

Wis. Stat. § 948.02

948.02. Sexual assault of a child

(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.

(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.

(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.

Wis. Stat. § 948.025

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

<Text of subsec. (1), as affected by 2005 Act 430, §§ 5, 6>

(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).

<Text of subsec. (1), as affected by 2005 Act 437, §§ 3, 4>

(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).

<Text of subsec. (2), as affected by 2005 Act 430, §§ 7, 8>

(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).

<Text of subsec. (2), as affected by 2005 Act 437, §§ 5, 6>

(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)(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).

(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.

948.09 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.

History: 1987 a. 332.