CHAPTER 948

CRIMES AGAINST CHILDREN

Cross−reference: See definitions in s. 939.22.

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

(1d) "Exhibit," with respect to a recording of an image that is not viewable in its recorded form, means to convert the recording of the image into a form in which the image may be viewed.

(1g) "Joint legal custody" has the meaning given in s. 767.001 (1s).

(1r) "Legal custody" has the meaning given in s. 767.001 (2).

(1t) "Lewd exhibition of intimate parts" means the display of less than fully and opaquely covered intimate parts of a person who is posed as a sex object or in a way that places an unnatural or unusual focus on the intimate parts.

(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; stepparent; guardian; foster parent; an employee 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.

(3m) "Physical placement" has the meaning given in s. 767.001 (5).

(3r) "Recording" includes the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound.

(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 of the following:

(a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional 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, upon the defendant's instruction, by another person 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.

(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 intimate parts.

History: 1987 a. 332; 1989 a. 31; 1993 a. 446; 1995 a. 27, 67, 69, 100, 214; 2001 a. 16; 2005 a. 273, 435; 2007 a. 96; 2009 a. 28; 2019 a. 16.

When a defendant allows sexual contact initiated by a child, the defendant is guilty of intentional touching as defined in sub. (5). State v. Traylor, 170 Wis. 2d 393, 489 N.W.2d 626 (Ct. App. 1992).

The definition of "parent" in sub. (3) is all−inclusive; a defendant whose paternity was admitted but had never been adjudged was a "parent." State v. Evans, 171 Wis. 2d 471, 492 N.W.2d 141 (1992).

A live−in boyfriend can be a person responsible for the welfare of a child if he was used by the child's legal guardian as a caretaker for the child. State v. Sostre, 198 Wis. 2d 409, 542 N.W.2d 774 (1996), 94−0778.

The phrase "by the defendant or upon the defendant's instruction" in sub. (6) modifies the entire list of acts and establishes that for intercourse to occur the defendant either had to perform one of the actions on the victim or instruct the victim to perform one of the actions on himself or herself. State v. Olson, 2000 WI App 158, 238 Wis. 2d 74, 616 N.W.2d 144, 99−2851.

A person under 18 years of age employed by his or her parent to care for a child for whom the parent was legally responsible can be a person responsible for the welfare of the child under sub. (3). State v. Hughes, 2005 WI App 155, 285 Wis. 2d 388, 702 N.W.2d 87, 04−2122.

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 103.21 to 103.31 and 103.64 to 103.82, relating to the 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 253.11, relating to infant blindness.

(5) Section 254.12, relating to applying lead−bearing paints or selling or transferring a fixture or other object containing a lead−bearing paint.

(6) Sections 961.01 (6) and (9) and 961.49, relating to delivering and distributing controlled substances or controlled substance analogs to children.

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

(8) Section 961.573 (3) (b) 2., relating to the use or possession of methamphetamine−related drug paraphernalia in the presence of a child who is 14 years of age or younger.

(9) A crime that involves an act of domestic abuse, as defined in s. 968.075 (1) (a), if the court includes in its reasoning under s. 973.017 (10m) for its sentencing decision the aggravating factor under s. 973.017 (6m).

(10) Section 942.09 (4) (a), relating to solicitation of an intimate or private representation of a child.

(11) Section 944.18 (2) (h), (i), (j), and (k), relating to sexual contact with an animal.

History: 1987 a. 332; 1989 a. 31; 1993 a. 27; 1995 a. 448; 2005 a. 263; 2011 a. 273; 2017 a. 11, 129; 2019 a. 162.

948.02 Sexual assault of a child. (1) FIRST DEGREE SEXUAL ASSAULT. (am) Whoever 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 is guilty of a Class A felony.

(b) Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony.

(c) Whoever has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony.

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

(e) 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. This subsection does not apply if s. 948.093 applies.

(3) FAILURE TO ACT. A person responsible for the welfare of a child who has not attained the age of 16 years is guilty of a Class F 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.

History: 1987 a. 332; 1989 a. 31; 1995 a. 14, 69; 2001 a. 109; 2005 a. 430, 437; 2007 a. 80; 2013 a. 167; 2017 a. 174.

Relevant evidence in child sexual assault cases is discussed. In Interest of Michael R.B., 175 Wis. 2d 713, 499 N.W.2d 641 (1993).

Limits relating to expert testimony regarding child sex abuse victims is discussed. State v. Hernandez, 192 Wis. 2d 251, 531 N.W.2d 348 (Ct. App. 1995).

The criminalization, under sub. (2), of consensual sexual relations with a child does not violate the defendant's constitutionally protected privacy rights. State v. Fisher, 211 Wis. 2d 665, 565 N.W.2d 565 (Ct. App. 1997), 96−1764.

Second degree sexual assault under sub. (2) is a lesser included offense of first degree sexual assault under sub. (1). State v. Moua, 215 Wis. 2d 510, 573 N.W.2d 210 (Ct. App. 1997).

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not be informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. State v. Bollig, 2000 WI 6, 232 Wis. 2d 561, 605 N.W.2d 199, 98−2196.

Expert evidence of sexual immaturity is relevant to a preadolescent's affirmative defense that he or she is not capable of having sexual contact with the purpose of becoming sexually aroused or gratified. State v. Stephen T., 2002 WI App 3, 250 Wis. 2d 26, 643 N.W.2d 151, 00−3045.

That the intended victim was actually an adult was not a bar to bringing the charge of attempted 2nd degree sexual assault of a child. The fictitiousness of the victim is an extraneous factor beyond the defendant's control within the meaning of the attempt statute. State v. Grimm, 2002 WI App 242, 258 Wis. 2d 166, 653 N.W.2d 284, 01−0138.

Section 939.22 (19) includes female and male breasts as each is "the breast of a human being." The touching of a boy's breast constitutes "sexual contact" under sub. (2). State v. Forster, 2003 WI App 29, 260 Wis. 2d 149, 659 N.W.2d 144, 02−0602.

Sub. (2), in conjunction with ss. 939.23 and 939.43 (2), precludes a defense predicated on a child's intentional age misrepresentation. The statutes do not violate an accused's rights under the 14th amendment to the U.S. Constitution. State v. Jadowski, 2004 WI 68, 272 Wis. 2d 418, 680 N.W.2d 418, 03−1493.

The consent of the child in a sub. (2) violation is not relevant. Yet if the defendant asserts that she did not consent to the intercourse and that she was raped by the child, the issue of her consent becomes paramount. If the defendant was raped, the act of having sexual intercourse with a child does not constitute a crime. State v. Lackershire, 2007 WI 74, 301 Wis. 2d 418, 734 N.W.2d 23, 05−1189.

"Sexual intercourse" as used in this section does not include bona fide medical, health care, and hygiene procedures. This construction cures the statute's silence regarding medically appropriate conduct. Thus the statute is not unconstitutionally overbroad. State v. Lesik, 2010 WI App 12, 322 Wis. 2d 753, 780 N.W.2d 210, 08−3072.

The elements of the offense under sub. (1) (e), are: 1) that the defendant had sexual contact with the victim; and 2) that the victim was under the age of 13 years at the time of the alleged sexual contact. It is these elements that the jury must unanimously agree upon. The exact location of the assault is not a fact necessary to prove the sexual contact and does not require jury unanimity. State v. Badzinski, 2014 WI 6, 352 Wis. 2d 329, 843 N.W.2d 29, 11−2905.

Defendant's convictions for both failure to protect a child from sexual assault contrary to sub. (3) and first−degree sexual assault of a child under 13 as a party to a crime contrary to sub. (1) (e) and s. 939.05 were not multiplicitous. The two convictions were supported by different conduct and were not identical in fact. State v. Steinhardt, 2017 WI 62, 375 Wis. 2d 712, 896 N.W.2d 700, 15−0993.

The constitutionality of this statute is upheld. Sweeney v. Smith, 9 F. Supp. 2d 1026 (1998).

Statutory Rape in Wisconsin: History, Rationale, and the Need for Reform. Olszewski. 89 MLR 693 (2005).

948.025 Engaging in repeated acts of sexual assault of the same child. (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of:

(a) A Class A felony if at least 3 of the violations were violations of s. 948.02 (1) (am).

(b) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am), (b), or (c).

(c) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am), (b), (c), or (d).

(d) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1).

(e) A Class C felony if at least 3 of the violations were violations of s. 948.02 (1) or (2).

(2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

(b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am), (b), or (c) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) (am), (b), or (c).

(c) If an action under sub. (1) (c) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am), (b), (c), or (d) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), or (d).

(d) If an action under sub. (1) (d) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

(e) If an action under sub. (1) (e) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) or (2) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) or (2).

(3) The state may not charge in the same action a defendant with a violation of this section and with a violation involving the same child under s. 948.02 or 948.10, unless the other violation occurred outside of the time period applicable under sub. (1). This subsection does not prohibit a conviction for an included crime under s. 939.66 when the defendant is charged with a violation of this section.

History: 1993 a. 227; 1995 a. 14; 2001 a. 109; 2005 a. 430, 437; 2007 a. 80.

