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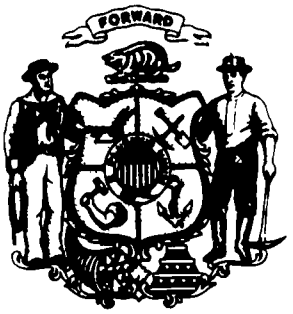
ABSTRACT

This document is one of six discussion papers prepared for the Wisconsin Legislative Council's Special Committee on Crimes Against Children. The introduction explains the committee's task of conducting a thorough examination of state laws relating to crimes against children, reviewing major policy issues affecting those laws to determine whether substantive changes are needed in various statutory provisions and reorganizing the laws. This paper deals specifically with the crimes of contributing to the delinquency of a minor. It is organized into five parts which cover the areas of: (1) laws relating to contributing to the delinquency of children; (2) the prohibition against crime comics; (3) the prohibitions against furnishing alcoholic beverages to a child and the presence of minors on alcoholic beverage licensed premises; (4) the prohibitions against distributing controlled substances to minors; and (5) receiving stolen property from a minor. For each of these issues, there is a section explaining current law and a section giving suggestions for statutory revisions. Copies of the statutes covered in the report, arranged in numerical order, and a copy of ss. 939.50 to 939.52, which prescribe the basic criminal penalty classification system used in the Criminal Code are appended. (NB)



CRIMES AGAINST CHILDREN
E. CONTRIBUTING TO DELINQUENCY OF A MINOR

DISCUSSION PAPER 86-1E

Wisconsin Legislative Council Staff

State Capitol

October 2, 1986

Madison, Wisconsin

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

Wisconsin Legislative Council Staff — Madison, Wisconsin

Special Committee on Crimes Against Children — October 2, 1986

DISCUSSION PAPER 86-1E*

CRIMES AGAINST CHILDREN

E. CONTRIBUTING TO DELINQUENCY OF A MINOR

INTRODUCTION

Discussion Paper 86-1E is the fifth of a series of Discussion Papers that will be prepared for the Legislative Council's Special Committee on Crimes Against Children. The Special Committee is conducting a thorough examination of state laws relating to crimes against children, including:

1. Reviewing major policy issues affecting these laws to determine whether substantive changes are needed in such statutory provisions as abuse of children; sexual assault; child enticement; lewd and lascivious conduct; abduction; incest; abandonment; and others.

2. Reorganizing these laws, to the extent appropriate, so that like provisions are logically grouped; ambiguities and conflicts in the present laws are reconciled; and relevant Supreme Court and Court of Appeals decisions and Attorney General opinions are codified.

The Special Committee review will be based, in part, on a project undertaken, at the request of Senator Barbara Ulichny, by the University of Wisconsin-Madison Law School and Extension. This project resulted in a preliminary draft proposal entitled "Crimes Against Children: A Proposed Chapter of the Wisconsin Statutes" (July 1985), prepared by Attorney Ronni G. Jones, under the supervision of a Law School/Extension faculty advisory committee. The draft proposal (hereafter referred to as the Law School Proposal) suggests certain policy changes in various statutes relating to crimes against children and suggests the creation of a separate chapter of the statutes on crimes against children, organized by "the interest of the child sought to be protected."

*This Discussion Paper was prepared by Don Salm, Staff Attorney, Legislative Council Staff.

For Special Committee discussion purposes, the issues and statutes to be examined will be grouped into the following separate Discussion Papers which will describe the statutes under discussion and summarize suggestions for changes in these statutes:

Discussion Paper 86-1A: Physical and Psychological Abuse: The Paper will cover ss. 940.201, abuse of children; 940.203, sexual exploitation; and 940.225, sexual assault.

Discussion Paper 86-1B: Sexual Morality: The Paper will cover ss. 944.06, incest; 944.12, enticement for immoral purposes; 944.15 fornication; 944.17, sexual gratification; 944.20 and 944.21, lewd behavior; 944.25, exposure to harmful materials; and 944.32, soliciting prostitutes.

Discussion Paper 86-1C: Physical Neglect: The Paper will cover ss. 940.27, failure to support; 940.28, abandonment of a young child; and 940.29, abuse of residents of facilities.

Discussion Paper 86-1D: Interfering With Custody: The Paper will cover ss. 940.32, abduction; 946.71, interference with custody of child; 946.715, interference by parent with parental rights of other parent; and 946.716, unauthorized placement for adoption.

Discussion Paper 86-1E: Contributing to Delinquency of a Minor: The Paper will cover ss. 947.15, contributing to delinquency; 947.08, crime comics; 125.07, serving alcohol beverages to minor; 161.46, distributing drugs to minor; 943.34, receiving stolen property from minor; and 946.46, encouraging probation or parole violation.

Discussion Paper 86-1F: Regulatory Offenses Directed at Children: The Paper will cover ss. 103.19 to 103.32 and 103.64 to 103.86, employment regulations; 118.13, pupil discrimination; 146.01, infant blindness; 151.03, lead poisoning; 444.09 (4), boxing exhibitions; 940.26, hazing; 941.22, furnishing a pistol to a minor; 942.02, strip search by school employe; 946.63, concealing death of a child; and 943.35, receiving property from a child.

