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# Wisconsin Legislative Council

## ACT MEMO

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### 2023 Wisconsin Act 200 [2023 Senate Bill 333]

### Sexual Misconduct by a School Staff Member and DPI License Revocations Based on Criminal Convictions

2023 Wisconsin Act 200 creates a new crime prohibiting sexual misconduct by a school staff member or volunteer against a pupil. The act also adds certain crimes, including the new crime of sexual misconduct by school staff, to the list of crimes under state law that result in automatic revocation of licenses issued by the State Superintendent of Public Instruction, and further requires permanent revocation of such licenses if a licensee is convicted of certain crimes.

## CRIME OF SEXUAL MISCONDUCT

Act 200 creates a new crime prohibiting an act of “sexual misconduct” against a pupil. Specifically, under the act, any school staff member or volunteer who commits an act of sexual misconduct against a pupil enrolled in the school is guilty of a Class I felony. The act applies to public or private elementary or secondary schools, or a tribal school, and defines “school staff member” as “any person who provides services to a school, or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract” and includes a bus driver.

For purposes of this crime, the term “sexual misconduct” means verbal contact of a sexual nature or physical conduct of a sexual nature. More specifically, the act defines “verbal contact of a sexual nature” as communications made intentionally for the purposes of either sexually degrading or sexually humiliating the pupil or the actor, or sexually arousing or sexually gratifying the pupil or the actor. The act further defines “physical contact of a sexual nature” as any of the following types of intentional touching, whether direct or through clothing, if for the purpose of either sexually degrading or sexually humiliating the pupil or the actor, or sexually arousing or sexually gratifying the pupil or the actor:

- Intentional touching by the actor or, upon the actor’s instruction, by another person, by the use of any body part or object.
- Intentional touching by the pupil, by the use of any body part or object, of the actor or, if done upon the actor’s instruction, another person.

The act also requires a child protective services agency or law enforcement officer who receives a report of an alleged violation of the new crime of sexual misconduct by school staff to report the sexual misconduct to the Department of Public Instruction (DPI).

## LICENSE REVOCATION

### Automatic Revocation

Under state law, the state superintendent may revoke any license granted by the state superintendent for “incompetency” or “immoral conduct” by the licensee, after written notice of the charges and an opportunity for defense. However, the state superintendent must revoke a license, without a hearing, if

the licensee is convicted of any Class A, B, C, D, E, F, G, or H felony under ch. 940, Stats., titled *Crimes Against Life and Bodily Security*, or ch. 948, Stats., titled *Crimes Against Children*.<sup>1</sup>

Act 200 expands the list of crimes for which a conviction results in automatic license revocation to include the following crimes, if the violation occurs on or after the act's effective date:

- Invasion of privacy under s. 942.08, Stats.
- Representations depicting nudity under s. 942.09 (2), Stats.
- Sexual misconduct by a school staff person or volunteer, as created by the act.
- Exposing genitals, pubic area, or intimate parts under s. 948.10, Stats.
- Exposing a child to harmful material under s. 948.11 (2) (a), Stats.
- Theft under s. 943.20, Stats., if a felony violation and the property belonged to the school district.
- A violation of federal law or the law of another state or jurisdiction that would constitute a violation of any of the crimes for which automatic revocation is required, if committed in this state.

## Permanent Revocation

State law generally prohibits the state superintendent from reinstating a revoked license for six years following the date of the conviction, unless the conviction has been reversed, set aside, or vacated. After the six-year period, the state superintendent may only reinstate a license revoked due to a felony conviction if the licensee establishes by clear and convincing evidence that he or she is entitled to reinstatement.

Act 200 creates an exception to the six-year default revocation period to require permanent license revocation if a licensee is convicted of certain crimes. Specifically, the act prohibits the state superintendent from reinstating a license that was automatically revoked due to a criminal conviction, if the revocation was based on any of the following types of convictions:

- A felony conviction for a violation of any crime against a child under ch. 948, Stats., that requires automatic revocation under prior law maintained by the act, as described in footnote 2.
- A felony conviction for a violation of the crime of invasion of privacy under 942.08, Stats., or the crime of sexual misconduct by a school staff person or volunteer, created by the act.
- A conviction for a violation of the crime of representations depicting nudity under s. 942.09 (2), if the person depicted in the representation is a child.
- A conviction for a violation of federal law or the law of another state or jurisdiction that would be a violation of any of the crimes listed above, if committed in this state.

**Effective date:** March 24, 2024

For a full history of the bill, visit the Legislature's [bill history page](#).

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<sup>1</sup> Specifically, the automatic revocation requirement applies to licensees who are convicted of any Class A, B, C, or D felony under ch. 940 or 948, Stats., for a violation that occurred on or after September 12, 1991, or any Class E, F, G, or H felony under ch. 940 or 948, Stats., for a violation that occurred on or after February 1, 2003. These provisions do not apply, however, to the offense of homicide by negligent handling of a dangerous weapon, explosives, or fire under s. 940.08, Stats., or the offense of battery or threat to a Department of Revenue employee under s. 940.205, Stats.