

Wisconsin

948.01

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:

948.01(1)

(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.

948.01(1d)

(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.

948.01(1g)

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

948.01(1r)

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

948.01(2)

(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.

948.01(3)

(3) "Person responsible for the child's welfare" includes the child's parent; stepparent; guardian; foster parent; treatment 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.

948.01(3m)

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

948.01(3r)

(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.

948.01(4)

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

948.01(5)

(5) "Sexual contact" means any of the following:

948.01(5)(a)

(a) Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant.

948.01(5)(b)

(b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant 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.

948.01(6)

(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.

948.01(7)

(7) "Sexually explicit conduct" means actual or simulated:

948.01(7)(a)

(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;

948.01(7)(b)

(b) Bestiality;

948.01(7)(c)

(c) Masturbation;

948.01(7)(d)

(d) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or

948.01(7)(e)

(e) Lewd exhibition of intimate parts.

948.01 - ANNOT.

History: 1987 a. 332; 1989 a. 31; 1993 a. 446; 1995 a. 27, 67, 69, 100, 214; 2001 a. 16.

948.01 - ANNOT.

Instructions were proper that told the jury that "lewd" under sub. (7) (e), when applied to photographs, is not mere nudity but requires the display of the genital area and sexual suggestiveness as determined by the jury in the use of common sense. *State v. Petrone*, 161 Wis. 2d 530, 468 N.W.2d 676 (1991).

948.01 - ANNOT.

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).

948.01 - ANNOT.

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).

948.01 - ANNOT.

A live-in boyfriend can be a person responsible for the welfare of a child under sub. (3) 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).

948.01 - ANNOT.

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.

948.015

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:

948.015(1)

(1) Sections 103.19 to 103.32 and 103.64 to 103.82, relating to employment of minors.

948.015(2)

(2) Section 118.13, relating to pupil discrimination.

948.015(3)

(3) Section 125.07, relating to furnishing alcohol beverages to underage persons.

948.02

948.02 Sexual assault of a child.

948.02(1)

(1) First degree sexual assault. 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.

948.02(2)

(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.

948.02(3)

(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.

948.02(4)

(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.

948.02(5)

(5) Death of victim. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

948.02 - ANNOT.

History: 1987 a. 332; 1989 a. 31; 1995 a. 14, 69; 2001 a. 109.

948.02 - ANNOT.

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).

948.02 - ANNOT.

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).

948.02 - ANNOT.

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 664, 565 N.W.2d 565 (Ct. App. 1997).

948.02 - ANNOT.

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).

948.02 - ANNOT.

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.

948.02 - ANNOT.

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.

948.02 - ANNOT.

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.

948.02 - ANNOT.

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.

948.02 - ANNOT.

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, ___ Wis. 2d ___, ___ N.W. 2d ___, 03-1493.

948.02 - ANNOT.

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

948.025

948.025 Engaging in repeated acts of sexual assault of the same child.

948.025(1)

(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:

948.025(1)(a)

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

948.025(1)(b)

(b) A Class C felony if fewer than 3 of the violations were violations of s. 948.02 (1).

948.025(2)

(2)

948.025(2)(a)

(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) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

948.025(2)(b)

(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) 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).

948.025(3)

(3) The state may not charge in the same action a defendant with a violation of this section and with a felony violation involving the same child under ch. 944 or a violation involving the same child under s. 948.02, 948.05, 948.06, 948.07, 948.075, 948.08, 948.10, 948.11, or 948.12, 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.

948.025 - ANNOT.

History: 1993 a. 227; 1995 a. 14; 2001 a. 109.

948.025 - ANNOT.

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.

948.025 - ANNOT.

Convicting the defendant on 3 counts of first-degree sexual assault of a child and one count of repeated acts of sexual assault of a child when all 4 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.

948.03

948.03 Physical abuse of a child.

948.03(1)

(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.

948.03

948.03 Physical abuse of a child.

948.03(1)

(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.

948.03(2)

(2) Intentional causation of bodily harm.

948.03(2)(a)

(a) Whoever intentionally causes great bodily harm to a child is guilty of a Class E felony.

948.03(2)(b)

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

948.03(2)(c)

(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.