This section does not violate the right to a unanimous verdict or to due process. State v. Johnson, 2001 WI 52, 243 Wis. 2d 365, 627 N.W.2d 455, 99−2968.

Convicting the defendant on three counts of first−degree sexual assault of a child and one count of repeated acts of sexual assault of a child when all four charges involved the same child and the same time period violated sub. (3). A court may reverse the conviction on the repeated acts charge under sub. (1) rather than the convictions for specific acts of sexual assault under s. 948.02 (1) when the proscription against multiple charges in sub. (3) is violated even if the repeated acts charge was filed prior to the charges for the specific actions. State v. Cooper, 2003 WI App 227, 267 Wis. 2d 886, 672 N.W.2d 118, 02−2247.

The state may bring multiple prosecutions under sub. (1) when two or more episodes involving "3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child" are discrete as to time and venue. State v. Nommensen, 2007 WI App 224, 305 Wis. 2d 695, 741 N.W.2d 481, 06−2727.

The respondent 15 year−old's assertion, that applying sub. (1) (e) to him violated his due process and equal protection rights, failed. While a juvenile under the age of 16 could be both a victim and an offender under sub. (1) (e), the respondent was not a victim under the facts in this case. Sub. (1) (e) prohibits a person from engaging in sexual contact with another person who has not reached the age of 16. Sexual contact occurs when intentional touching is done "either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant." The statute provides an objective standard that makes clear that every person who engages in sexual contact with a child under the age of 16 for the purposes described is strictly liable. State v. Colton M., 2015 WI App 94, 366 Wis. 2d 119, 875 N.W.2d 642, 14−2419.

When the state alleged that the defendant engaged in repeated sexual assaults of the same child during 2007 and 2008, and during that time period sub. (1) was repealed and recreated, the applicable law was the statute in effect when the last criminal action constituting a continuing offense occurred. Although the defendant should have been charged under the 2007−08 law, the defendant was mistakenly charged under the 2005−06 law. Nevertheless, the defendant was charged with a crime that existed at law. Class C criminal liability attached under the 2005−06 and 2007−08 laws to the same conduct as it pertained to the defendant. The wording difference was immaterial as the elements were the same. The technical charging error did not prejudice the defendant, nor did it affect the circuit court's subject matter jurisdiction. State v. Scott, 2017 WI App 40, 376 Wis. 2d 430, 899 N.W.2d 728, 16−1411.

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 H 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 F felony.

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

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

(4) FAILING TO ACT TO PREVENT BODILY HARM. (a) A person responsible for the child's welfare is guilty of a Class F 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 H 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) ENGAGING IN REPEATED ACTS OF PHYSICAL ABUSE OF THE SAME CHILD. (a) Whoever commits 3 or more violations under sub. (2), (3), or (4) within a specified period involving the same child is guilty of the following:

1. A Class A felony if at least one violation caused the death of the child.

2. A Class B felony if at least 2 violations were violations of sub. (2) (a).

3. A Class C felony if at least one violation resulted in great bodily harm to the child.

4. A Class D felony if at least one violation created a high probability of great bodily harm to the child.

5. A Class E felony.

(b) If an action under par. (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of sub. (2), (3), or (4) occurred within the specified period but need not agree on which acts constitute the requisite number.

(c) The state may not charge in the same action a defendant with a violation of this subsection and with a violation involving the same child under sub. (2), (3), or (4), unless the other violation occurred outside of the period applicable under par. (a). This paragraph does not prohibit a conviction for an included crime under s. 939.66 when the defendant is charged with a violation of this subsection.

(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.

History: 1987 a. 332; 2001 a. 109; 2007 a. 80; 2009 a. 308; 2015 a. 366.

To obtain a conviction for aiding and abetting a violation of sub. (2) or (3), the state must prove conduct that as a matter of objective fact aids another in executing the crime. State v. Rundle, 176 Wis. 2d 985, 500 N.W.2d 916 (Ct. App. 1993).

To overcome the privilege of parental discipline in s. 939.45 (5), the state must prove beyond a reasonable doubt that only one of the following is not met: 1) the use of force must be reasonably necessary; 2) the amount and nature of the force used must be reasonable; and 3) the force used must not be known to cause, or create a substantial risk of, great bodily harm or death. Whether a reasonable person would have believed the amount of force used was necessary and not excessive must be determined from the standpoint of the defendant at the time of the defendant's acts. The standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense. State v. Kimberly B., 2005 WI App 115, 283 Wis. 2d 731, 699 N.W.2d 641, 04−1424.

The definition of reckless in this section is distinct from the general definition found in s. 939.24 and does not contain a state of mind element. Because the defense of mistake defense applies only to criminal charges with a state of mind element the trial court properly exercised its discretion in refusing to give an instruction on the mistake defense. State v. Hemphill, 2006 WI App 185, 296 Wis. 2d 198, 722 N.W.2d 393, 05−1350.

Reckless child abuse requires the defendant's actions demonstrate a conscious disregard for the safety of a child, not that the defendant was subjectively aware of that risk. In contrast, criminal recklessness under s. 939.24 (1) is defined as when the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk. Thus, recklessly causing harm to a child is distinguished from criminal recklessness, because only the latter includes a subjective component. State v. Williams, 2006 WI App 212, 296 Wis. 2d 834, 723 N.W.2d 719, 05−2282.

Testimony supporting the defendant father's assertion that he was beaten with a belt as a child was not relevant to whether the amount of force he used in spanking his daughter was objectively reasonable. A parent may not abuse his or her child and claim that conduct is reasonable based on his or her history of being similarly abused. State v. Williams, 2006 WI App 212, 296 Wis. 2d 834, 723 N.W.2d 719, 05−2282.

The treatment−through−prayer provision under sub. (6) by its terms applies only to charges of criminal child abuse under this section. On its face, the treatment−through−prayer provision does not immunize a parent from any criminal liability other than that created by the criminal child abuse statute. No one reading the treatment−through−prayer provision should expect protection from criminal liability under any other statute. State v. Neumann, 2013 WI 58, 348 Wis. 2d 455, 832 N.W.2d 560, 11−1044.

The second−degree reckless homicide statute, s. 940.06, and this statute are sufficiently distinct that a parent has fair notice of conduct that is protected and conduct that is unprotected. The statutes are definite enough to provide a standard of conduct for those whose activities are proscribed and those whose conduct is protected. A reader of the treatment−through−prayer provision, sub. (6), cannot reasonably conclude that he or she can, with impunity, use prayer treatment as protection against all criminal charges. The statutes are not unconstitutional on due process fair notice grounds. State v. Neumann, 2013 WI 58, 348 Wis. 2d 455, 832 N.W.2d 560, 11−1044.

This section penalizes two types of harm: 1) bodily harm; and 2) great bodily harm. The definition of "substantial bodily harm" under s. 939.22 (38) that includes bone fractures is inapplicable to this section. Although bone fractures do not involve a risk of death, disfigurement, or a permanent or protracted loss or impairment of any part of a victim's body, they can fall under the "other serious bodily injury" segment of the "great bodily harm" definition in s. 939.22 (14). Just because all fractures meet the definition of substantial bodily harm, that does not imply that a particular fracture, or multiple fractures as is the case here, cannot be serious enough to qualify as an "other serious bodily injury" for purposes of being great bodily harm. State v. Davis, 2016 WI App 73, 371 Wis. 2d 737, 885 N.W.2d 807, 15−2030.

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 F felony.

(2) A person responsible for the child's welfare is guilty of a Class F 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 mental harm to the child that is caused by the other person.

History: 1987 a. 332; 2001 a. 109.

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 may be penalized under sub. (2p):

(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 may be penalized under sub. (2p) 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 proscribed in sub. (1) (a) or (b) or (1m) may be penalized under sub. (2p).

(2p) (a) Except as provided in par. (b), a person who violates sub. (1), (1m), or (2) is guilty of a Class C felony.

(b) A person who violates sub. (1), (1m), or (2) is guilty of a Class F felony if the person is under 18 years of age when the offense occurs.

(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.

History: 1987 a. 332; 1999 a. 3; 2001 a. 16, 109; 2005 a. 433.

"Import" under sub. (1) (c) [now sub. (1m)] means bringing in from an external source and does not require a commercial element or exempt personal use. State v. Bruckner, 151 Wis. 2d 833, 447 N.W.2d 376 (Ct. App. 1989).

The purposes of this section, child exploitation, and s. 948.07, child enticement, are distinct, and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833, 98−0642.

948.051 Trafficking of a child. (1) Whoever knowingly recruits, entices, provides, obtains, harbors, transports, patronizes, or solicits or knowingly attempts to recruit, entice, provide, obtain, harbor, transport, patronize, or solicit any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a), is guilty of a Class C felony.

(2) Whoever benefits in any manner from a violation of sub. (1) is guilty of a Class C felony if the person knows that the benefits come from an act described in sub. (1).

(3) Any person who incurs an injury or death as a result of a violation of sub. (1) or (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.

History: 2007 a. 116; 2013 a. 362; 2015 a. 367.