Discussion Paper 86-1E is organized as follows: Part I covers the laws relating to contributing to the delinquency of children; Part II deals with the prohibition against crime comics; Part III discusses the prohibitions against furnishing alcohol beverages to a child and the presence of minors on alcohol beverage licensed premises; Part IV covers the prohibitions against distributing controlled substances to minors; Part V relates to receiving stolen property from a minor; and the Appendix contains copies of the statutes covered in the Discussion Paper, arranged in numerical order, plus a copy of ss. 939.50 to 939.52, which prescribe the basic criminal penalty classification system used in the Criminal Code.

PART I

CONTRIBUTING TO DELINQUENCY OR NEGLECT OF CHILDREN

A. EXPLANATION OF CURRENT LAW

1. Contributing to Delinquency or Neglect of Children

a. Description of Contributing to Delinquency or Neglect of Children Statute

Under s. 947.15, Stats., relating to contributing to delinquency or neglect of children, the following persons are guilty of a Class A misdemeanor (punishable by a fine not to exceed $10,000 or imprisonment not to exceed nine months, or both) or, if death is a consequence, a Class D felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed five years, or both):

(i) Any person 18 years of age or older who intentionally encourages or contributes to the delinquency of any child or the neglect of any child. Since the term "delinquency" only applies to acts by children aged 12 to 17, the statute specifies that this provision also applies to intentionally encouraging or contributing to an act by a child under the age of 12 which would be a delinquent act if committed by a child 12 years of age or older; or

(ii) Any parent, guardian or legal custodian who, by neglect or disregard of the morals, health or welfare of his or her child, contributes to the delinquency of that child. As under item (i), the statute specifies that this provision also applies to neglect or disregard on the part of a parent, guardian or legal custodian which results in the commission or probable commission by a child under the age of 12 of an act which would be a delinquent act if committed by a child 12 years of age or older.

In s. 947.15, the term "delinquent act" means an action by a child 12 to 17 years of age which violates any state or federal criminal law. However, the term does not apply to a child who has committed a traffic, boating or ordinance violation or to a child 16 years of age or older who has been waived to adult court for alleged criminal law violations. [This is the same definition used in ch. 48, Stats., the Children's Code.]

Under s. 947.15, even though a child does not actually become neglected or delinquent, a person is guilty of contributing to the delinquency or neglect of a child, if the natural and probable consequences of an act or failure to act would be to cause the child to become delinquent or neglected [s. 947.15, Stats.].

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There has been one court decision on the constitutionality of s. 947.15, Stats. In State ex rel. Schulter v. Roraff, 39 Wis. 2d 342 (1968), the Wisconsin Supreme Court held that:

(i) The provision in the statute, imposing an increased penalty if death results [s. 947.15 (1) (intro.), Stats.], was reasonable and not unconstitutionally arbitrary, even if the death was unintended or unforeseen. The Court noted:

> Foreseeability or intent that the specific consequences occur are not necessary to due process or to a crime. Acts which result in death frequently carry increased penalties over the same act which does not result in death, e.g., sec. 940.03, felony murder. We think there is sufficient connection even if it is only causation between the proscribed act of contributing to the delinquency of a child and death resulting from such delinquency to make an increased penalty reasonable and not arbitrary even though death is unintended or unforeseen [Schulter, supra, p. 355].

(ii) The statute was not unconstitutionally vague, overbroad or indefinite, since it "fairly informed an ordinary person who is subject to it what acts are prohibited and will render him liable to penalties" [Schulter, supra, p. 356].

2. Encouraging Person to Abscond or Violate Condition of Parole or Probation

a. Description of Encouraging Person to Abscond or Violate Condition of Parole or Probation Statute

Section 946.46, Stats., prohibits a person from intentionally aiding or encouraging a parolee or probationer, or any person committed to the Department of Health and Social Services (DHSS) by reason of crime or delinquency, to abscond or violate a term or condition of parole or probation. A person who violates this prohibition is guilty of a Class A misdemeanor (punishable by a fine not to exceed $10,000 or imprisonment not to exceed nine months, or both).

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 946.46, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Higher Penalty if Felony Involved

a. Background

Under s. 947.15, a violator is guilty of a Class A misdemeanor for contributing to the delinquency or neglect of a child, if the delinquent act involved would have been a felony or a lesser criminal offense if the child were an adult. The Law School Proposal recommends that a higher penalty be imposed (a Class D felony, punishable by a fine not to exceed $10,000 or imprisonment not to exceed five years, or both) rather than the present Class A misdemeanor if a person:

(i) Intentionally encourages or contributes to a delinquent act by a child aged 12 to 17 when the delinquent act is a violation of a state or federal criminal law which is punishable as a felony: or

(ii) Intentionally encourages or contributes to an act by a child under 12, if the act: (a) would be a delinquent act if committed by a child 12 or over; and (b) would be punishable as a felony if the child were an adult.

