

# State of Wisconsin



2011 Senate Bill 536

Date of enactment:  
Date of publication\*:

## 2011 WISCONSIN ACT

AN ACT *to repeal* 939.74 (2) (d); *to amend* 48.415 (9m) (title), 939.74 (2) (c), 939.74 (2d) (c), 948.12 (1m), 949.03 (1) (b), 968.28 and 972.11 (2) (b) (intro.); and *to create* 48.415 (9m) (am) of the statutes; **relating to:** prosecution time limits for the offense of trafficking a child, possession of child pornography, termination of parental rights after committing the offense of trafficking a child, criminal procedure, crime victim compensation, and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 48.415 (9m) (title) of the statutes is amended to read:

48.415 (9m) (title) COMMISSION OF A SERIOUS FELONY AGAINST ONE OF THE PERSON'S CHILDREN A CHILD.

**SECTION 2.** 48.415 (9m) (am) of the statutes is created to read:

48.415 (9m) (am) Commission of a violation of s. 948.051 involving any child or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.051 involving any child if committed in this state.

**SECTION 3.** 939.74 (2) (c) of the statutes is amended to read:

939.74 (2) (c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (b), 948.03 (2) (a), 948.05, 948.051, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085, or 948.095 shall be commenced before the victim reaches the age of 45 years or be barred, except as provided in sub. (2d).

**SECTION 4.** 939.74 (2) (d) of the statutes is repealed.

**SECTION 5.** 939.74 (2d) (c) of the statutes is amended to read:

939.74 (2d) (c) If, before the applicable time limitation under sub. (1) or (2) (am), (c), or (cm), ~~or~~ (d) for commencing prosecution of a felony under ch. 940 or 948, other than a felony under s. 940.225 (1) or a felony specified in sub. (2) (a), expires, the state collects biological material that is evidence of the identity of the person who committed the felony, identifies a deoxyribonucleic acid profile from the biological material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the state may commence prosecution of the person who is the source of the biological material for the felony or a crime that is related to the felony or both within 12 months after comparison of the deoxyribonucleic acid profile relating to the felony results in a probable identification of the person or within the applicable time under sub. (1) or (2), whichever is latest.

**SECTION 6.** 948.12 (1m) of the statutes is amended to read:

948.12 (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):

\* Section 991.11, WISCONSIN STATUTES 2009-10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(a) The person knows that he or she possesses or has accessed the material.

(b) The person knows ~~the character and content of the, or reasonably should know, that the material that is possessed or accessed contains depictions of~~ sexually explicit conduct ~~in the material~~.

(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.

**SECTION 7.** 949.03 (1) (b) of the statutes is amended to read:

949.03 (1) (b) The commission or the attempt to commit any crime specified in s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24, 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32, 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86, 943.87, 948.02, 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.075, 948.08, 948.085, 948.09, 948.095, 948.20, 948.30 or 948.51.

**SECTION 8.** 968.28 of the statutes is amended to read:

**968.28 Application for court order to intercept communications.** The attorney general together with the district attorney of any county may approve a request of an investigative or law enforcement officer to apply to the chief judge of the judicial administrative district for the county where the interception is to take place for an order authorizing or approving the interception of wire, electronic or oral communications. The chief judge may under s. 968.30 grant an order authorizing or approving the interception of wire, electronic or oral communications by investigative or law enforcement officers having

responsibility for the investigation of the offense for which the application is made. The authorization shall be permitted only if the interception may provide or has provided evidence of the commission of the offense of homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances or controlled substance analogs, a computer crime that is a felony under s. 943.70, sexual exploitation of a child under s. 948.05, trafficking of a child under s. 948.051, child enticement under s. 948.07, use of a computer to facilitate a child sex crime under s. 948.075, or soliciting a child for prostitution under s. 948.08, or any conspiracy to commit any of the foregoing offenses.

**SECTION 9.** 972.11 (2) (b) (intro.) of the statutes is amended to read:

972.11 (2) (b) (intro.) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, 948.09, or 948.095, or under s. 940.302 (2), if the court finds that the crime was sexually motivated, as defined in s. 980.01 (5), any evidence concerning the complaining witness's prior sexual conduct or opinions of the witness's prior sexual conduct and reputation as to prior sexual conduct shall not be admitted into evidence during the course of the hearing or trial, nor shall any reference to such conduct be made in the presence of the jury, except the following, subject to s. 971.31 (11):

**SECTION 10. Initial applicability.**

(1) Notwithstanding section 990.06 of the statutes, the treatment of section 939.74 (2) (c) and (d) and (2d) (c) first applies to an act for which the time limit under section 939.74 of the statutes for prosecution has not expired as of the effective date of this subsection.