

Reporting Requirements for Sexually Active Adolescents

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Statutes

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Introduction

State statutes regarding the mandatory reporting of sexually active adolescents are complex with different directions dependent upon the nature of the sexual contact, age of the adolescent and access to health care services. This paper, developed in cooperation with the former Department of Health and Family Services(DHFS), is intended to help school districts, in collaboration with their county child protective services(CPS) agency and/or law enforcement agency, develop policies and procedures to address situations where a school staff member becomes aware that a student is sexually active. Applicable statutes and definitions are included for reference.

This paper is not designed nor intended to be used as a school district policy. School districts are advised to consult with their attorney prior to finalizing and implementing any local policies and procedures.

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Suggested Procedures for School Professionals Who Become Aware a Minor Student Has Had Non-Consensual Sexual Contact with Another Person

Any school professional, who through the course of his/her professional duties, has reason to believe that a student under the age of 18 years has had sexual contact(see page 4 for definition) with another person *and* has reason to doubt the student's participation in the sexual contact is voluntary, should immediately contact the county CPS agency or local law enforcement agency and make a report to that effect. The school professional may inform the student in a confidential interview, 1) the report is being made and is required by law, and 2) what to expect concerning the CPS or law enforcement investigation, e.g., investigation procedures, likely outcomes of the investigation.

The school professional may encourage the student to discuss this matter with his/her parents as long as the parents were in no way involved in the sexual contact nor contributed to nor condoned the sexual contact. If the student has previously accessed or is accessing health care services(see page 4 for definition), the school professional should relate this information to the county CPS agency or local law enforcement agency, as a report may already have been made by the health care provider.

County departments of social services now have the autonomy to continue to investigate reports of non-caregiver abuse, refer these reports to law enforcement for investigation, or determine this on a case-by-case basis. The reader is advised to contact his/her respective county department of social services to learn how non-caregiver reports will be handled.

References: Wis. Stats. 48.02(2); 48.981(2),(2m), (3); 940.225; 948.02(1), (2), (3); 948.025

Suggested Procedures for School Professionals Who Become Aware a Minor Student Has Had Consensual Sexual Contact with Another Person

Students 16 or 17 Years Old

Suggested procedures for school professionals who become aware that a student under the age of 18 years has had consensual *sexual contact* with another person differ dependent upon the student's age(see page 3 for definition of "consent"). It is not illegal to have *voluntary sexual contact* with a person 16 or 17 years old and, consequently, there is no reason for a report to either the county CPS agency or local law enforcement.

Sexual intercourse(see page 4 for definition) with someone 16 or 17 years old is a Class A misdemeanor, and carries the same penalty classification as fourth degree sexual assault. [Wis. Stats. 940.225(3m) and 948.09] However, this behavior does not fall under the mandated reporting requirement in Wis. Stat. 48.981 if the school professional feels, in his/her professional opinion, the sexual intercourse is consensual. A letter from the DHFS Office of Legal Counsel, dated 3/15/94(citing a 1983 Wisconsin Attorney General opinion which states "consensual sexual contact involving 16- and 17-year-old children does not constitute child abuse under section 48.981(2), Stats."), concludes "there is nothing in the child 'abuse' definition of s. 48.981 encompassing voluntary sexual activity of the typical 16-year-old or 17-year-old. Accordingly, there is no reporting requirement in that regard and no authority under s. 48.981 for the county Department of Social Services to investigate reports of such activity." This legal interpretation was reestablished in a Department of Justice(DOJ) memorandum dated 4/14/05.

The Wisconsin laws that deal with sexual contact with minors do not discuss the age of the person with which the minor has sexual contact nor an age discrepancy between the minor and the other person. However, relative to a school professional's decision to make a report for suspected abuse, it is important to discuss this issue. Because of the greater possibility of a power differential in an adolescent relationship where one person is significantly older than the other, some counties request that mandated reporters contact the CPS agency if they become aware of voluntary sexual relationships where the age differential exceeds a certain number, e.g., three years. It is important for mandated reporters to be aware of their county's local policies and expectations. While not required by law, greater cooperation between systems can be fostered by respecting each other's policies.