The Law School Proposal recommends the higher penalty where the delinquent act would be a felony, in order to parallel the solicitation statute, s. 939.30, Stats. Under that statute, a person, who solicits another person to commit a felony, is guilty of: (i) a Class D felony, if the felony is a Class A, B, C or D felony; or (ii) a Class E felony, if the felony involved is a Class E felony. According to the Proposal, encouraging a child to commit a delinquent act is a form of solicitation which would be a felony if committed by an adult; therefore, the person encouraging a child to commit such an act should be guilty of a felony, not a misdemeanor, as specified in current law. Since the Law School Proposal generally assumes that a crime committed against a child should be punished more severely than a comparable crime committed against an adult, the Proposal, unlike the solicitation statute, would subject a violator to a Class D felony, even where the delinquent act the child is encouraged to commit would be punishable as a Class E felony.

In addition to the changes described above, the Law School Proposal would retain: (i) the current penalty (Class A misdemeanor) for

encouraging commission of delinquent acts other than felonies and for encouraging violation of a term or condition of commitment to the DHSS; and (ii) the current penalty (Class D felony) if death results from a violation of s. 947.15.

b. Suggestions

The Special Committee could consider imposing a higher penalty than the current Class A misdemeanor penalty, where a person:

(i) Intentionally encourages or contributes to a delinquent act by a child aged 12 to 17 when the delinquent act is a violation of a state or federal criminal law which is punishable as a felony; or

(ii) Intentionally encourages or contributes to an act by a child under 12, if the act: (a) would be a delinquent act if committed by a child 12 or over; and (b) would be punishable as a felony if the child were an adult.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.34, Contributing to the Delinquency of a Child.]

2. Failure to Act

a. Background

Current s. 947.15 (2), Stats., specifies that even if a child does not actually become neglected or delinquent, a person is guilty of contributing to the delinquency or neglect of a child, if the natural and probable consequences of an act or failure to act would be to cause the child to become delinquent or neglected. The actual prohibition against a parent or other legal custodian contributing to the delinquency of a child by neglect [s. 947.15 (1) (b), Stats.] implies (by use of the term "neglect"), but does not specifically state, that a violation may result from the person's failure to act as well as from his or her actions. The Law School Proposal recommends that the actual prohibition in s. 947.15 (1) (b), Stats., be clarified by stating explicitly that a person responsible for the welfare of a child may contribute to the neglect or delinquency of a child through his or her failure to take action as well as through his or her actions. The Proposal would not make any changes in s. 947.15 (2), Stats.

b Suggestion

The Special Committee could consider stating explicitly in s. 947.15 (1) (b) that a person responsible for the welfare of a child may

contribute to the neglect or delinquency of the child by his or her failure to take action, as well as by his or her actions.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.55 (1) (a) and (2), Neglecting a Child; Disregarding the Welfare of a Child.]

3. Definition of Neglect

a. Background

Current s. 947.15 prohibits, among other things: (i) intentionally encouraging or contributing to the neglect of a child [s. 947.15 (1) (a)]; and (ii) contributing to the delinquency of a child by neglect of a child [s. 947.15 (1) (b)]. The statute does not define the term "neglect." However, the Jury Instructions contain the following separate definitions of the term "neglect" as used in these statutory provisions:

(i) For purposes of s. 947.15 (1) (a) (intentionally encouraging or contributing to the neglect of a child), a child is "neglected" when the child's parent, guardian, legal custodian or other person exercising temporary or permanent control over the child neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child [Wisconsin Jury Instructions--Criminal, Number 1960].

(ii) For purposes of s. 947.15 (1) (b), Stats. (neglect of a child contributing to delinquency), a child is "neglected" if the child's parent, guardian or legal custodian failed to provide the care, protection, training or discipline that a parent, guardian or legal custodian can reasonably be expected to provide [Wisconsin Jury Instructions--Criminal, Number 1961].

The Jury Instructions interpretation of "neglect" in s. 947.15 (1) (a) is based on definitions of "neglect" in the following two provisions of ch. 48, Stats., the Children's Code: (i) s. 48.13 (10), Stats., which sets forth one of the circumstances in which a child is alleged to be in need of protection or services under the Code; and (ii) s. 48.981 (1) (d), Stats., which defines a "neglected child" for the purposes of the child neglect and abuse reporting statute.

However, for purposes of s. 947.15 (1) (b), Stats., the Jury Instructions do not use the definitions of "neglect" set forth in the Children's Code, because, according to a comment to the Instructions, those definitions' "stress on food, clothing, medical or dental care, etc., does not bear a strong connection with delinquent activity."

Instead, the Jury Instructions Committee developed a separate definition of "neglect" for s. 947.15 (1) (b) that, according to the comment, "emphasizes the relationship of the alleged neglect to the child's delinquent act."

b. Suggestion

The Special Committee could consider whether the term "neglect" should be defined for purposes of: (i) the prohibition against intentionally encouraging or contributing to the neglect of a child; and (ii) the prohibition against neglect which contributes to delinquency of a child. The Special Committee could consider using the definitions of "neglect" set forth in the Wisconsin Criminal Jury Instructions on s. 947.15 (1) (a) and (b), Stats. [Wisconsin Jury Instructions--Criminal, Numbers 1960 and 1961].