Under the Radar: Human Trafficking in Wisconsin. Monaco−Wilcox & Mueller. Wis. Law. Oct. 2017.

948.055 Causing a child to view or listen to sexual activity. (1) Whoever intentionally causes a child who has not attained 18 years of age, or an individual who 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 as provided in sub. (2) if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child or individual.

(2) Whoever violates sub. (1) is guilty of:

(a) A Class F felony if any of the following applies:

1. The child has not attained the age of 13 years.

2. The actor believes or has reason to believe that the child has not attained the age of 13 years.

(b) A Class H felony if any of the following applies:

1. The child has attained the age of 13 years but has not attained the age of 18 years.

2. The actor believes or has reason to believe that the child has attained the age of 13 years but has not attained the age of 18 years.

History: 1987 a. 334; 1989 a. 359; 1993 a. 218 ss. 6, 7; Stats. 1993 s. 948.055; 1995 a. 67; 2001 a. 109; 2011 a. 284.

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.

(1m) Has sexual contact or sexual intercourse with a child if the actor is the child's stepparent.

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

(a) Has knowledge that another person who is related to the child by blood or adoption in a degree of kinship closer than 2nd cousin or who is a child's stepparent 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.

History: 1987 a. 332; 1995 a. 69; 2001 a. 109; 2005 a. 277.

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 D felony:

(1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02, 948.085, or 948.095.

(2) Causing the child to engage in prostitution.

(3) Exposing genitals, pubic area, or intimate parts to the child or causing the child to expose genitals, pubic area, or intimate parts 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.

History: 1987 a. 332; 1995 a. 67, 69, 448, 456; 2001 a. 16, 109; 2005 a. 277; 2013 a. 362.

The penalty scheme of sub. (3) is not unconstitutionally irrational. That the statute, unlike sub. (1), did not distinguish between victims 16 years old or older and other children victims is a matter for the legislature. State v. Hanson, 182 Wis. 2d 481, 513 N.W.2d 700 (Ct. App. 1994).

This section includes the attempted crime, as well as the completed crime, and cannot be combined with the general attempt statute. State v. DeRango, 229 Wis. 2d 1, 599 N.W.2d 27 (Ct. App. 1999), 98−0642.

The purposes of s. 948.05, child exploitation, and this section, child enticement, are distinct, and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833, 98−0642.

This section creates one crime with multiple modes of commission. The alternate modes of commission are not so dissimilar as to implicate fundamental fairness. As such, a defendant is not entitled to a unanimity instruction. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833, 98−0642.

One alternate mode of commission of the crime under this section is attempt to cause a child to go into a vehicle, building, room, or secluded place. The principles of attempt in s. 939.32 apply. That the intended victims were fictitious constituted an extraneous fact beyond the defendant's control that prevented successful enticement while not excusing the attempt to entice. State v. Koenck, 2001 WI App 93, 242 Wis. 2d 693, 626 N.W.2d 359, 00−2684.

Attempted child enticement may be charged when the intervening extraneous factor that makes the offense an attempted rather than completed crime is that unbeknownst to the defendant, the "victim" is an adult government agent posing as a child. The 1st amendment is not implicated by the application of the child enticement statute to child enticements initiated over the internet as the statute regulates conduct, not speech. State v. Robins, 2002 WI 65, 253 Wis. 2d 298, 647 N.W.2d 287, 00−2841.

Acts alleged in furtherance of the criminal objective, such as attempts to have a child get into a vehicle or go into a hotel room or a secluded place are not required to prove attempted child enticement. Going to meet the child at a planned time and place is a sufficient, unequivocal act in furtherance of the criminal objective when earlier conversations provide reasonable inferences of that criminal objective. State v. Grimm, 2002 WI App 242, 258 Wis. 2d 166, 653 N.W.2d 284, 01−0138.

While an attempt cannot lie to an offense that does not carry the element of specific intent and the statutory definition of sexual intercourse does not formally include an intent element, the act of sexual intercourse is necessarily an intentional act. As such, the crime of attempted sexual assault of a child by means of sexual intercourse is a crime. State v. Brienzo, 2003 WI App 203, 267 Wis. 2d 349, 671 N.W.2d 700, 01−1362.

Like the child enticement statute in *Robins*, the child sexual assault statute regulates conduct, not speech. An attempt to have sexual contact or sexual intercourse with a child initiated or carried out in part by means of language does not make an attempted child sexual assault charge susceptible of 1st amendment scrutiny. State v. Brienzo, 2003 WI App 203, 267 Wis. 2d 349, 671 N.W.2d 700.

This section requires only that the defendant cause the child to go into any vehicle, building, room, or secluded place with the intent to engage in illicit conduct, but not that the child necessarily be first separated from the public. State v. Provo, 2004 WI App 97, 272 Wis. 2d 837, 681 N.W.2d 272, 03−1710.

"Secluded" in this section is not a technical term. In the context of child enticement, a secluded place would include any place that provides the enticer an opportunity to remove the child from within the general public's view to a location where any intended sexual conduct is less likely to be detected by the public. A place need not even be screened or hidden or remote if some other aspect of the place lowers the likelihood of detection. All the statute requires is that the place provides a means by which to exclude the child and reduce the risk of detection. State v. Pask, 2010 WI App 53, 324 Wis. 2d 555, 781 N.W.2d 751, 09−0559.

Sexual contact is not an element of the crime of child enticement under this section. Rather, the six enumerated prohibited intents are modes of commission. At least one mode of commission must be referenced during a plea colloquy, but the terms comprising each mode need not be specifically defined. The crime of child enticement does not require proof of the actual, physical action contemplated by the mode of commission, only that the defendant acted to entice a child while intending to do one of the prohibited acts. The act of enticement is the crime, not the underlying intended sexual or other misconduct. State v. Hendricks, 2018 WI 15, 379 Wis. 2d 549, 906 N.W.2d 666, 15−2429.

948.075 Use of a computer to facilitate a child sex crime. (1r) 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 in violation of s. 948.02 (1) or (2) is guilty of a Class C felony.

(2) This section does not apply if, at the time of the communication, the actor reasonably believed that the age of the person to whom the communication was sent was no more than 24 months less than the age of the actor.

(3) Proof that the actor did an act, other than use a computerized communication system to communicate with the individual, to effect the actor's intent under sub. (1r) shall be necessary to prove that intent.

History: 2001 a. 109; 2003 a. 321; 2005 a. 433; 2007 a. 96.

Defendant's admission to driving to the alleged victim's neighborhood for an innocent purpose combined with computer communications, in which the defendant told the alleged victim that he drove through her neighborhood for the specific purpose of meeting her, and his confession to the police that he went to the area so he could "get her interested in chatting with him again," showed that the non−computer−assisted act of driving through the area was to effect his intent to have sex with the alleged victim and satisfied the requirement in sub. (3). State v. Schulpius, 2006 WI App 263, 298 Wis. 2d 155, 726 N.W.2d 706, 06−0283.

Defendant's use of a webcam to transmit video of himself was, under the circumstances of this case, nothing more than the use of his computer to communicate and thus not an act "other than us[ing] a computerized communication system to communicate" as required under sub. (3). State v. Olson, 2008 WI App 171, 314 Wis. 2d 630, 762 N.W.2d 393, 08−0587.

The element use of a "computerized communication system" in sub. (1r) was satisfied when the defendant used his flip−style cellphone to exchange texts with, and receive picture messages from, the 14−year−old victim. There is no doubt that modern cellphones today are in fact computers. The defendant used his cellphone as a computer to send communications to the victim over the computer system used by their cellphones so that he could have sexual contact with her. State v. McKellips, 2016 WI 51, 369 Wis. 2d 437, 881 N.W.2d 258, 14−0827.

This section is not unconstitutionally vague because a person of ordinary intelligence would understand that using a cellphone to text or picture message with a child to entice sexual encounters violates the statute, and this section is capable of objective enforcement. State v. McKellips, 2016 WI 51, 369 Wis. 2d 437, 881 N.W.2d 258, 14−0827.

The legislature had reasonable and practical grounds for making a conviction for using a computer to facilitate a child sex crime under sub. (1r) subject to a mandatory minimum sentence. Thus, there was a rational basis for the penalty enhancer in s. 939.617 (1) and s. 939.617 (1) was not unconstitutional as applied to the defendant. State v. Heidke, 2016 WI App 55, 370 Wis. 2d 771, 883 N.W.2d 162, 15−1420.

948.08 Soliciting a child for prostitution. Whoever intentionally solicits or causes any child to engage in an act of prostitution or establishes any child in a place of prostitution is guilty of a Class D felony.

History: 1987 a. 332; 1995 a. 69; 2001 a. 109; 2007 a. 80.

Although colloquially referred to as prohibiting solicitation, this section also specifically, and alternatively, prohibits causing a child to practice prostitution. Cause is a substantial factor that need not be the first or sole cause of a child practicing prostitution. The habitual nature of the defendant's trading cocaine for sex with the child victim satisfied the requisite that the victim did "practice prostitution" with the

defendant. State v. Payette, 2008 WI App 106, 313 Wis. 2d 39, 756 N.W.2d 423, 07−1192.