When a school professional comes into contact with a student who is sexually active and a report to the county CPS agency is not warranted, the school professional may wish to, 1) take steps to ensure the student is fully cognizant of the potential adverse consequences of being sexually active, 2) ask the student whether he/she has talked to his/her parents or some other responsible, adult family member about being sexually active, and if not, provide the student with strategies and encouragement to do so, including offering to help the student speak with his/her parents, and 3) ask the student whether he/she has accessed appropriate health care services necessary to prevent pregnancy and sexually transmitted infections(STIs) and, if not, provide the student with the necessary information to make a self-referral.

Students Under 16 Years Old

Sexual contact or *sexual intercourse* with a person under the age of 16 years is a felony. [Wis. Stat. 948.02(1),(2)] School professionals who have reasonable cause to believe a student under the age of 16 years has had sexual contact with another person, where the student claims the sexual contact is consensual, must still report this behavior to the county CPS agency. The only possible exception to this requirement is when the student is receiving or has received health care services from a health care provider(see page 4 for definition). The stated purpose of this exception in state statute “is to allow children to obtain confidential health care services.” [Wis. Stat. 48.981(2m)(a)] It is not clear whether the confidentiality provisions of this statute apply only to health care providers or may also extend to a pupil services professional who learns from a student that he/she has accessed health care services and is sexually active. Some health care services(as defined in statute to include family planning services) may be within the scope of a school nurse’s responsibilities, i.e., counseling, distribution of information, and referral.

However, even if a student has accessed health care services, there are a number of circumstances under which a report to the CPS agency must still be made:

1. the sexual intercourse or contact occurred or is likely to occur with a caregiver,
2. the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her action,
3. the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact,
4. the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact,
5. another participant in the sexual contact or sexual intercourse was or is exploiting the child, and
6. the school professional has any reasonable doubt as to the voluntary nature of the child’s participation in the sexual contact or sexual intercourse. [Wis. Stat. 48.981(2m)(d), (e)]

Once again, a significant age difference between the student and the other person may be reason alone to doubt whether the nature of the student’s participation is truly voluntary, due to the power differential that may be present in the relationship. Local school policy, developed in collaboration with the county CPS agency, may wish to stipulate an age difference or range determined to be significant and necessitating a referral.

As above, the school professional may inform the student in a confidential interview, 1) the report is being made and is required by law, and 2) what to expect concerning the CPS or law enforcement investigation, e.g., investigation procedures, likely outcomes of the investigation. The school professional may encourage the student to discuss this matter with his/her parents as

long as the parents were in no way involved in the sexual contact nor contributed to nor condoned it in any way.

References: Wis. Stats. 48.981(2), (2m), (3); 253.07(1)(b); 940.225(3m); 948.02(1), (2), (3); 948.025; 948.09; DHFS Office of Legal Counsel letter dated 3/15/94; Opinions of the Attorney General, 1983; DOJ Memorandum dated 4/14/05.

Suggested Disclaimer to be Used by Pupil Services Staff Members Prior to Providing Counseling to Adolescent Students

Prior to beginning a counseling relationship, pupil services staff typically notify students that everything discussed is confidential unless there is reason to believe someone has been or will be hurt in some way. Similarly, it may be appropriate to notify adolescent students that any information shared about having sexual contact with another person may also have to be reported to the appropriate authorities, dependent upon the age of the student and the circumstances of the sexual contact. Using this disclaimer can avoid a student later feeling that her/his confidence has been violated.

References: Wis. Stats. 48.981(2), (2m), (3); 948.02(3)

Parental Notification

When making a referral to the county CPS agency for suspected child abuse, school officials routinely do not notify the parents of the referral. Parental notification as part of the investigation becomes the responsibility of the CPS agency. Clearly, when the parents are possibly the perpetrators, this is necessary. However, in situations involving peer-involved, sexually active students, the parents are not suspect. State law does not prohibit mandated reporters from notifying parents. However, the CPS agency has the authority, in situations where it is in the best interests of the child, not to notify the parents of the referral and subsequent investigation. Schools and county CPS agencies should meet and proactively discuss guidelines for determining how, when, and if parents are to be notified in a timely manner about their children being sexually active.

Reference: Child Protective Services Access and Initial Assessment Standards
Department of Children and Family Services
http://dcf.wisconsin.gov/memos/num_memos/2007/2007-11Standards.pdf

Definitions

Abuse – in the context of sexual abuse and assault, means sexual intercourse or sexual contact under s. 940.225(Sexual assault), 948.02(Sexual assault of a child) or 948.025(Engaging in repeated acts of sexual assault of the same child). [Wis. Stat. 48.02(1)(b)] Reference also s. 948.05(Sexual exploitation of a child), s. 948.055(Causing a child to view or listen to sexual activity), s. 948.10(Exposing genitals or pubic area).