4. New Crime: Leaving a Child Unattended

a. Background

As noted in item 3, above, for purposes of s. 947.15 (1) (a), Stats. (contributing to the neglect of a child), Wisconsin Jury Instructions--Criminal, Number 1960, requires that the neglect of the child must "seriously endanger the physical health of a child." Testimony on 1985 Senate Bill 564 indicated that this requirement makes it difficult to apply s. 947.15 (1) (a), Stats., to a common situation where a parent leaves a very young child at home alone. With all the potential dangers to a child that are found in a home or an apartment, it may be assumed that leaving a very young child alone on such premises for an extended period of time is likely to endanger the health or welfare of the child, especially if the parent has not taken necessary steps to make the premises safe. The testimony indicated that because, in most cases, nothing happens to the child while the parent is away, it is difficult f a prosecutor to prove that merely leaving the child alone for an extended period of time "seriously endangered" the child's physical health.

1985 Senate Bill 564 would have established a more specific standard for determining when a parent or other custodian of a child acts illegally in leaving a child unattended. The standard is based on the degree of negligence exhibited by the parent or custodian, the age of the child and the length of time the child is left unattended. The Bill would have prohibited any parent, guardian or legal custodian from, with a high degree of negligence, leaving his or her child under 10 years of age "unattended in or at any place for such a period of time as may be likely to endanger the health or welfare of the child." The Bill defined "a high degree of negligence" as:

> ...conduct which demonstrates ordinary negligence to a high degree, consisting of an act which the person should realize creates a situation of unreasonable risk and high probability of death or great bodily harm to another.

The effect of the inclusion of the "high degree of negligence" requirement in the Bill is not clear. It apparently would require that the parent leave the child unattended for a substantial period of time or under circumstances which would clearly subject the child to an unreasonable risk of injury (e.g., leaving dangerous tools or appliances in places readily accessible to the child).

The penalty for this offense would have been a Class A misdemeanor (punishable by a fine of not more than $10,000 or imprisonment for not more than nine months, or both). If death were a consequence, the penalty would have been a Class D felony (punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both).

Senate Bill 564 received a public hearing in the Senate Judiciary and Consumer Affairs Committee, but received no further action and failed to pass.

b. Suggestion

The Special Committee could consider: (i) creating a crime prohibiting a parent, guardian or legal custodian from leaving a child of a certain age (e.g., under 10 years of age) unattended in or at any place for such a period of time as may be likely to endanger the health or welfare of the child; (ii) requiring as an element of the new crime that the parent, guardian or legal custodian must have acted with "a high degree of negligence"; and (iii) establishing an appropriate penalty for the new crime.

PART II

PROVIDING CRIME COMICS

A. EXPLANATION OF CURRENT LAW

1. Description of Crime Comics Statute

The current crime comics statute contains the following statement of legislative findings:

> It is declared as a legislative finding of fact that exercise of this state's police power to minimize all incentives to crime, particularly in the field of sanguinary or salacious publications with their stimulation of juvenile delinquency is important; and that the publication, sale and distribution to minors or possession by minors of books, magazines, or other printed matter consisting of narrative material in pictorial form, commonly known as comic books and which depict, in substantial part, acts of indecency, horror, terror, physical torture or brutality, have the effect of inciting, encouraging, or advocating the commission of crime, and are a source of crime, particularly among minors, and a contributing factor in impairing the moral and ethical development of our youth and a danger to the health, safety, morals and well-being of the people of the state. Therefore, the provisions hereinafter prescribed are enacted and their necessity in the public interest is hereby declared as a matter of legislative determination [s. 947.08 (1), Stats.].

Under the crime comics statute, a person who does any of the following is guilty of a Class B misdemeanor (punishable by a fine not to exceed $1,000 or imprisonment not to exceed 90 days, or both):

a. Sells or distributes commercially a crime comic to a minor;

b. Has a crime comic in his or her possession with intent to sell or distribute it commercially to a minor; and

c. Distributes a crime comic commercially to a retailer with knowledge that the retailer intends to distribute it to a minor.

"Crime comic" is defined to mean any book, magazine or other printed matter consisting of narrative material in pictorial form, commonly known as a comic book and which depicts, in substantial part, acts of indecency, horror, terror, physical torture or brutality.

Section 947.08 specifies that this prohibition does not apply to the portrayal of historical or current events or of literary works of recognized merit "unless acts are so depicted as to demonstrate a purpose to incite, advocate or encourage the commission of crime or to exploit minors' interest in the commission of acts of indecency, horror, terror, physical torture or brutality."

2. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 947.08, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Repeal

a. Background

The Law School Proposal recommends that s. 947.08, Stats., be repealed because:

(i) It apparently has not been used since its passage in 1957 and this lack of use may render the provision unenforceable should a prosecution now be commenced.

(ii) With the prevalence of violence on television and in movies, violence in comic books may no longer be viewed by the public as a significant threat to a child's development.