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 in 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. In a prosecution under this section, 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.

History: 2017 a. 128.

948.085 Sexual assault of a child placed in substitute care. Whoever does any of the following is guilty of a Class C felony:

(1) Has sexual contact or sexual intercourse with a child for whom the actor is a foster parent.

(2) Has sexual contact or sexual intercourse with a child who is placed in any of the following facilities if the actor works or volunteers at the facility or is directly or indirectly responsible for managing it:

(a) A shelter care facility licensed under s. 48.66 (1) (a).

(b) A group home licensed under s. 48.625 or 48.66 (1).

(c) A facility described in s. 940.295 (2) (m).

History: 2005 a. 277; 2007 a. 97; 2009 a. 28.

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 if the defendant has attained the age of 19 years when the violation occurs.

History: 1987 a. 332; 2017 a. 174.

948.093 Underage sexual activity. Whoever has sexual contact with a child who has attained the age of 15 years but has not attained the age of 16 years, or whoever has sexual intercourse with a child who has attained the age of 15 years, is guilty of a Class A misdemeanor if the actor has not attained the age of 19 years when the violation occurs. This section does not apply if the actor is the child's spouse.

History: 2017 a. 174.

948.095 Sexual assault of a child by a school staff person or a person who works or volunteers with children. (1) In this section:

(a) "School" means a public or private elementary or secondary school, or a tribal school, as defined in s. 115.001 (15m).

(b) "School staff" means 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.

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class H felony if all of the following apply:

(a) The child is enrolled as a student in a school or a school district.

(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.

(3) (a) 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 years, who is not the person's spouse, and with whom the person works or interacts through that occupation or volunteer position.

(b) Whoever violates par. (a) is guilty of a Class H felony.

(c) Paragraph (a) does not apply to an offense to which sub. (2) applies.

(d) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact directly with children:

1. Teaching children.
2. Child care.
3. Youth counseling.
4. Youth organization.
5. Coaching children.
6. Parks or playground recreation.
7. School bus driving.

History: 1995 a. 456; 2001 a. 109; 2005 a. 274; 2007 a. 97; 2009 a. 302.

An "employee" and persons "under contract" are examples of persons included within the group of people that provide services to a school or school board within the definition of school staff under sub. (1) (b). These phrases are illustrative, and do not limit the definition of "a person who provides services." State v. Kaster, 2003 WI App 105, 264 Wis. 2d 751, 663 N.W.2d. 390, 02−2352 and 2006 WI App 72, 292 Wis. 2d 252, 714 N.W.2d 238, 05−1285.

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, or intimate parts to a child is guilty of the following:

(a) Except as provided in par. (b), a Class I felony.

(b) A Class A misdemeanor if any of the following applies:

1. The actor is a child when the violation occurs.

2. At the time of the violation, the actor had not attained the age of 19 years and was not more than 4 years older than the child.

(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.

History: 1987 a. 332; 1989 a. 31; 1995 a. 165; 2009 a. 202; 2013 a. 362.

Like other statutes in this chapter that create strict liability for crimes against children, this section can only be employed in situations involving face−to−face contact at the time of the crime and not to remote exposures such as over the Internet. This section lacks the scienter element of age of the victim that is necessary in a variable obscenity statute. State v. Stuckey, 2013 WI App 98, 349 Wis. 2d 654, 837 N.W.2d 160, 12−1776.

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

(ag) "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.

(ar) "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.

(b) "Harmful to children" means that quality of any description, narrative account or representation, in whatever form, of nudity, sexually explicit 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 for children; and

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

(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 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 years.

2. The person has face−to−face contact with the child before or during the communication.

(b) 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 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.

(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.

(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.

(4) LIBRARIES AND EDUCATIONAL INSTITUTIONS. (a) The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the state to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.

(b) No person who is an employee, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employee, a member of the board of directors or a trustee:

1. A public elementary or secondary school.

2. A private school, as defined in s. 115.001 (3r), or a tribal school, as defined in s. 115.001 (15m).

3. Any school offering vocational, technical or adult education that:

a. Is a technical college, is a school approved by the department of safety and professional services under s. 440.52, or is a school described in s. 440.52 (1) (e) 6., 7. or 8.; and

b. Is exempt from taxation under section 501 (c) (3) of the internal revenue code, as defined in s. 71.01 (6).

4. Any institution of higher education that is accredited, as described in s. 39.30 (1) (d), and is exempt from taxation under section 501 (c) (3) of the internal revenue code, as defined in s. 71.01 (6).

5. A library that receives funding from any unit of government.

(5) SEVERABILITY. The provisions of this section, including the provisions of sub. (4), are severable, as provided in s. 990.001 (11).

History: 1987 a. 332; 1989 a. 31; 1993 a. 220, 399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9; 2001 a. 16, 104, 109; 2005 a. 22, 25, 254; 2009 a. 302; 2017 a. 59.

This section is not unconstitutionally overbroad. The exemption from prosecution of libraries, educational institutions, and their employees and directors does not violate equal protection rights. State v. Thiel, 183 Wis. 2d 505, 515 N.W.2d 847 (1994).

An individual violates this section if he or she, aware of the nature of the material, knowingly offers or presents for inspection to a specific minor material defined as harmful to children in sub. (1) (b). The personal contact between the perpetrator and the child−victim is what allows the state to impose on the defendant the risk that the victim is a minor. State v. Trochinski, 2002 WI 56, 253 Wis. 2d 38, 644 N.W.2d 891, 00−2545.

Evidence was not insufficient to sustain the jury's verdict solely because the jury did not view the video alleged to be "harmful material," but instead heard only the children victim's and a detective's descriptions of what they saw. State v. Booker, 2006 WI 79, 292 Wis. 2d 43, 717 N.W.2d 676, 04−1435.

"Verbally" in sub. (2) (am) is most reasonably read as proscribing communication to children of harmful matter in words, whether oral or written, and to distinguish sub. (2) (am) from sub. (2) (a), which primarily proscribes visual representations. State v. Ebersold, 2007 WI App 232, 306 Wis. 2d 371, 742 N.W.2d 876, 06−0833.

When the jury was instructed that the state had to prove only that the defendant exhibited harmful material to the child and the instruction did not include the word "knowing" or "intentional," in light of the instructions in the case and reviewing the proceedings as a whole, there was a reasonable likelihood that the jury was confused and misled about the need for the state to prove an element of the crime. State v. Gonzalez, 2011 WI 63, 335 Wis. 2d 270, 802 N.W.2d 454, 09−1249.

948.12 Possession of child pornography. (1m) 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 may be penalized under sub. (3):

(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, if all of the following apply, may be penalized under sub. (3):

(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.

(3) (a) Except as provided in par. (b), a person who violates sub. (1m) or (2m) is guilty of a Class D felony.

(b) A person who violates sub. (1m) or (2m) is guilty of a Class I felony if the person is under 18 years of age when the offense occurs.

History: 1987 a. 332; 1995 a. 67; 2001 a. 16, 109; 2005 a. 433; 2011 a. 271.

A violation of this section must be based on the content of the photograph and how it was produced. Evidence of the location and manner of storing the photo are not properly considered. State v. A.H., 211 Wis. 2d 561, 566 N.W.2d 858 (Ct. App. 1997), 96−2311.

For purposes of multiplicity analysis, each image possessed can be prosecuted separately. Prosecution is not based upon the medium of reproduction. Multiple punishment is appropriate for a defendant who compiled and stored multiple images over time. State v. Multaler, 2002 WI 35, 252 Wis. 2d 54, 643 N.W.2d 437, 00−1846.

Criminalizing child pornography presents the risk of self−censorship of constitutionally protected material. Criminal responsibility may not be imposed without some element of scienter, the degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission. In this section, "reasonably should know" is less than actual knowledge but still requires more than the standard used in civil negligence actions, which is constitutionally sufficient. State v. Schaefer, 2003 WI App 164, 266 Wis. 2d 719, 668 N.W.2d 760, 01−2691.

There was sufficient evidence in the record to demonstrate that the defendant knowingly possessed the child pornography images on his computer because he repeatedly visited child pornography Web sites, clicked on thumbnail images to create larger pictures for viewing, accessed five images twice, and saved at least one image to his personal folder. State v. Lindgren, 2004 WI App 159, 275 Wis. 2d 851, 687 N.W.2d 60, 03−1868.

Sub. (1m) forbids only depictions of real children engaged in sexually explicit activity. Sub. (1m) (c) specifies that to be convicted under the statute, the person possessing the pornography must know or have reason to know that the child engaged in sexually explicit conduct has not attained the age of 18 years. This element does not speak of depictions at all, but rather of a child who has not attained the age of 18 years. State v. Van Buren, 2008 WI App 26, 307 Wis. 2d 447, 746 N.W.2d 545, 06−3025.

Sub. (1m) criminalizes the knowing possession of any photograph of a child engaging in sexually explicit conduct. Expert testimony or other evidence to establish the reality of apparently real photographs is not required. When there has been no evidence adduced that the photographs are anything other than what they appear to be, the photographs themselves are sufficient evidence of the reality of what they depict. State v. Van Buren, 2008 WI App 26, 307 Wis. 2d 447, 746 N.W.2d 545, 06−3025.