Child – means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, “child” does not include a person who has attained 17 years of age. [Wis. Stat. 48.02(2)]

Consent - with regard to sexual assault, consent means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue if the victim suffers from mental illness or deficiency, is intoxicated, or is unconscious. [Wis. Stat. 940.225(4)] In addition, a 1983 Attorney General’s opinion, cited and reinforced by a DHFS Office of Legal Counsel opinion, dated 3/15/94, concludes consent is not an issue for sexual contact involving children under the age of 16 years. Specifically, “Since sexual contact or intercourse with any child under the age of sixteen years is a sexual assault, regardless of whether consent was given, section 940.225(1)(d),(2)(e) and(4), all sexual conduct involving children in that age group must be reported.”

Family planning services - mean counseling by trained personnel regarding family planning; distribution of information relating to family planning; and referral to licensed nurse practitioners within the scope of their practice, licensed physicians or local health departments for consultation, examination, medical treatment and prescriptions for the purpose of family planning. “Family planning” does not include the performance, promotion, encouragement or counseling in favor of, or referral either directly or through an intermediary for, voluntary termination of pregnancy, but may include the provision of nondirective information explaining any of the following: 1) prenatal care and delivery; 2) infant care, foster care or adoption; 3) pregnancy termination. [Wis. Stat. 253.07(1)(b)]

Health care provider - means a physician, as defined under s. 448.01(5), a physician assistant, as defined under s. 448.01(6), or a nurse holding a certificate of registration under s. 441.06(1) or a license under s. 441.10(3). [Wis. Stat. 48.981(2m)(b)(1)]

Health care service - means family planning services, as defined in s. 253.07(1)(b), 1995 Wis. Stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease. [Wis. Stats. 48.981(2m)(b)(2)]

Sexual contact - means 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. [Wis. Stat. 948.01(5)(a)] Reference also s. 948.01(5)(b)

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. [Wis. Stat. 948.01(6)]

Available Resources

Child Protective Service Investigation Standards, published by the Department of Health and Family Services(DHFS), were written to provide county CPS agencies with more specific direction in conducting child abuse and neglect investigations than is offered by statute alone. <http://dhfs.wisconsin.gov/Children/CPS/progserv/progINDEX.htm>

The School's Role in Preventing Child Abuse and Neglect was developed by the Department of Public Instruction with support from the Department of Health and Family Services and can be obtained at <http://www.dpi.wi.gov/sspw/doc/sswchildabuse.doc>.

Educational Services for Children Placed in Out-of-Home Care, Information Update #00.11, was jointly developed by representatives of the Departments of Public Instruction(DPI) and Health and Family Services(DHFS) to help both school and county staff better understand each respective system. <http://www.dpi.wi.gov/sped/bul00-11.html>

Referenced Statutes

48.02 Definitions. In this chapter, unless otherwise defined:

(1) "Abuse," other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(a) Physical injury inflicted on a child by other than accidental means.

(am) When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(b) Sexual intercourse or sexual contact under s. 940.225, 948.02, 948.025, or 948.085.

(c) A violation of s. 948.05.

(d) Permitting, allowing or encouraging a child to violate s. 944.30.

(e) A violation of s. 948.055.

(f) A violation of s. 948.10.

(g) Manufacturing methamphetamine in violation of s. 961.41(1)(e) under any of the following circumstances:

1. With a child physically present during the manufacture.

2. In a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home.

3. Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child.

(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

(1d) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

(2) "Child" means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "child" does not include a person who has attained 17 years of age.

48.981(2) Persons required to report.

(a) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3):

1. A physician.
2. A coroner.
3. A medical examiner.
4. A nurse.
5. A dentist.
6. A chiropractor.
7. An optometrist.
8. An acupuncturist.
9. A medical or mental health professional not otherwise specified in this paragraph.
10. A social worker.
11. A marriage and family therapist.
12. A professional counselor.
13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141(1)(d).
14. A school teacher.
15. A school administrator.
16. A school counselor.
17. A mediator under s. 767.11.
18. A child-care worker in a day care center, group home, as described in s. 48.625(1m), or residential care center for children and youth.
19. A day care provider.
20. An alcohol or other drug abuse counselor.
21. A member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42, or 51.437 or a residential care center for children and youth.
22. A physical therapist.
- 22m. A physical therapist assistant.
23. An occupational therapist.
24. A dietitian.
25. A speech-language pathologist.
26. An audiologist.
27. An emergency medical technician.
28. A first responder.
29. A police or law enforcement officer.