948.03(3)

(3) Reckless causation of bodily harm.

948.03(3)(a)

(a) Whoever recklessly causes great bodily harm to a child is guilty of a Class G felony.

948.03(3)(b)

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

948.03(3)(c)

(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.

948.03(4)

(4) Failing to act to prevent bodily harm.

948.03(4)(a)

(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.

948.03(4)(b)

(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.

948.03(6)

(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.

948.03 - ANNOT.

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

948.03 - ANNOT.

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).

948.03 - ANNOT.

A live-in boyfriend can be a person responsible for the welfare of a child under sub. (5) 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).

948.04

948.04 Causing mental harm to a child.

948.04(1)

(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.

948.04(2)

(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.

948.04 - ANNOT.

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

948.05

948.05 Sexual exploitation of a child.

948.05(1)

(1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is guilty of a Class F felony:

948.05(1)(a)

(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.

948.05(1)(b)

(b) Records or displays in any way a child engaged in sexually explicit conduct.

948.05(1m)

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct is guilty of a Class F felony 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.

948.05(2)

(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) is guilty of a Class F felony.

948.05(3)

(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.

948.05 - ANNOT.

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

948.05 - ANNOT.

"Import" under sub. (1) (c) 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).

948.07

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:

948.07(1)

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

948.07(2)

(2) Causing the child to engage in prostitution.

948.07(3)

(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.

948.07(4)

(4) Recording the child engaging in sexually explicit conduct.

948.07(5)

(5) Causing bodily or mental harm to the child.

948.07(6)

(6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

948.07 - ANNOT.

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

948.07 - ANNOT.

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).

948.07 - ANNOT.

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).

948.07 - ANNOT.

The purposes of ss. 948.05, child exploitation, and 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.

948.07 - ANNOT.

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.

948.07 - ANNOT.

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.

948.07 - ANNOT.

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.

948.07 - ANNOT.

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.

948.07 - ANNOT.

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.

948.07 - ANNOT.

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.

948.07 - ANNOT.

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, ___ Wis. 2d ___, ___ N.W. 2d ___, 03-1710.

948.075

948.075 Use of a computer to facilitate a child sex crime.

948.075(1)

(1) 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 D felony.

948.075(2)

(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.

948.075(3)

(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. (1) shall be necessary to prove that intent.

948.075 - ANNOT.

History: 2001 a. 109; 2003 a. 321.

948.08

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

948.08 - ANNOT.

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

948.09

948.09 Sexual intercourse with a child age 16 or older. Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor.

948.09 - ANNOT.
History: 1987 a. 332.

948.095

948.095 Sexual assault of a student by a school instructional staff person.

948.095(1)

(1) In this section:

948.095(1)(a)

(a) "School" means a public or private elementary or secondary school.

948.11

948.11 Exposing a child to harmful material or harmful descriptions or narrations.

948.11(1)

(1) Definitions. In this section:

948.11(1)(ag)

(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.

948.11(1)(ar)

(ar) "Harmful material" means:

948.11(1)(ar)1.

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

948.11(1)(ar)2.

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.

948.11(1)(b)

(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:

948.11(1)(b)1.

1. Predominantly appeals to the prurient, shameful or morbid interest of children;

948.11(1)(b)2.

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and

948.11(1)(b)3.

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

948.11(1)(d)

(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.

948.11(1)(e)

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

948.11(1)(f)

(f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

948.11(2)

(2) Criminal penalties.

948.11(2)(a)

(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:

948.11(2)(a)1.

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

948.11(2)(a)2.

2. The person has face-to-face contact with the child before or during the sale, rental, exhibit, playing, distribution, or loan.

948.11(2)(am)

(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:

948.11(2)(am)1.

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

948.11(2)(am)2.

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

948.11(2)(b)

(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:

948.11(2)(b)1.

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

948.11(2)(b)2.

2. The person has face-to-face contact with the child.

948.11(2)(c)

(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.

948.11(3)

(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.

948.11(4)

(4) Libraries and educational institutions.

948.11(4)(a)

(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.

948.11(4)(b)

(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:

948.11(4)(b)1.

1. A public elementary or secondary school.

948.11(4)(b)2.

2. A private school, as defined in s. 115.001 (3r).

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