(iii) Section 944.25, Stats. (exposing minors to harmful materials), enacted in 1969, covers most of the materials prohibited by the crime comics statute by prohibiting the sale or exhibition of material (defined, in part, as "any book, pamphlet, magazine or printed matter however reproduced") which is harmful to minors. Under s. 944.25 (1) (b), the term "harmful to minors" is defined as:

> ...[t]hat quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of minors;

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

3. Is utterly without redeeming social importance for minors.

An argument against the repeal of the crime comics statute is that that statute appears to be broader in its coverage than the statute on exposure of minors to harmful materials, since it applies to depictions of "acts of indecency, horror, terror, physical torture or brutality." The statute on exposing minors to harmful materials applies only to descriptions or representations of "nudity, sexual conduct, sexual excitement, or sadomasochistic abuse." The term "sadomasochistic abuse" may not be broad enough to cover all forms of torture or brutality.

b. Suggestion

The Special Committee could consider:

(i) Repealing the crime comics statute, s. 947.08, Stats.; or

(ii) Revising the statute to focus more specifically on material not covered under s. 944.25, Stats., relating to the exposure of minors to harmful material (i.e., torture or brutality not included within the term "sadomasochistic abuse"). As an alternative, the Special Committee could consider revising s. 944.25, Stats., to cover such torture or brutality.

[For the specific language in the Law School Proposal, see the following provision of the Proposal: s. 960.37, Distributing Crime Comics to a Child.]

2. Reduced Penalty

a. Background

If s. 947.08, Stats., is not repealed, the Law School Proposal recommends that the penalty be reduced from a Class B misdemeanor (punishable by a fine not to exceed $1,000 or imprisonment not to exceed 90 days, or both) to a Class B forfeiture (punishable by a forfeiture not to exceed $1,000). According to a comment to the Proposal, this change is desired so that "the prospect of incarceration for serious crimes can remain a potential deterrent" (emphasis added).

b. Suggestion

If the Special Committee decides not to repeal the crime comics statute, it could consider reducing the classification of that statute from a misdemeanor to a forfeiture (e.g., a Class B forfeiture as suggested by the Law School Proposal).

[For the specific language in the Law School Proposal, see the following provision of the Proposal: s. 960.37 (2), Distributing Crime Comics to a Child.]

3. Notice Provision

a. Background

The statute on exposure of minors to harmful material contains provisions requiring notice to a seller or intended seller of harmful materials to children that the material has been adjudged to be harmful. These notice provisions were included to avoid possible constitutional problems resulting from prior restraint of materials which may be protected under the First Amendment. There are no similar provisions in the crime comics statute, so there may be constitutional problems with enforcing the current statute. [For a full description of the notice provisions in the statute on exposure of minors to harmful material, see Discussion Paper 86-1B, Crimes Against Children--B. Sexual Morality, pp. 31-33, 37 and 38.]

b. Suggestion

If the Special Committee decides not to repeal the crime comics statute, it could consider including a notice requirement in the crime comics statute comparable to any notice requirement which the Special Committee may decide to include in the statute on exposure of minors to harmful materials.

[For the specific language in the Law School Proposal, see the following provisions of the Proposal: s. 960.24 (3), Exposing a Child to Harmful Materials, and s. 960.37, Distributing Crime Comics to a Child.]

PART III

FURNISHING ALCOHOL BEVERAGES TO UNDERAGE PERSONS OR ALLOWING THEIR PRESENCE ON CERTAIN PREMISES

A. EXPLANATION OF CURRENT LAW

1. Furnishing Alcohol Beverages to an Underage Person

a. Description of Prohibitions on Furnishing Alcohol Beverages to an Underage Person Statute

Section 125.07 (1), Stats., was significantly affected by 1985 Act 120, the Budget Adjustment Act, and 1985 Act 337, relating to changing the legal drinking age. The current law contains the following prohibitions:

(i) No person may procure for, sell, dispense or give away any alcohol beverages (i.e., beer or intoxicating liquor) to any person under the legal drinking age (hereafter "underage person") not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age. The current legal drinking age is 21, except for persons who attained the age of 19 before September 1, 1986.

(ii) No alcohol beverage licensee or permittee 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.

(iii) 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 provision does not apply to alcohol beverages used exclusively as part of a religious service.

(iv) No adult may intentionally encourage or contribute to a violation of the statutory prohibitions against possession or consumption of alcohol beverages by underage persons.

A person who commits a violation of any of the above prohibitions (or a local ordinance which strictly conforms to the statutory prohibitions) is subject to a forfeiture of: (i) not more than $500 if the person has not committed a previous violation within 12 months of the violation; or (ii) not less than $200 nor more than $500 if the person has committed a previous violation within 12 months of the violation.

In addition, a court is required to suspend any alcohol beverage license or permit issued to the violator for:

(i) Not more than three days, if the court finds that the person committed a violation within 12 months after committing one previous violation;

(ii) Not less than three days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing two other violations; or

(iii) Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing three other violations.