Individuals who purposely view digital images of child pornography on the Internet, even though the images are not found in the person's computer hard drive, nonetheless knowingly possess those images in violation of sub. (1m). An individual knowingly possesses child pornography when he or she affirmatively pulls up images of child pornography on the Internet and views those images knowing that they contain child pornography. Whether the proof is hard drive evidence or something else should not matter. State v. Mercer, 2010 WI App 47, 324 Wis. 2d 506, 782 N.W.2d 125, 08−1763.

948.13 Child sex offender working with children. (1) In this section, "serious child sex offense" means any of the following:

(a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is under 18 years of age at the time of the offense, a crime under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or a crime under s. 948.02 (1) or (2), 948.025 (1), 948.05 (1) or (1m), 948.051, 948.06, 948.07 (1), (2), (3), or (4), 948.075, or 948.085.

(b) A crime under federal law or the law of any other state or, prior to May 7, 1996, under the law of this state that is comparable to a crime specified in par. (a).

(2) (a) Except as provided in pars. (b) and (c), 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.

(b) If all of the following apply, the prohibition under par. (a) does not apply to a person who has been convicted of a serious child sex offense until 90 days after the date on which the person receives actual written notice from a law enforcement agency, as defined in s. 165.77 (1) (b), of the prohibition under par. (a):

1. The only serious child sex offense for which the person has been convicted is a crime under s. 948.02 (2).

2. The person was convicted of the serious child sex offense before May 7, 2002.

3. The person is eligible to petition for an exemption from the prohibition under sub. (2m) because he or she meets the criteria specified in sub. (2m) (a) 1. and 1m.

(c) The prohibition under par. (a) does not apply to a person who is exempt under a court order issued under sub. (2m).

(2m) (a) A person who has been convicted of a crime under s. 948.02 (2), 948.025 (1), or 948.085 may petition the court in which he or she was convicted to order that the person be exempt from sub. (2) (a) and permitted to engage in an occupation or participate in a volunteer position that requires the person to work or interact primarily and directly with children under 16 years of age. The court may grant a petition filed under this paragraph if the court finds that all of the following apply:

1. At the time of the commission of the crime under s. 948.02 (2), 948.025 (1), or 948.085 the person had not attained the age of 19 years and was not more than 4 years older or not more than 4 years younger than the child with whom the person had sexual contact or sexual intercourse.

1m. The child with whom the person had sexual contact or sexual intercourse had attained the age of 13 but had not attained the age of 16.

2. It is not necessary, in the interest of public protection, to require the person to comply with sub. (2) (a).

(b) A person filing a petition under par. (a) shall send a copy of the petition to the district attorney who prosecuted the person. The district attorney shall make a reasonable attempt to contact the victim of the crime that is the subject of the person's petition to inform the victim of his or her right to make or provide a statement under par. (d).

(c) A court may hold a hearing on a petition filed under par. (a) and the district attorney who prosecuted the person may appear at the hearing. Any hearing that a court decides to hold under this paragraph shall be held no later than 30 days after the petition is filed if the petition specifies that the person filing the petition is covered under sub. (2) (b), that he or she has received actual written notice from a law enforcement agency of the prohibition under sub. (2) (a), and that he or she is seeking an exemption under this subsection before the expiration of the 90−day period under sub. (2) (b).

(d) Before deciding a petition filed under par. (a), the court shall allow the victim of the crime that is the subject of the petition to make a statement in court at any hearing held on the petition or to submit a written statement to the court. A statement under this paragraph must be relevant to the issues specified in par. (a) 1., 1m. and 2.

(e) 1. Before deciding a petition filed under par. (a), the court may request the person filing the petition to be examined by a physician, psychologist or other expert approved by the court. If the person refuses to undergo an examination requested by the court under this subdivision, the court shall deny the person's petition without prejudice.

2. If a person is examined by a physician, psychologist or other expert under subd. 1., the physician, psychologist or other expert shall file a report of his or her examination with the court, and the court shall provide copies of the report to the person and, if he or she requests a copy, to the district attorney. The contents of the report shall be confidential until the physician, psychologist or other expert has testified at a hearing held under par. (c). The report shall contain an opinion regarding whether it would be in the interest of public protection to require the person to comply with sub. (2) (a) and the basis for that opinion.

3. A person who is examined by a physician, psychologist or other expert under subd. 1. is responsible for paying the cost of the services provided by the physician, psychologist or other expert, except that if the person is indigent the cost of the services provided by the physician, psychologist or other expert shall be paid by the county. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), except that the person shall be considered indigent without another determination under s. 977.07 (1) if the person is represented by the state public defender or by a private attorney appointed under s. 977.08.

(em) A court shall decide a petition no later than 45 days after the petition is filed if the petition specifies that the person filing the petition is covered under sub. (2) (b), that he or she has received actual written notice from a law enforcement agency of

the prohibition under sub. (2) (a), and that he or she is seeking an exemption under this subsection before the expiration of the 90−day period under sub. (2) (b).

(f) The person who filed the petition under par. (a) has the burden of proving by clear and convincing evidence that he or she satisfies the criteria specified in par. (a) 1., 1m. and 2. In deciding whether the person has satisfied the criterion specified in par. (a) 2., the court may consider any of the following:

1. The ages, at the time of the violation, of the person who filed the petition and the victim of the crime that is the subject of the petition.

2. The relationship between the person who filed the petition and the victim of the crime that is the subject of the petition.

3. Whether the crime that is the subject of the petition resulted in bodily harm to the victim.

4. Whether the victim of the crime that is the subject of the petition suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the person who filed the petition will commit other serious child sex offenses in the future.

6. The report of the examination conducted under par. (e).

7. Any other factor that the court determines may be relevant to the particular case.

(3) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact primarily and directly with children under 16 years of age:

(a) Teaching children.

(b) Child care.

(c) Youth counseling.

(d) Youth organization.

(e) Coaching children.

(f) Parks or playground recreation.

(g) School bus driving.

History: 1995 a. 265; 1997 a. 130, 220; 1999 a. 3; 2001 a. 97, 109; 2003 a. 321; 2005 a. 277; 2007 a. 97, 116.

948.14 Registered sex offender and photographing minors.

(1) DEFINITIONS. In this section:

(a) "Captures a representation" has the meaning given in s. 942.09 (1) (a).

(b) "Minor" means an individual who is under 17 years of age.

(c) "Representation" has the meaning giving in s. 942.09 (1) (c).

(d) "Sex offender" means a person who is required to register under s. 301.45.

(2) PROHIBITION. (a) A sex offender may not intentionally capture a representation of any minor without the written consent of the minor's parent, legal custodian, or guardian. The written consent required under this paragraph shall state that the person seeking the consent is required to register as a sex offender with the department of corrections.

(b) Paragraph (a) does not apply to a sex offender who is capturing a representation of a minor if the sex offender is the minor's parent, legal custodian, or guardian.

(3) PENALTY. Whoever violates sub. (2) is guilty of a Class I felony.

NOTE: The Court of Appeals in State v. Oatman, 2015 WI App 76, concluded that s. 948.14 is overbroad on its face and invalid in its entirety.

History: 2005 a. 432.

The structure of s. 942.09, with its separate subdivisions for capturing and possessing a representation, and the legislature's decision to import the definition of "captures a representation" from s. 942.09, along with legislative history indicating that the purpose of this section is to prohibit sex offenders from photographing, filming, or videotaping minors without parental consent, leads to the conclusion that "stores in any medium data that represents a visual image" as used in the definition of "captures a representation" in s. 942.09 does not include the mere possession of visual images. State v. Chagnon, 2015 WI App 66, 364 Wis. 2d 719, 870 N.W.2d 27, 14−2770.

948.20 Abandonment of a child.

Whoever, with intent to abandon the child, leaves any child in a place where the child may suffer because of neglect is guilty of a Class G felony.

History: 1977 c. 173; 1987 a. 332 s. 35; Stats. 1987 s. 948.20; 2001 a. 109.

948.21 Neglecting a child.

(1) DEFINITIONS. In this section:

(a) "Child sex offense" means an offense under s. 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.10, 948.11, or 948.12.

(b) "Emotional damage" has the meaning given in s. 48.02 (5j).

(c) "Necessary care" means care that is vital to the needs of a child's physical, emotional, or mental health based on all of the facts and circumstances bearing on the child's need for care, including the child's age; the child's physical, mental, or emotional condition; and any special needs of the child.

(d) "Negligently" means acting, or failing to act, in such a way that a reasonable person would know or should know seriously endangers the physical, mental, or emotional health of a child.

(2) NEGLECT. Any person who is responsible for a child's welfare who, through his or her action or failure to take action, for reasons other than poverty, negligently fails to provide any of the following, so as to seriously endanger the physical, mental, or emotional health of the child, is guilty of neglect and may be penalized as provided in sub. (3):

(a) Necessary care.

(b) Necessary food.

(c) Necessary clothing.

(d) Necessary medical care.