(b) A court-appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under s. 48.236(3) has been abused or neglected or who has reason to believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in sub. (2m), report as provided in sub. (3).

(bm)

1. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties:

a. Has been abused, as defined in s. 48.02(1)(b) to (f); or

b. Has been threatened with abuse, as defined in s. 48.02(1)(b) to (f), and abuse of the child will likely occur.

2. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause, based on observations made or information that he or she receives, to suspect that a member of the clergy has done any of the following:

a. Abused a child, as defined in s. 48.02(1)(b) to (f).

b. Threatened a child with abuse, as defined in s. 48.02(1)(b) to (f), and abuse of the child will likely occur.

3. A member of the clergy is not required to report child abuse information under subd. 1. or 2. that he or she receives solely through confidential communications made to him or her privately or in a confessional setting if he or she is authorized to hear or is accustomed to hearing such communications and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. Those disciplines, tenets, or traditions need not be in writing.

(c) Any person not otherwise specified in par.(a), (b), or (bm), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) No person making a report under this subsection may be discharged from employment for so doing.

48.981(2m) Exception to reporting requirement.

(a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. "Health care provider" means a physician, as defined under s. 448.01(5), a physician assistant, as defined under s. 448.01(6), or a nurse holding a certificate of registration under s. 441.06(1) or a license under s. 441.10(3).

2. "Health care service" means family planning services, as defined in s. 253.07(1)(b), 1995 Wis. stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars.(d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02(1)(b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.
2. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par.(c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.
2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.
4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.
5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par.(d), a person described under par.(c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

48.981(3) Reports; investigation.

(a) *Referral of report.*

1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village, or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur.

2. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department all of the following types of cases reported to the sheriff or police department:

- a. Cases in which a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of a child.
- b. Cases in which a caregiver is suspected of facilitating or failing to take action to prevent the suspected or threatened abuse or neglect of a child.
- c. Cases in which it cannot be determined who abused or neglected or threatened to abuse or neglect a child.
- d. Cases in which there is reason to suspect that an unborn child has been abused or there is reason to believe that an unborn child is at substantial risk of abuse.

2d. The sheriff or police department may refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under

contract with the department a case reported to the sheriff or police department in which a person who is not a caregiver is suspected of abuse or of threatened abuse of a child.

2g. The county department, department, or licensed child welfare agency may require that a subsequent report of a case referred under subd. 2. or 2d. be made in writing.

3. A county department, the department, or a licensed child welfare agency under contract with the department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in s. 48.02(1)(b) to (f), reported to it. For cases of suspected or threatened abuse, as defined in s. 48.02(1)(a), (am), (g), or (gm), or neglect, each county department, the department, and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

4. If the report is of suspected or threatened abuse, as defined in s. 48.02(1)(b) to (f), the sheriff or police department and the county department, department, or licensed child welfare agency under contract with the department shall coordinate the planning and execution of the investigation of the report.

(b) Duties of local law enforcement agencies.

1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to suspect that the health or safety of a child or of an unborn child is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19(1)(c) or (cm) or (d) 5. or 8. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20.

2m. If the investigating officer has reason under s. 48.193(1)(c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the sheriff or police department determines that criminal action is necessary, the sheriff or police department shall refer the case to the district attorney for criminal prosecution. Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02(1)(b) to (f), that the sheriff or police department will routinely refer to the district attorney for criminal prosecution.

(bm) Notice of report to Indian tribal agent. In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a county department which receives a report under par.(a) pertaining to a child or unborn child knows that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child or expectant mother and the fact that a report has been received about that child or unborn child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Ho-Chunk service area where the child or expectant mother resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho-Chunk service area in the county.