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 125.07 (1), Stats., as affected by 1985 Acts 120 and 337.

2. Presence of Underage Persons on Certain Premises Where Alcohol Beverages are Furnished

a. Description of Underage Persons on Certain Premises Statutes

Section 125.07 (3) (a), Stats., was significantly affected by 1985 Act 28, relating to presence of 18-year olds on licensed premises, 1985 Act 29, the Budget Act, 1985 Act 47, relating to civil liability for serving alcohol beverages, 1985 Act 221, relating to underage persons on licensed premises during certain times, 1985 Act 317, relating to underage persons on premises of curling clubs, and 1985 Act 337, relating to changing the legal drinking age to age 21.

Section 125.07 (3) (a), Stats., prohibits an underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age from entering or being on any premises for which a license or permit for the retail sale of alcohol beverages has been issued. There are a number of exceptions to this prohibition (e.g., presence in a bowling alley, grocery store or athletic stadium or presence on the premises for some business purpose). A licensee or permittee who directly or indirectly permits an underage person to enter or be on licensed premises in violation of this prohibition is subject to a forfeiture of not more than $500 (i.e., a civil penalty).

Under a related provision in current law, no person who is the proprietor of any dance hall or who conducts, manages or is in charge of

any dance hall or pavilion in this state, may permit, during any public dance held in the hall or pavilion, the presence of any person under the age of 18 years unless accompanied by parent, lawful guardian or adult spouse when alcohol beverages are available for consumption on the premises. Any person who violates this prohibition is subject to a fine of not less than $25 and not more than $1,000, or by imprisonment for not less than 30 days in the county jail and not more than one year in the state prison, or both (i.e., criminal penalties). In addition, the court may revoke the person's retail alcohol beverage license [s. 175.20 (2) and (3), Stats.].

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 125.07 (1), as affected by 1985 Acts 120 and 337; s. 125.07 (3), Stats., as affected by 1985 Acts 28, 29, 47, 221, 317 and 337; or s. 175.20, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Background

Although ss. 125.07 (3) and 175.20 (2), Stats., are directed at essentially the same conduct (i.e., the presence of an unaccompanied young person on premises where alcohol beverages are furnished), the provisions are significantly different in that:

a. Section 125.07 (3) applies to persons under 21 years of age and s. 175.20 (2) applies only to persons under 18 years of age.

b. Section 125.07 (3) applies to persons who, with certain specified exceptions, are on any licensed premises that serves alcohol beverages, no matter what activities are being conducted on the premises. Section 175.20 (2) applies to persons who are attending a public dance in a dance hall or pavilion where alcohol beverages are served.

c. Section 125.07 (3) subjects a violator to a civil forfeiture and s. 175.20 (3) subjects a violator to a criminal penalty (i.e., a fine, imprisonment, or both). In contrast to the criminal penalty for a violation of s. 175.20 (3), it should be noted that s. 125.07 (1), which relates to actually furnishing alcohol beverages to persons under age 21, a more serious offense than s. 175.20 (3), subjects a violator to only a forfeiture.

The Law School Proposal recommends that s. 175.20 (3), Stats., be repealed as unnecessary and, perhaps, too severe in light of the more

recently enacted s. 125.07 (3), Stats. If not repealed, the Proposal recommends that s. 175.20 be amended by increasing the age limit to reflect the current legal drinking age, and making the penalty the same as for a violation of s. 125.07 (3), Stats. (i.e., a civil forfeiture).

2. Suggestion

The Special Committee could consider repealing s. 175.20 (2), Stats. If the Special Committee decides not to repeal that provision, it could consider: (a) increasing the age limit in the statute to reflect the legal drinking age; and (b) reducing the penalty to a civil forfeiture [e.g., making the penalty the same penalty as for a violation of s. 125.07 (3) (a), Stats.].

[For the discussion of these provisions in the Law School Proposal, see pp. 5 and 6 in the Introduction to the Proposal.]

PART IV

DISTRIBUTING CONTROLLED SUBSTANCES TO MINORS

A. EXPLANATION OF CURRENT LAW

1. Description of Distributing Controlled Substances to Minors Statute and Related Statutes

Under s. 161.41 (1), Stats., as affected by 1985 Act 328, except if specifically authorized in ch. 161, Stats. (the Controlled Substances Act), it is unlawful for any person to deliver a "controlled substance" (i.e., a drug listed in schedules I to V set forth in subch. II of ch. 161) to another person. "Deliver" is defined to mean the actual, constructive or attempted transfer of a controlled substance from one person to another. The penalties for delivery of various types of controlled substances are set forth below.

a. If a person delivers a controlled substance classified in schedule I or II which is a narcotic drug, the person may be fined not more than $25,000 or imprisoned not more than 15 years, or both.

b. If a person delivers any other controlled substance classified in schedule I or II, except cocaine (which is classified in schedule II), or any controlled substance classified in schedule III, the person may be fined not more than $15,000 or imprisoned not more than five years, or both.

c. If a person delivers a substance classified in schedule IV, the person may be fined not more than $10,000 or imprisoned not more than three years, or both.

d. If a person delivers a substance classified in schedule V, the person may be fined not more than $5,000 or imprisoned not more than one year, or both.

e. If a person delivers cocaine, which is classified in schedule II, a person is subject to the following penalties:

(i) If 10 grams or less are delivered, the person must be fined not less than $1,000 nor more than $200,000 (i.e., a mandatory minimum fine) and may be imprisoned for not more than five years.