(e) Necessary shelter.

(f) Education in compliance with s. 118.15.

(g) The protection from exposure to the distribution or manufacture of controlled substances, as defined in s. 961.01 (4), or controlled substance analogs, as defined in s. 961.01 (4m), or to drug abuse, as defined in s. 46.973 (1) (b).

(3) PENALTIES. A person who violates sub. (2) is guilty of the following:

(a) A Class D felony if the child suffers death as a consequence.

(b) A Class F felony if any of the following applies:

1. The child suffers great bodily harm as a consequence.

2. The child becomes a victim of a child sex offense as a consequence.

(c) A Class G felony if the child suffers emotional damage as a consequence.

(d) A Class H felony if the child suffers bodily harm as a consequence.

(e) A Class I felony if the natural and probable consequences of the violation would be a harm under par. (a), (b), (c), or (d) although the harm did not actually occur if one of the following applies:

1. The child had not attained the age of 6 years when the violation was committed.

2. The child has a physical, cognitive, or developmental disability that was known or should have been known by the actor.

(f) A Class A misdemeanor if the natural and probable consequences of the violation would be a harm under par. (a), (b), (c), or (d) although the harm did not actually occur.

History: 1987 a. 332; 2001 a. 109; 2007 a. 80; 2017 a. 283.

948.215 Chronic neglect; repeated acts of neglect.

(1) Whoever violates s. 948.21 (2) is guilty of chronic neglect and may be penalized as provided in sub. (2) if one of the following applies:

(a) The person commits 3 or more violations under s. 948.21 (2) within a specified period of time involving the same child.

(b) The person has at least one previous conviction for a violation of s. 948.21 (2) involving the same child as the current violation.

(2) A person who is guilty of chronic neglect under sub. (1) is guilty of the following:

(a) A Class B felony if the child suffers death as a consequence.

(b) A Class D felony if any of the following applies:

1. The child suffers great bodily harm as a consequence.

2. The child becomes a victim of a child sex offense, as defined in s. 948.21 (1) (a), as a consequence.

(c) A Class E felony if the child suffers emotional damage, as defined in s. 948.21 (1) (b), as a consequence.

(d) A Class F felony if the child suffers bodily harm as a consequence.

(e) A Class H felony if the natural and probable consequences of the violation would be a harm under par. (a), (b), (c), or (d) although the harm did not actually occur.

(3) If an action under sub. (1) (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.21 (2) involving the same child occurred within the specified period but need not agree on which acts constitute the requisite number or which acts resulted in any requisite consequence.

(4) The state may not charge a person in the same action with a violation under sub. (1) (a) and a violation involving the same child under s. 948.21 (2), unless the violation of s. 948.21 (2) occurred outside of the period applicable under sub. (1) (a).

History: 2017 a. 283.

948.22 Failure to support. (1) In this section:

(a) "Child support" means an amount which a person is ordered to provide for support of a child by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(b) "Grandchild support" means an amount which a person is legally obligated to provide under s. 49.90 (1) (a) 2. and (11).

(c) "Spousal support" means an amount which a person is ordered to provide for support of a spouse or former spouse by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(2) Any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class I felony. A prosecutor may charge a person with multiple counts for a violation under this subsection if each count covers a period of at least 120 consecutive days and there is no overlap between periods.

(3) Any person who intentionally fails for less than 120 consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support under an order, failure to pay the child, grandchild or spousal support payment required under the order.

(b) For a person not subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she has a dependent, failure to provide support equal to at least the amount established by rule by the department of children and families under s. 49.22 (9) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01 (2).

(5) Under this section, it is not a defense that child, grandchild or spousal support is provided wholly or partially by any other person or entity.

(6) 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.

(7) (a) Before trial, upon petition by the complainant and notice to the defendant, the court may enter a temporary order requiring payment of child, grandchild or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class I felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. If a court order requiring the defendant to pay child, grandchild or spousal support exists, order the defendant to pay the amount required including any amount necessary to meet a past legal obligation for support.

2. If no court order described under subd. 1. exists, enter such an order. For orders for child or spousal support, the court shall determine the amount of support in the manner required under s. 767.511 or 767.89, regardless of the fact that the action is not one for a determination of paternity or an action specified in s. 767.511 (1).

(bm) Upon request, the court may modify the amount of child or spousal support payments determined under par. (b) 2. if, after considering the factors listed in s. 767.511 (1m), regardless of the fact that the action is not one for a determination of paternity or an action specified in s. 767.511 (1), the court finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or to either of the child's parents.

(c) An order under par. (a) or (b), other than an order for grandchild support, constitutes an income assignment under s. 767.75 and may be enforced under s. 767.77. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under s. 767.57.

History: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22; 1989 a. 31, 212; 1993 a. 274, 481; 1995 a. 289; 1997 a. 35, 191, 252; 1999 a. 9; 2001 a. 109; 2003 a. 321; 2005 a. 443 s. 265; 2007 a. 20.

Under s. 940.27 (2) [now sub. (2)], the state must prove that the defendant had an obligation to provide support and failed to do so for 120 days. The state need not prove that the defendant was required to pay a specific amount. Sub. (6) does not unconstitutionally shift the burden of proof. State v. Duprey, 149 Wis. 2d 655, 439 N.W.2d 837 (Ct. App. 1989).

Multiple prosecutions for a continuous failure to pay child support are allowed. State v. Grayson, 172 Wis. 2d 156, 493 N.W.2d 23 (1992).

Jurisdiction in a criminal nonsupport action under this section does not require that the child to be supported be a resident of Wisconsin during the charged period. State v. Gantt, 201 Wis. 2d 206, 548 N.W.2d 134 (Ct. App. 1996), 95−2469.

Evidence of incarceration to prove inability to pay is not excluded under sub. (6), and there was no basis to find the evidence irrelevant. State v. Stutesman, 221 Wis. 2d 178, 585 N.W.2d 181 (Ct. App. 1998), 97−2991.

This section does not distinguish between support and arrearages. It criminalizes failure to pay arrearages even after the child for whom support is ordered attains majority. Incarceration for violation of this section is not unconstitutional imprisonment for a debt. State v. Lenz, 230 Wis. 2d 529, 602 N.W.2d 172 (Ct. App. 1999), 99−0860.

If nonsupport is charged as a continuing offense, the statute of limitations runs from the last date the defendant intentionally fails to provide support. If charges are brought for each 120 day period that a person does not pay, the statute of limitations bars charging for those 120 periods that are more than 6 years old. The running of the statute of limitations does not prevent inclusion of all unpaid amounts in a later arrearage order. State v. Monarch, 230 Wis. 2d 542, 602 N.W.2d 179 (Ct. App. 1999), 99−1054.

A father, who intentionally refused to pay child support could, as a condition of probation, be required to avoid having another child unless he showed that he could support that child and his current children. In light of the defendant's ongoing victimization of his children and record manifesting his disregard for the law, the condition was not overly broad and was reasonably related to the defendant's rehabilitation. State v. Oakley, 2001 WI 103, 245 Wis. 2d 447, 629 N.W.2d 200, 99−3328.

Whether a court of competent jurisdiction ordered a defendant to pay child support is not an element of failure to pay child support. A question in that regard need not be submitted to the jury. Because the defendant father did not identify a historical fact

inconsistent with an incident of the Maine court's jurisdiction, whether a court of competent jurisdiction ordered him to pay child support was a purely legal question for the court to determine. State v. Smith, 2005 WI 104, 283 Wis. 2d 57, 699 N.W.2d 508, 03−1698.

948.23 Concealing or not reporting death of a child; not reporting disappearance of a child. (1) Whoever does any of the following is guilty of a Class I felony:

(a) 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.

(b) Unless a physician or an authority of a hospital, sanatorium, public or private institution, convalescent home, or any institution of a like nature is required to report the death under s. 979.01 (1) or unless a report conflicts with religious tenets or practices, fails to report to law enforcement the death of a child immediately after discovering the death, or as soon as practically possible if immediate reporting is impossible, if the actor is the parent, stepparent, guardian, or legal custodian of the child and if any of the following applies:

1. The death involves unexplained, unusual, or suspicious circumstances.

2. The death is or appears to be a homicide or a suicide.

3. The death is due to poisoning.

4. The death follows an accident, whether the injury is or is not the primary cause of the death.

(2) Whoever, without authorization under s. 69.18 or other legal authority to move a corpse, hides or buries the corpse of a child is guilty of a Class F felony.

(3) (ag) In this subsection, "missing" means absent without a reasonable explanation if the absence would raise concern in a reasonable person for the child's well−being.

(am) Within the period under par. (b), an individual must report to law enforcement a child as missing if the individual is the parent, stepparent, guardian, or legal custodian of the child.

(b) 1. The report under par. (am) must be made within 24 hours after the child is discovered to be missing if the child is under 13 years of age when the discovery is made.

2. The report under par. (am) must be made within 48 hours after the child is discovered to be missing if the child is at least 13 years of age but under 16 years of age when the discovery is made.

3. The report under par. (am) must be made within 72 hours after the child is discovered to be missing if the child is at least 16 years of age when the discovery is made.

