HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION CODE (HCC)

TITLE 9 – CRIMINAL CODE

SECTION 948 – CRIMES AGAINST CHILDREN

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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 tribal, 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" means the condition under which both parties share legal custody and neither party's legal custody rights are superior, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order.

(1r) "Legal custody" means:

(a) With respect to any person granted legal custody of a child, other than the Nation, a county agency or a licensed child welfare agency under par. (b), the right and responsibility to make major decisions concerning the child, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order.

(b) With respect to the Nation, department or a county agency or a licensed child welfare agency granted legal custody of a child, the rights and responsibilities to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

(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" means the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody.

(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.

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) Wis. Stat. 103.19 to 103.32 and 103.64 to 103.82 relating to employment of minors.

(2) No person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

(3) (a) No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

(b) No licensee or permitee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

(c) No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This subdivision does not apply to alcohol beverages used exclusively as part of a religious service.

(d) No adult may intentionally encourage or contribute to a violation of sub. (4) (a) or (b).

(4) For the prevention of ophthalmia neonatorum or infant blindness the attending physician or midwife shall use a prophylactic agent approved by the department.

(5) No person may apply lead-bearing paints:

(a) To any exposed surface on the inside of a dwelling;

(b) To the exposed surface of a structure used for the care of children; or

(c) To any fixture or other object placed in or upon any exposed surface of a dwelling and ordinarily accessible to children.

(d) No person may sell or transfer any fixture or other object intended to be placed upon any surface on the inside of a dwelling, containing a lead-bearing paint and ordinarily accessible to children.

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

(7) No person under the age of 18 years shall participate in any professional boxing contest.

(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).

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 felony.

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

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

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

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

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

(e) A 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 Nation 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.

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 felony.

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

(3) RECKLESS CAUSATION OF BODILY HARM.

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

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

(4) FAILING TO ACT TO PREVENT BODILY HARM.

(a) A person responsible for the child's welfare is guilty of a 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 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.

(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 the law in lieu of medical or surgical treatment.

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 felony.
(2) A person responsible for the child's welfare is guilty of a 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.

948.05 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 or Nation, 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 felony.
(b) A person who violates sub. (1), (1m), or (2) is guilty of a 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.

948.051 Trafficking of a child.
(1) Whoever knowingly recruits, entices, provides, obtains, or harbors, or knowingly attempts to recruit, entice, provide, obtain, or harbor, any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a), is guilty of a felony.
(2) Whoever benefits in any manner from a violation of sub.(1) is guilty of a 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.

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 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 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.

948.06 Incest with a child. Whoever does any of the following is guilty of a 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.

948.07 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 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.

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 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.

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 felony.

948.085 Sexual assault of a child placed in substitute care. Whoever does any of the following is guilty of a 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 licensed shelter care facility.
(b) A licensed group home.
(c) A residential care center for children and youth operated by a child welfare agency licensed by the Ho-Chunk Nation or licensed under Wisconsin s. 48.60 or an institution operated by a public agency for the care of neglected, dependent, or delinquent children.

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.

948.095 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.
(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 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 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.

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 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 breastfeeding of her child.

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 with- out monetary consideration, is guilty of a 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 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 Nation, the President or any person performing the functions of President 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

Nation 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 Nation 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 or a tribal school.
3. Any school offering vocational, technical or adult education that:
   a. Is a technical college, is a school approved by the educational approval board.
   b. Is exempt from taxation under section 501 (c) (3) of the federal internal revenue code
4. Any institution of higher education that is accredited and is exempt from taxation under section 501 (c) (3) of the federal internal revenue code.
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.

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 felony.

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

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 tribe, state or, prior to May 7, 1996, under the law of this Nation 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 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 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 prosecutor who prosecuted the person. The prosecutor 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 prosecutor 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 prosecutor. 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, except that the person shall be considered indigent without another determination if the person is represented by the public defender or by a private attorney appointed by the court.

(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.

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 applicable law.

(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 felony.

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 felony.

948.21 Neglecting a child.

(1) Any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of one of the following:

(a) A Class A misdemeanor.

(b) A felony if bodily harm is a consequence.

(c) A felony if great bodily harm is a consequence.

(d) A felony if death is a consequence.

(2) Under sub. (1), a person responsible for the child's welfare contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.

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 Nation or in another tribe, state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide.

(b) "Grandchild support" means an amount which a person is legally obligated to provide.

(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 Nation or in another tribe, state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide.

(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 or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person.

