilitate a child sex crime is subject to the penalty for the completed act.

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.

948.081 PATRONIZING A CHILD

An actor who enters or remains in any place of prostitution with intent to have nonmarital sexual intercourse or to commit an act of sexual gratification, in public or private, involving the sex organ of one person and the mouth or anus of another, masturbation, or sexual contact with a person is guilty of a Class G felony if the person is a child. It need not be proven that the actor knew the age of the person and it is not a defense that the actor reasonably believed that the person was not a child.

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

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 if either:

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

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 under the same circumstances above.

Whoever, with knowledge of the character and content of the material, possesses harmful material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child is guilty of a Class A misdemeanor under the same circumstances above.

It is an affirmative defense to a prosecution for these violations 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 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:

- 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, sado masochistic abuse, physical torture or brutality and that is harmful to children; or
- 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.

**Note:* This list is not exhaustive. Please reference 948.11 for a full list.

948.12 POSSESSION OF CHILD PORNOGRAPHY

Whoever possesses, or accesses in any way with the 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:

- The person knows that he or she possesses or has accessed the material.
- The person knows, or reasonably should know, that the material that is possessed or accessed contains depictions of sexually explicit conduct.
- 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)

Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct is guilty if all of the following apply:

- The person knows that he or she has exhibited or played the recording.
- Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct.
- 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, the offender is guilty of a Class D felony. If the person convicted was under 18, s/he is guilty of a Class I felony.

DEFINITIONS

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:

- 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;
 - Bestiality;
 - Masturbation;
 - Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or
 - Lewd exhibition of intimate parts.
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Sadomasochistic abuse means the infliction of force, pain or violence upon a person for the purpose of sexual arousal or sexual gratification.

Commercial sex act means any of the following for which anything of value is given to, promised, or received, directly or indirectly, by any person

- Sexual contact
- Sexual intercourse
- Sexually explicit performance
- Any other conduct done for the purpose of sexual humiliation, degradation, arousal, or gratification.

PENALTIES

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

Note: Wis. Stat. 393.617 (2) allows the court to deviate from mandatory minimum sentences or place offenders on probation for violations of 948.05 and 948.12 if (1) it is in the best interests of the community, (2) the public will not be harmed, and (3) the offender is no more than four years older than the victim. This change was created by 2011 Wisconsin Act 272. It is important to note that the court may not deviate from the mandatory minimum sentence unless all of the above criteria are met.

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.