(c) Whoever violates par. (am) is guilty of the following:

1. Except as provided in subds. 2. to 4., a Class A misdemeanor.

2. If the child suffers bodily harm or substantial bodily harm while he or she is missing, a Class H felony.

3. If the child suffers great bodily harm while he or she is missing, a Class F felony.

4. If the child dies while he or she is missing or as a result of an injury he or she suffered while missing, a Class D felony.

History: 1977 c. 173; 1987 a. 332 s. 47; Stats. 1987 s. 948.23; 2001 a. 109; 2011 a. 268; 2013 a. 168 s. 21.

948.24 Unauthorized placement for adoption. (1) Whoever does any of the following is guilty of a Class H felony:

(a) Places or agrees to place his or her child for adoption for anything exceeding the actual cost of the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

(b) For anything of value, solicits, negotiates or arranges the placement of a child for adoption except under s. 48.833.

(c) In order to receive a child for adoption, gives anything exceeding the actual cost of the legal and other services rendered in connection with the adoption and the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

(2) This section does not apply to placements under s. 48.839.

History: 1981 c. 81; 1987 a. 332 s. 50; Stats. 1987 s. 948.24; 1989 a. 161; 1997 a. 104; 2001 a. 109.

948.25 Unauthorized interstate placements of children. (1) Any person who sends a child out of this state, brings a child into this state, or causes a child to be sent out of this state or brought into this state for the purpose of permanently transferring physical custody of the child to a person who is not a relative, as defined in s. 48.02 (15), of the child is guilty of a Class A misdemeanor.

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

(a) A placement of a child that is authorized under s. 48.98, 48.988, or 48.99.

(b) A placement of a child that is approved by a court of competent jurisdiction of the sending state or receiving state.

History: 2013 a. 314.

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 E 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 C 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.

History: 1987 a. 332; 2001 a. 109.

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, child custody, paternity, guardianship or habeas corpus.

2. The department of children and families or the department of corrections or any person, county department under s. 46.215, 46.22, or 46.23, or licensed child welfare agency, if custody or supervision of the child has been transferred under ch. 48 or 938 to that department, person, or agency.

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court−approved period of physical placement or 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 F felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this paragraph.

(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, in the case of a nonmarital child whose parents do not subse-

quently intermarry under s. 767.803, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class I felony. This subsection is not applicable if legal 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 F 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 child custody rights, 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 (14).

(c) After issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a child to leave the other parent in violation of the order or withholds a child for more than 12 hours beyond the court−approved period of physical placement or 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 in a situation in which the parent or authorized person reasonably believes that there is a threat of physical harm or sexual assault to the child;

2. Is taken by a parent fleeing in a situation in which the parent reasonably believes that there is a threat of physical harm or sexual assault 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 to any 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.

History: 1987 a. 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ss. 7237, 9126 (19); 1995 a. 77; 1997 a. 290; 2001 a. 109; 2005 a. 130; 2005 a. 443 s. 265; 2007 a. 20.

"Imminent physical harm" under sub. (4) is discussed. State v. McCoy, 143 Wis. 2d 274, 421 N.W.2d 107 (1988).

When a mother had agreed to the father's taking their child on a camping trip, but the father actually intended to permanently take, and did abscond to Canada with, the child, the child was taken based on the mother's "mistake of fact," which under s. 939.22 (48) rendered the taking of the child "without consent." State v. Inglin, 224 Wis. 2d 764, 592 N.W.2d 666 (Ct. App. 1999), 97−3091.

In sub. (2), "takes away" a child refers to the defendant removing the child from the parents' possession, which suggests physical manipulation or physical removal. "Causes to leave" in sub. (2) means being responsible for a child abandoning, departing, or leaving the parents, which suggest some sort of mental, rather than physical, manipulation. State v. Samuel, 2001 WI App 25, 240 Wis. 2d 756, 623 N.W.2d 565, 99−2587.

Reversed on other grounds. 2002 WI 34, 252 Wis. 2d 26, 643 N.W.2d 423, 99−2587.

The common law affirmative defense of fraud is not applicable to this section. The circuit court properly prevented the defendant from collaterally attacking the underlying custody order despite his allegations that it was obtained by fraud. State v. Campbell, 2006 WI 99, 294 Wis. 2d 100, 718 N.W.2d 649, 04−0803.

For a violation of the "withholds a child for more than 12 hours" provision of sub. (2), the state must prove three elements: 1) on the date of the alleged offense, the child was under the age of 18 years; 2) the defendant withheld the child for more than 12 hours from the child's parents; and 3) the child's parents did not consent. There is no requirement that the state prove that the defendant had the parents' initial permission to take the child. State v. Ziegler, 2012 WI 73, 342 Wis. 2d 256, 816 N.W.2d 238, 10−2514.

948.40 Contributing to the delinquency of a child.

(1) No person may intentionally encourage or contribute to the delinquency of a child. This subsection includes intentionally encouraging or contributing to an act by a child under the age of 10 which would be a delinquent act if committed by a child 10 years of age or older.

(2) No person 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 that contributes to an act by a child under the age of 10 that would be a delinquent act if committed by a child 10 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 D 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 H felony.

History: 1987 a. 332; 1989 a. 31; 1995 a. 77; 2001 a. 109.

The punishments for first−degree reckless homicide by delivery of a controlled substance under s. 940.02 (2) (a) and contributing to the delinquency of a child with death as a consequence in violation of subs. (1) and (4) (a) are not multiplicitous when both convictions arise from the same death. State v. Patterson, 2010 WI 130, 329 Wis. 2d 599, 790 N.W.2d 909, 08−1968.

Sub. (1) proscribes contributing to the delinquency of any child under the age of 18. The definition of "child" in s. 948.01 (1) excludes those over seventeen only for the "purposes of prosecuting" a person charged with violating this section and not that person's victim. State v. Patterson, 2010 WI 130, 329 Wis. 2d 599, 790 N.W.2d 909, 08−1968.

948.45 Contributing to truancy.

(1) Except as provided in sub. (2), any person 17 years of age or older who, by any act or omission, knowingly encourages or contributes to the truancy, as defined under s. 118.16 (1) (c), of a person 17 years of age or under is guilty of a Class C misdemeanor.

(2) Subsection (1) does not apply to a person who has under his or her control a child who has been sanctioned under s. 49.26 (1) (h).

(3) An act or omission contributes to the truancy of a child, whether or not the child is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the child to be truant.

History: 1987 a. 285; 1989 a. 31 s. 2835m; Stats. 1989 s. 948.45; 1995 a. 27.

948.50 Strip search by school employee.

(1) The legislature intends, by enacting this section, to protect pupils from being strip searched. By limiting the coverage of this section, the legislature is not condoning the use of strip searches under other circumstances.

(2) In this section:

(a) "School" means a public school, parochial or private school, or tribal school, as defined in s. 115.001 (15m), which provides an educational program for one or more grades between kindergarten and grade 12 and which is commonly known as a kindergarten, elementary school, middle school, junior high school, senior high school, or high school.

(b) "Strip search" means a search in which a person's genitals, pubic area, buttock or anus, or a female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

(3) Any official, employee or agent of any school or school district who conducts a strip search of any pupil is guilty of a Class B misdemeanor.

(4) This section does not apply to a search of any person who:

(a) Is serving a sentence, pursuant to a conviction, in a jail, state prison or house of correction.

(b) Is placed in or transferred to a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g).

(c) Is committed, transferred or admitted under ch. 51, 971 or 975.

(5) This section does not apply to any law enforcement officer conducting a strip search under s. 968.255.

History: 1983 a. 489; 1987 a. 332 s. 38; Stats. 1987 s. 948.50; 1995 a. 77; 2005 a. 344; 2009 a. 302.

948.51 Hazing. (1) In this section "forced activity" means any activity which is a condition of initiation or admission into or affiliation with an organization, regardless of a student's willingness to participate in the activity.

(2) No person may intentionally or recklessly engage in acts which endanger the physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating in connection with a school, college or university. Under those circumstances, prohibited acts may include any brutality of a physical nature, such as whipping, beating, branding, forced consumption of any food, liquor, drug or other substance, forced confinement or any other forced activity which endangers the physical health or safety of the student.

(3) Whoever violates sub. (2) is guilty of:

(a) A Class A misdemeanor if the act results in or is likely to result in bodily harm to another.

(b) A Class H felony if the act results in great bodily harm to another.

(c) A Class G felony if the act results in the death of another.

History: 1983 a. 356; 1987 a. 332 s. 32; Stats. 1987 s. 948.51; 2001 a. 109.

948.53 Child unattended in child care vehicle. (1) DEFINITIONS. In this section:

(a) "Child care provider" means a child care center that is licensed under s. 48.65 (1), a child care provider that is certified under s. 48.651, or a child care program that is established or contracted for under s. 120.13 (14).

(b) "Child care vehicle" means a vehicle that is owned or leased by a child care provider or a contractor of a child care provider and that is used to transport children to and from the child care provider.