(ii) If more than 10 grams but not more than 30 grams are delivered, the person must be fined not less than $1,000 nor more than $250,000 and must be imprisoned for not less than six

months nor more than five years (i.e., a mandatory minimum fine and imprisonment).

(iii) If more than 30 grams are delivered, the person must be fined not less than $1,000 nor more than $500,000 and must be imprisoned for not less than one year nor more than 15 years (i.e., a mandatory minimum fine and imprisonment).

Under s. 161.46, Stats., as affected by 1985 Act 328, all of the penalties described above are enhanced under certain circumstances involving the delivery of controlled substances to persons under 18 years of age. Current law specifies that:

a. If a person is 18 years of age or older and violates the prohibitions in items a to d, above, by distributing the applicable controlled substance to a person under 18 years of age who is at least three years his or her junior, the person is subject to up to twice the applicable fine or imprisonment, or both.

b. If a person is 18 years of age or older and violates the prohibition in item e, above, by distributing cocaine to a person under 18 years of age who is at least three years his or her junior, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment must be doubled.

In addition, current law provides that if a person distributes cocaine while within 1,000 feet of any private or public school building, the person's maximum term of imprisonment may be increased by five years [ss. 161.01 (6) and 161.49, Stats., created by 1985 Act 328].

It should be noted that the above-described penalties may also be enhanced if the violator is a repeat offender. Current law specifies that:

a. Except under item b, below, if a person is convicted of a second or subsequent offense under ch. 161, Stats., the person may be fined, imprisoned, or both, up to twice the amount otherwise authorized for the offense; and

b. If the person is convicted of a second or subsequent offense relating to the delivery or possession of cocaine, any applicable minimum or maximum fines or imprisonment must be doubled [s. 161.48, Stats., as affected by 1985 Act 328].

2. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of current law.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. No Substantive Changes

a. Background

The Law School Proposal, which was published prior to the recent changes in the laws relating to delivery or possession of cocaine (1985 Act 328), refers to, but does not recommend any substantive changes in, the statutes relating to distributing controlled substances to minors.

b. Suggestion

The Special Committee could consider making no changes in the statutes relating to distributing controlled substances to minors.

2. Increased Penalties and Penalty Enhancers

a. Background

As noted above, current law, as affected by 1985 Act 328, contains specific penalty provisions relating to the delivery of cocaine which are, in general, more severe than penalties applicable to the delivery of other controlled substances. The cocaine penalties differ from other controlled substance penalties in that they: (i) include mandatory minimum fines and imprisonment; and (ii) are increased based on the amount of cocaine which is delivered. In addition, the penalty enhancers applicable to delivering cocaine are more severe than are applicable to the delivery of other controlled substances.

If a violator delivers cocaine to a person under 18 years of age who is at least three years his or her junior, the violator's minimum and maximum fine and imprisonment must be doubled; if the violator delivers any other controlled substance under such circumstances, the violator may have his or her fine, imprisonment, or both, increased "up to twice" the applicable amount. Also, there is a specific penalty enhancer applicable to delivery of cocaine near a school building, permitting the violator's maximum term of imprisonment to be increased by five years. There is no similar penalty enhancer where other controlled substances are involved.

b. Suggestion

The Special Committee could consider:

(i) Subjecting violators who deliver controlled substances other than cocaine to a person under 18 years of age, who is at least three years his or her junior, to the same penalty enhancement as is currently applicable to the delivery of cocaine to such persons (i.e., mandatory doubling of fines and imprisonment).

(ii) Subjecting violators who deliver controlled substances other than cocaine near a school building to the same penalty enhancement as is currently applicable to the delivery of cocaine near a school building (i.e., increase of five years in prison term).

PART V

RECEIVING STOLEN PROPERTY

A. EXPLANATION OF CURRENT LAW

1. Description of Receiving Stolen Property Statute

Under s. 943.34, Stats., a person who intentionally receives or conceals stolen property is guilty of:

a. A Class A misdemeanor (punishable by a fine not to exceed $10,000 or imprisonment not to exceed nine months, or both), if the value of the property does not exceed $500. However, if the property is received from a person under the age of 18 years, the person is guilty of a Class E felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed two years, or both).

b. A Class E felony, if the value of the property exceeds $500 but not more than $2,500.

c. A Class C felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both), if the value of the property exceeds $2,500.

2. Discussion of Relevant Court Decisions and Other Interpretations of the Law

In a prosecution for receiving stolen property, the burden of proof is on the state to establish the intent of the defendant in receiving the stolen items and the defendant's knowledge of the stolen character of the items received. A Wisconsin Supreme Court decision has discussed the type of evidence which may be admissible to prove the defendant's intent and knowledge under the statute.