(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 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 the law, regardless of the fact that the action is not one for a determination of paternity

(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 required under the law, regardless of the fact that the action is not one for a determination of paternity, 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 and may be enforced. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under applicable law.

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 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 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 or other legal authority to move a corpse, hides or buries the corpse of a child is guilty of a 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 felony.

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

948.24 Unauthorized placement for adoption.
(1) Whoever does any of the following is guilty of a felony:
(a) Places or agrees to place his or her child for adoption for anything exceeding the actual cost authorized under applicable law
(b) For anything of value, solicits, negotiates or arranges the placement of a child for adoption except as authorized under applicable law.
(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 under applicable law and the payments authorized under applicable law.
(2) This section does not apply to placements.

948.25 Unauthorized interstate placements of children.
(1) Any person who sends a child out of this jurisdiction, brings a child into this jurisdiction, or causes a child to be sent out of this jurisdiction or brought into this jurisdiction for the purpose of permanently transferring physical custody of the child to a person who is not a relative, defined as a parent, sibling, aunt, uncle, niece, nephew, grandparent 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 applicable law.
(b) A placement of a child that is approved by a court of competent jurisdiction of the sending jurisdiction or receiving jurisdiction.

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 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 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.

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 tribal, state or county child welfare agency, or licensed child welfare agency, if custody or supervision of the child has been transferred under applicable law to that department, person, or agency.

(b) Except as provided under applicable law, 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 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 non-marital child whose parents do not subsequently intermarry, 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 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 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.

(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) 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.

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 felony; or

(b) If the child's act which is encouraged or contributed to is a violation of a tribal, state or federal criminal law which is punishable as a felony, the person is guilty of a felony.

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, 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.

(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.

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, 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, or a secured residential care center for children and youth.

(c) Is committed, transferred or admitted on the basis of being at risk of harming oneself or others.

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

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 sub- stance, 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 felony if the act results in great bodily harm to another.

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

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, a child care provider that is certified, or a child care program that is established or contracted for.

(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 felony if bodily harm is a consequence.
3. A felony if great bodily harm is a consequence.
4. A felony if death is a consequence.

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 hunting regulations or 948.60 (3).

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 a juvenile delinquency proceeding unless jurisdiction is waived under such proceeding or the person is subject to the jurisdiction of a court of criminal jurisdiction under such proceeding.

(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 traditional 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 applicable hunting regulations. 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 applicable hunting regulations or to an adult who is in violation of s. 941.28.

948.605 Gun−free school zones.

(1) DEFINITIONS. In this section:

(a) "Encased" means enclosed in a case that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed.

(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.

(am) "Motor vehicle" means a vehicle, including a combination of 2 or more vehicles or an articulated vehicle, which is self-propelled, except a vehicle operated exclusively on a rail. "Motor vehicle" includes, without limitation, a commercial motor vehicle or a vehicle which is propelled by electric power obtained from overhead trolley wires but not operated on rails. A snowmobile, an all-terrain vehicle, a utility terrain vehicle, and an electric personal assistive mobility device shall be considered motor vehicles only for purposes made specifically applicable by statute.

(b) "School" means a public school, parochial or private school, or tribal school, 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 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 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 means an individual holding a valid license to carry a concealed weapon.

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.

(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 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; or

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

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 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 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.

(4) A person under 17 years of age who has violated this section is subject to juvenile delinquency proceedings, unless jurisdiction is waived under such proceeding or the person is subject to the jurisdiction of a court of criminal jurisdiction under such proceeding

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 felony, if the value of the property exceeds $500 but does not exceed $2,500.

(bm) A 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 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.

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.

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

(a) "Physician" means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by a medical examining board, and holding a license granted by a medical examining board.

(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.

948.80 Prohibiting a child from speaking Ho-Chunk or practicing their way of life. Whoever prohibits a child from speaking Ho-Chunk or practicing their way of life shall be guilty of a felony.

Legislative History:

12/17/13	Legislature established the Criminal Code Workgroup through Resolution 12-17-13C.
12/11/14	The Criminal Code Workgroup presented the Criminal Code to the Administration Committee at which time it was referred to the full Legislature to be placed out for 45 Day Public Comment.
01/06/15	Legislature placed the Criminal Code out for 45 Day Public Comment by Resolution 01-06-15B.
03/17/15	Legislature placed the Criminal Code out for an additional 45 Day Public Comment by Resolution 03-17-15K.
05/05/15	Legislature enacted the Criminal Code through Resolution 05-05-15P.
05/17/16	Technical corrections made in accordance with Section 45 of the Legislative Organization Act (2 HCC § 11).