

State of Wisconsin



2019 Senate Bill 139

Date of enactment: **March 3, 2020**
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2019 WISCONSIN ACT 162

AN ACT *to repeal* 944.17 (2) (a), 944.17 (2) (c) and 944.17 (2) (d); *to renumber and amend* 944.17 (2) (intro.); *to amend* 173.07 (1), 173.10, 173.13 (1) (a) 8., 173.21 (1) (a), 173.22 (4) (b), 173.22 (4) (d) (intro.), 173.22 (4) (d) 1., 173.22 (4) (d) 2., 173.22 (4) (e), 173.24 (1), 173.24 (3), 173.41 (5) (a), 173.41 (13) and 301.45 (1d) (b); and *to create* 944.18 and 948.015 (11) of the statutes; **relating to:** sexual contact with an animal and providing a penalty.

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

SECTION 1. 173.07 (1) of the statutes is amended to read:

173.07 (1) ENFORCEMENT. A humane officer shall enforce ~~ss. 95.21 and 944.18~~, this chapter, chs. 174 and 951 and ordinances relating to animals enacted by political subdivisions in which the humane officer has jurisdiction under s. 173.03 (3).

SECTION 2. 173.10 of the statutes is amended to read:

173.10 Investigation of cruelty complaints. A person may apply for a search warrant under s. 968.12 if there is reason to believe that a violation of s. 944.18 or ch. 951 has taken place or is taking place. If the court is satisfied that probable cause exists, it shall issue a search warrant directing a law enforcement officer in the county to proceed immediately to the location of the alleged violation with a doctor of veterinary medicine, if the court determines that a veterinarian is necessary for purposes of the search, and directing the law enforcement officer to search the place designated in the warrant, retaining in his or her custody subject to the order of the court such property or things as are specified in the warrant, including any animal. If the person applying for the search warrant is a humane officer, the warrant shall direct that the

humane officer accompany the law enforcement officer who is directed to perform the search. The warrant shall be executed and returned to the court which issued the warrant in accordance with ss. 968.15 and 968.17. This section does not affect other powers and duties of law enforcement officers.

SECTION 3. 173.13 (1) (a) 8. of the statutes is amended to read:

173.13 (1) (a) 8. An animal used in any crime under s. 944.18 or ch. 951 or that constitutes evidence of a crime under s. 944.18 or ch. 951.

SECTION 4. 173.21 (1) (a) of the statutes is amended to read:

173.21 (1) (a) There are reasonable grounds to believe that the owner has used the animal in a crime under s. 944.18 or ch. 951 or that the animal constitutes evidence of a crime under s. 944.18 or ch. 951.

SECTION 4m. 173.22 (4) (b) of the statutes is amended to read:

173.22 (4) (b) In the hearing under par. (a), the court shall determine if the animal is needed as evidence or if there is reason to believe that the animal was involved in any crime under s. 944.18 or ch. 951. If the court determines that the animal is needed as evidence or that there is reason to believe that the animal was involved in any

* Section 991.11, WISCONSIN STATUTES: 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."

crime under s. 944.18 or ch. 951, the court shall order the animal to be retained in custody. If the court determines that the animal is not needed as evidence and that there is not reason to believe that the animal was involved in a crime under s. 944.18 or ch. 951, the court shall order the animal returned to the owner.

SECTION 5. 173.22 (4) (d) (intro.) of the statutes is amended to read:

173.22 (4) (d) (intro.) If an animal that was taken into custody under s. 173.13 (1) (a) 8. or is withheld under s. 173.21 (1) (a) is in custody and its owner is charged with a crime under s. 944.18 or ch. 951, one of the following applies:

SECTION 6. 173.22 (4) (d) 1. of the statutes is amended to read:

173.22 (4) (d) 1. If all of the charges are dismissed or the owner is found not guilty of all charges, the political subdivision or person contracting under s. 173.15 (1) with custody of the animal shall return the animal to the owner unless the owner is subject to the restrictions under s. 944.18 (3) (c) 1. or 951.08 (2m) or the animal has been treated as unclaimed or is otherwise subject to a disposition under s. 173.23.

SECTION 7. 173.22 (4) (d) 2. of the statutes is amended to read:

173.22 (4) (d) 2. If the owner is convicted of a crime under s. 944.18 or ch. 951, the animal shall be treated as unclaimed under s. 173.23 (1m), except that the charges under s. 173.23 (1m) (a) 4. do not apply if the court assesses the charges as expenses under s. 173.24.

SECTION 8. 173.22 (4) (e) of the statutes is amended to read:

173.22 (4) (e) If an animal that was taken into custody under s. 173.13 (1) (a) 8. or is withheld under s. 173.21 (1) (a) is in custody and the district attorney or the department of justice notifies the political subdivision or person contracting under s. 173.15 (1) with custody of the animal that the animal's owner will not be charged with a crime under s. 944.18 or ch. 951, the political subdivision or person contracting under s. 173.15 (1) with custody of the animal shall return the animal to its owner unless the owner is subject to the restrictions under s. 944.18 (3) (c) 1. or 951.08 (2m) or the animal has been treated as unclaimed or is otherwise subject to a disposition under s. 173.23.

SECTION 8c. 173.24 (1) of the statutes is amended to read:

173.24 (1) A court shall assess the expenses under this section, minus any amounts paid under s. 173.22 (4) (f), in any case in which there has been a search authorized under s. 173.10 or in which an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime under s. 944.18 or ch. 951.

SECTION 8f. 173.24 (3) of the statutes is amended to read:

173.24 (3) If the person alleged to have violated s. 944.18 or ch. 951 is found guilty of the violation, the person shall be assessed the expenses under subs. (1) and (2). If the person is not found guilty, the county treasurer shall pay the expenses from the general fund of the county.