(2) NO CHILD LEFT UNATTENDED. (a) No person responsible for a child's welfare while the child is being transported in a child care vehicle may leave the child unattended at any time from the time the child is placed in the care of that person to the time the child is placed in the care of another person responsible for the child's welfare.

(b) Any person who violates par. (a) is guilty of one of the following:

1. A Class A misdemeanor.
2. A Class I felony if bodily harm is a consequence.
3. A Class H felony if great bodily harm is a consequence.
4. A Class G felony if death is a consequence.

History: 2005 a. 184; 2007 a. 80; 2009 a. 185.

948.55 Leaving or storing a loaded firearm within the reach or easy access of a child. (1) In this section, "child" means a person who has not attained the age of 14 years.

(2) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class A misdemeanor if all of the following occur:

(a) A child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child.

(b) The child under par. (a) discharges the firearm and the discharge causes bodily harm or death to himself, herself or another.

(3) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class C misdemeanor if all of the following occur:

(a) A child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child.

(b) The child under par. (a) possesses or exhibits the firearm in a public place or in violation of s. 941.20.

(4) Subsections (2) and (3) do not apply under any of the following circumstances:

(a) The firearm is stored or left in a securely locked box or container or in a location that a reasonable person would believe to be secure.

(b) The firearm is securely locked with a trigger lock.

(c) The firearm is left on the person's body or in such proximity to the person's body that he or she could retrieve it as easily and quickly as if carried on his or her body.

(d) The person is a peace officer or a member of the armed forces or national guard and the child obtains the firearm during or incidental to the performance of the person's duties. Notwithstanding s. 939.22 (22), for purposes of this paragraph, peace officer does not include a commission warden who is not a state−certified commission warden.

(e) The child obtains the firearm as a result of an illegal entry by any person.

(f) The child gains access to a loaded firearm and uses it in the lawful exercise of a privilege under s. 939.48.

(g) The person who stores or leaves a loaded firearm reasonably believes that a child is not likely to be present where the firearm is stored or left.

(h) The firearm is rendered inoperable by the removal of an essential component of the firing mechanism such as the bolt in a breech−loading firearm.

(5) Subsection (2) does not apply if the bodily harm or death resulted from an accident that occurs while the child is using the firearm in accordance with s. 29.304 or 948.60 (3).

History: 1991 a. 139; 1997 a. 248; 2007 a. 27.

948.60 Possession of a dangerous weapon by a person under 18. (1) In this section, "dangerous weapon" means any firearm, loaded or unloaded; any electric weapon, as defined in s. 941.295 (1c) (a); 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) (a) Any person under 18 years of age who possesses or goes armed with a dangerous weapon is guilty of a Class A misdemeanor.

(b) Except as provided in par. (c), any person who intentionally sells, loans or gives a dangerous weapon to a person under 18 years of age is guilty of a Class I felony.

(c) Whoever violates par. (b) is guilty of a Class H felony if the person under 18 years of age under par. (b) discharges the firearm and the discharge causes death to himself, herself or another.

(d) A person under 17 years of age who has violated this subsection is subject to the provisions of ch. 938 unless jurisdiction is waived under s. 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

(3) (a) This section does not apply to a person under 18 years of age 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 tradi-

tional 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 person under 18 years of age 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.

(b) This section does not apply to a person under 18 years of age who is a member of the armed forces or national guard and who possesses or is armed with a dangerous weapon in the line of duty. This section does not apply to an adult who is a member of the armed forces or national guard and who transfers a dangerous weapon to a person under 18 years of age in the line of duty.

(c) This section applies only to a person under 18 years of age who possesses or is armed with a rifle or a shotgun if the person is in violation of s. 941.28 or is not in compliance with ss. 29.304 and 29.593. This section applies only to an adult who transfers a firearm to a person under 18 years of age if the person under 18 years of age is not in compliance with ss. 29.304 and 29.593 or to an adult who is in violation of s. 941.28.

History: 1987 a. 332; 1991 a. 18, 139; 1993 a. 98; 1995 a. 27, 77; 1997 a. 248; 2001 a. 109; 2005 a. 163; 2011 a. 35.

Sub. (2) (b) does not set a standard for civil liability, and a violation of sub. (2) (b) does not constitute negligence *per se*. Logarto v. Gustafson, 998 F. Supp. 998 (1998).

948.605 Gun−free school zones. (1) DEFINITIONS. In this section:

(a) "Encased" has the meaning given in s. 167.31 (1) (b).

(ac) "Firearm" does not include any beebee or pellet−firing gun that expels a projectile through the force of air pressure or any starter pistol.

(ag) "Former officer" has the meaning given in s. 941.23 (1) (c).

(am) "Motor vehicle" has the meaning given in s. 340.01 (35).

(ar) "Qualified out−of−state law enforcement officer" has the meaning given in s. 941.23 (1) (g).

(b) "School" has the meaning given in s. 948.61 (1) (b).

(c) "School zone" means any of the following:

1. In or on the grounds of a school.

2. Within 1,000 feet from the grounds of a school.

(2) POSSESSION OF FIREARM IN SCHOOL ZONE. (a) Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is in or on the grounds of a school is guilty of a Class I felony. Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is within 1,000 feet of the grounds of a school is subject to a Class B forfeiture.

(b) Paragraph (a) does not apply to the possession of a firearm by any of the following:

1m. A person who possesses the firearm in accordance with 18 USC 922 (q) (2) (B) (i), (iv), (v), (vi), or (vii).

1r. Except if the person is in or on the grounds of a school, a licensee, as defined in s. 175.60 (1) (d), or an out−of−state licensee, as defined in s. 175.60 (1) (g).

2d. A person who is employed in this state by a public agency as a law enforcement officer and to whom s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies.

2f. A qualified out−of−state law enforcement officer to whom s. 941.23 (2) (b) 1. to 3. applies.

2h. A former officer to whom s. 941.23 (2) (c) 1. to 7. applies.

2m. A state−certified commission warden acting in his or her official capacity.

3. A person possessing a gun that is not loaded and is any of the following:

a. Encased.

b. In a locked firearms rack that is on a motor vehicle.

3m. A person who is legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest under s. 120.13 (38).

(3) DISCHARGE OF FIREARM IN A SCHOOL ZONE. (a) Any individual who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place the individual knows is a school zone is guilty of a Class G felony.

(b) Paragraph (a) does not apply to the discharge of, or the attempt to discharge, a firearm:

1. On private property not part of school grounds.

2. As part of a program approved by a school in the school zone, by an individual who is participating in the program.

3. By an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual.

4. By a law enforcement officer or state−certified commission warden acting in his or her official capacity.

5. By a person who is employed in this state by a public agency as a law enforcement officer and to whom s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies.

6. By a qualified out−of−state law enforcement officer to whom s. 941.23 (2) (b) 1. to 3. applies.

7. By a former officer to whom s. 941.23 (2) (c) 1. to 7. applies.

History: 1991 a. 17; 1993 a. 336; 2001 a. 109; 2005 a. 290; 2007 a. 27; 2011 a. 35; 2013 a. 166; 2015 a. 23.

948.61 Dangerous weapons other than firearms on school premises. (1) In this section:

(a) "Dangerous weapon" has the meaning specified in s. 939.22 (10), except "dangerous weapon" does not include any firearm and does include any beebee or pellet−firing gun that expels a projectile through the force of air pressure or any starter pistol.

(b) "School" means a public school, parochial or private school, or tribal school, as defined in s. 115.001 (15m), 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 I 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 or state−certified commission warden acting in the discharge of his or her official duties.

(d) Participates in a convocation authorized by school authorities in which 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 or uses a bow and arrow or knife while legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest under s. 120.13 (38).

(4) A person under 17 years of age who has violated this section is subject to the provisions of ch. 938, unless jurisdiction is waived under s. 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

History: 1987 a. 332; 1991 a. 17; 1993 a. 336; 1995 a. 27, 77; 2001 a. 109; 2005 a. 290; 2007 a. 27; 2009 a. 302.

Pellet guns and BB guns are dangerous weapons under this section. Interest of Michelle A.D. 181 Wis. 2d 917, 512 N.W.2d 248 (Ct. App. 1994).

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 A misdemeanor, if the value of the property does not exceed $500.

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

(bm) A Class H felony, if the property is a firearm or if the value of the property exceeds $2,500 but does not exceed $5,000.

(c) A Class G felony, if the value of the property exceeds $5,000.

(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.

History: 1987 a. 332; 2001 a. 109; 2011 a. 99.

948.63 Receiving property from a child. Whoever does either of the following is guilty of a Class A misdemeanor:

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

History: 1971 c. 228; 1977 c. 173; 1987 a. 332 s. 40; Stats. 1987 s. 948.63; 1989 a. 257.

948.70 Tattooing of children. **(1)** In this section:

(a) "Physician" has the meaning given in s. 448.01 (5).

(b) "Tattoo" means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce an indelible mark or figure through the skin.

(2) Subject to sub. (3), any person who tattoos or offers to tattoo a child is subject to a Class D forfeiture.

(3) Subsection (2) does not prohibit a physician from tattooing or offering to tattoo a child in the course of his or her professional practice.

History: 1991 a. 106.