(c) *Duties of county departments.*

1.

a. Immediately after receiving a report under par.(a), the agency shall evaluate the report to determine whether there is reason to suspect that a caregiver has abused or neglected the child, has threatened the child with abuse or neglect, or has facilitated or failed to take action to prevent the suspected or threatened abuse or neglect of the child. If the agency determines that a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of the child, determines that a caregiver is suspected of facilitating or failing to take action to prevent the suspected or threatened abuse or neglect of the child, or cannot determine who abused or neglected the child, within 24 hours after receiving the report the agency shall, in accordance with the authority granted to the department under s. 48.48(17)(a) 1. or the county department under s. 48.57(1)(a), initiate a diligent investigation to determine if the child is in need of protection or services. If the agency determines that a person who is not a caregiver is suspected of abuse or of threatened abuse, the agency may, in accordance with that authority, initiate a diligent investigation to determine if the child is in need of protection or services. Within 24 hours after receiving a report under par.(a) of suspected unborn child abuse, the agency, in accordance with that authority, shall initiate a diligent investigation to determine if the unborn child is in need of protection or services. An investigation under this subd. 1. a. shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations.

253.07 Family Planning.

(1) Definitions.

(b) "Family planning services" mean counseling by trained personnel regarding family planning; distribution of information relating to family planning; and referral to licensed nurse practitioners within the scope of their practice, licensed physicians or local health departments for consultation, examination, medical treatment and prescriptions for the purpose of family planning. "Family planning" does not include the performance, promotion, encouragement or counseling in favor of, or referral either directly or through an intermediary for, voluntary termination of pregnancy, but may include the providing of nondirective information explaining any of the following:

1. Prenatal care and delivery.
2. Infant care, foster care or adoption.
3. Pregnancy termination.

940.225 Sexual assault.

(1) First degree sexual assault. Whoever does any of the following is guilty of a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) Second degree sexual assault. Whoever does any of the following is guilty of a Class C felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employee of a facility or program under s. 940.295(2)(b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(h) Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

(i) Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agent's supervision of the individual. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

(j) Is a licensee, employee, or nonclient resident of an entity, as defined in s. 48.685(1)(b) or 50.065(1)(c), and has sexual contact or sexual intercourse with a client of the entity.

(3) Third degree sexual assault. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. Whoever has sexual contact in the manner described in sub. (5)(b)2. or 3. with a person without the consent of that person is guilty of a Class G felony.

(3m) Fourth degree sexual assault. Except as provided in sub. (3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

948.02 Sexual assault of a child.

(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 one of the following:

(a) If the sexual contact or sexual intercourse resulted in great bodily harm to the person, a Class A felony.

(b) If the sexual contact or sexual intercourse did not result in great bodily harm to the person, a Class B felony.

NOTE: Sub.(1) is affected by 2005 Wis. Acts 430 and 437. The 2 treatments are mutually inconsistent. Sub.(1) is shown as affected by the last enacted act, 2005 Wis. Act 437. As affected by 2005 Wis. Act 430, it reads:

(1) First degree sexual assault.

(a) In this subsection, "sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of any inanimate object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(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 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.

(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.

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:

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

(ar) A Class B felony if fewer than 3 of the violations were violations of s. 948.02(1)(a) but at least 3 of the violations were violations of s. 948.02(1)(a) or (b).

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

NOTE: Sub.(1) is affected by 2005 Wis. Acts 430 and 437. The 2 treatments are mutually inconsistent. Sub.(1) is shown as affected by the last enacted act, 2005 Wis. Act 437. As affected by 2005 Wis. Act 430, it reads:

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

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

(ar) A Class B felony if at least 3 of the violations were violations of s. 948.02(1)(b),(c),(d), or(e) but fewer than 3 of the violations were violations of s. 948.02(1)(b),(c), or(d).

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

(2)

(a) If an action under sub. (1)(ag) 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)(a) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

(am) If an action under sub. (1)(ar) 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)(a) or (b) 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) 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).

NOTE: Sub.(2) is affected by 2005 Wis. Acts 430 and 437. The 2 treatments are mutually inconsistent. Sub.(2) is shown as affected by the last enacted act, 2005 Wis. Act 437. As affected by 2005 Wis. Act 430, it reads:

(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)(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)(b) or (c).

(ag) If an action under sub. (1)(ag) 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)(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)(b), (c), or (d).

(ar) If an action under sub. (1)(ar) 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)(b), (c), (d), or (e) 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)(b), (c), (d), or (e).

(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).

(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.

948.05 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.

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 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.

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

(a) A Class F felony if the child has not attained the age of 13 years.

(b) A Class H felony if the child has attained the age of 13 years but has not attained the age of 18 years.

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.

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.

948.10 Exposing genitals or pubic area.

(1) Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of a Class A misdemeanor.

(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.