SECTION 8m. 173.41 (5) (a) of the statutes is amended to read:

173.41 (5) (a) The department may, by written notice, without prior notice or hearing, suspend a license issued under sub. (2) if, upon inspection of the licensed premises, the department finds any condition that imminently threatens the health, safety, or welfare of any animal on the licensed premises or there is evidence that an act of animal cruelty in violation of ch. 951 or bestiality in violation of s. 944.18 has been committed by the licensee or has occurred on the licensed premises.

SECTION 8p. 173.41 (13) of the statutes is amended to read:

173.41 (13) REPORTING MISTREATMENT OF DOGS. If the department has reasonable grounds to believe that a dog in the possession of a person required to be licensed under sub. (2) is being mistreated in violation of s. 944.18 or ch. 951, the department shall report the information that supports its belief to a humane officer or law enforcement agency with jurisdiction over the area in which the dog is located.

SECTION 9. 301.45 (1d) (b) of the statutes is amended to read:

301.45 (1d) (b) "Sex offense" means a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 944.18, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the person who committed the violation was not the victim's parent.

SECTION 10. 944.17 (2) (intro.) of the statutes is renumbered 944.17 (2) and amended to read:

944.17 (2) ~~Whoever does any of the following commits an act of sexual gratification in public involving the sex organ of one person and the mouth or anus of another is guilty of a Class A misdemeanor:~~

SECTION 11. 944.17 (2) (a) of the statutes is repealed.

SECTION 12. 944.17 (2) (c) of the statutes is repealed.

SECTION 13. 944.17 (2) (d) of the statutes is repealed.

SECTION 14. 944.18 of the statutes is created to read:

944.18 Bestiality. (1) DEFINITIONS. In this section:

(a) "Animal" means any creature, either alive or dead, except a human being.

(b) "Obscene material" has the meaning given in s. 944.21 (2) (c).

(c) "Photograph or film" means the making of a photograph, motion picture film, video tape, digital image, or any other recording.

(d) "Sexual contact" means any of the following types of contact that is not an accepted veterinary medical practice, an accepted animal husbandry practice that provides care for animals, an accepted practice related to the insemination of animals for the purpose of procreation, or an accepted practice related to conformation judging:

1. An act between a person and an animal involving physical contact between the sex organ, genitals, or anus of one and the mouth, sex organ, genitals, or anus of the other.

2. Any touching or fondling by a person, either directly or through clothing, of the sex organ, genitals, or anus of an animal or any insertion, however slight, of any part of a person's body or any object into the vaginal or anal opening of an animal.

3. Any insertion, however slight, of any part of an animal's body into the vaginal or anal opening of a person.

(2) PROHIBITED CONDUCT. No person may knowingly do any of the following:

(a) Engage in sexual contact with an animal.

(b) Advertise, offer, accept an offer, sell, transfer, purchase, or otherwise obtain an animal with the intent that it be used for sexual contact in this state.

(c) Organize, promote, conduct, or participate as an observer of an act involving sexual contact with an animal.

(d) Permit sexual contact with an animal to be conducted on any premises under his or her ownership or control.

(e) Photograph or film obscene material depicting a person engaged in sexual contact with an animal.

(f) Distribute, sell, publish, or transmit obscene material depicting a person engaged in sexual contact with an animal.

(g) Possess with the intent to distribute, sell, publish, or transmit obscene material depicting a person engaged in sexual contact with an animal.

(h) Force, coerce, entice, or encourage a child who has not attained the age of 13 years to engage in sexual contact with an animal.

(i) Engage in sexual contact with an animal in the presence of a child who has not attained the age of 13 years.

(j) Force, coerce, entice, or encourage a child who has attained the age of 13 years but who has not attained the age of 18 years to engage in sexual contact with an animal.

(k) Engage in sexual contact with an animal in the presence of a child who has attained the age of 13 years but who has not attained the age of 18 years.

(3) PENALTIES. (a) Any person who violates sub. (2) (a) to (g) is guilty of a Class H felony for the first violation and is guilty of a Class F felony for a 2nd or subsequent violation or if the act results bodily harm or death of an animal. Any person who violates sub. (2) (h) or (i) is guilty of a Class F felony for the first violation and is guilty of a Class D felony for a 2nd or subsequent violation. Any person who violates sub. (2) (j) or (k) is guilty of a Class G felony for the first violation and is guilty of a Class E felony for a 2nd or subsequent violation.

(c) If a person has been convicted under sub. (2), the sentencing court shall order, in addition to any other applicable penalties, all of the following:

1. That the person may not own, possess, reside with, or exercise control over any animal or engage in any occupation, whether paid or unpaid, at any place where animals are kept or cared for, for not less than 5 years or more than 15 years. In computing the time period, time which the person spent in actual confinement serving a criminal sentence shall be excluded.

2. That the person shall submit to a psychological assessment and participate in appropriate counseling at the person's expense.

3. That the person shall pay restitution to a person, including any local humane officer or society or county or municipal pound or a law enforcement officer or conservation warden or his or her designee, for any pecuniary loss suffered by the person as a result of the crime. This requirement applies regardless of whether the person is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the person to pay and shall determine the method of payment. Upon application of an interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss, as defined in s. 951.18 (4) (a) 1., under this subdivision.

(4) SEVERABILITY. The provisions of this section are severable, as provided in s. 990.001 (11).

SECTION 15. 948.015 (11) of the statutes is created to read:

948.015 (11) Section 944.18 (2) (h), (i), (j), and (k), relating to sexual contact with an animal.