In State v. Spraggin, 71 Wis. 2d 604 (1975), the Wisconsin Supreme Court stated that, in a prosecution for receiving stolen property, the circumstances under which property is received may be indicative of the knowledge or purpose of the recipient. The Court noted that the "mental element [intent and knowledge of the stolen character of the goods] may be established with the aid of circumstantial and inferential evidence" [Spraggin, supra, p. 618]. In the Spraggin case, the Court held that testimony by a witness for the state, as to other televisions and weapons found in the defendant's household, was admissible as probative of the intent of the defendant in receiving a stolen television and a stolen revolver.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Increased Penalty

a. Background

A comment to the Law School Proposal indicates that one goal of s. 943.34, Stats., is to make it unprofitable to steal, by making it difficult to find a recipient for the stolen items. With reference to children, the Proposal concludes that the difficulty is enhanced "by punishing those who would assist a child who is engaged in criminal activity more severely than those who encourage an adult to engage in the same activity."

The current statute on receipt of stolen property provides for enhanced penalties only where the value of the property received from a child exceeds $500. The Law School Proposal recommends that the statute also impose a higher penalty for receipt of stolen property valued at more than $500, but not more than $2,500, if the property is received from a child rather than from an adult. The Proposal suggests that this crime be a Class D felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed five years, or both) instead of the current Class E felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed two years, or both).

If the stolen property is valued at more than $2,500, the Law School Proposal would retain the same penalty as current law (i.e., a Class C felony, punishable by a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both) regardless of whether the property was received from a child or an adult. The Proposal would not increase the penalty for this crime to a Class B felony "because that penalty seems too severe for the crime." The Proposal points out that second-degree murder and first-degree sexual assault, much more serious crimes, are currently Class B felonies.

b. Suggestion

The Special Committee could consider establishing a higher penalty for receipt of stolen property from a child rather than from an adult where the property is valued at: (i) more than $500, but not more than $2,500; and (ii) more than $2,500.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.33, Receiving Stolen Property from a Child.]

2. Prima Facie Evidence

a. Background

Current s. 943.34, Stats., requires the prosecutor to prove that the alleged perpetrator intentionally received or concealed stolen property. The element of intent means that the perpetrator must have knowledge of the facts necessary to make his or her conduct criminal (i.e., knowledge that the property received is stolen). It may be difficult for a prosecutor to prove that the person receiving stolen property knew that it was stolen.

In response to this difficulty in proof, the Law School Proposal recommends that proof of the following should be prima facie evidence (i.e., sufficient evidence to establish a given fact) that the property was stolen and the defendant knew it: (i) that the value of the property received from a child was more than $500; and (ii) that there was no consent to the delivery of the property by the person responsible for the child's welfare. The Proposal states that the prima facie evidence provision is not intended to change the substantive law but to incorporate current case law into the statutes. In support of that statement, the Proposal cites two court decisions.

First, in the U.S. Supreme Court decision in Barnes v. United States, 412 U.S. 837 (1973), the Court approved a jury instruction advising a jury that:

> Possession of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which you may reasonably draw the inference and find, in light of the surrounding circumstances shown by the evidence in the case, that the person in possession knew the property had been stolen.

Second, in the Wisconsin Supreme Court decision in State v. Spraggin, supra, the Court stated that in a prosecution for receiving stolen property, the circumstances under which property is received may be indicative of the knowledge or purpose of the recipient.

In light of these decisions, the Proposal concludes that where a child has an item or items worth more than $500 to sell, trade or give away, and has no consent to do so from a parent or guardian, there is circumstantial and inferential evidence that it is stolen. The comment adds:

> Clearly the receiving adult should suspect that the item is, in fact, stolen. If [the person] proceeds

> to buy, trade for or take the item without requiring consent, [the person] does so knowing that such consent would not be forthcoming as the item is stolen.

It should be noted that, in a criminal case, the burden is on the state to prove each element of the criminal offense beyond a reasonable doubt. A prima facie evidence provision, such as the one proposed, may be subject to legal challenge on the basis that: (i) it relieves the state of this proof requirement (i.e., if the state proves the circumstances required by the Proposal, the state does not have to prove that the property was stolen and the defendant knew it); and (ii) it shifts the burden of proof, as to the elements covered by the prima facie evidence provision, to the defendant. It is not clear whether a challenge would succeed with reference to the proposed prima facie evidence provision, but the language in the Court decisions noted above do support the creation of such a provision.

b. Suggestion

The Special Committee could consider creating a provision in s. 943.34, Stats., specifying that proof of the following is prima facie evidence that the property was stolen and the defendant knew it: (i) that the value of the property received from a child was over a certain dollar amount (e.g., $500); and (ii) that there was no consent to the delivery of the property by a person responsible for the child's welfare.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.33 (4), Receiving Stolen Property from a Child.]

DLS:md:jc:wf:las:kja;wf;kjf

APPENDIX

STATUTES DISCUSSED IN DISCUSSION PAPER 86-1E

(LISTED IN NUMERICAL ORDER)

STATUTES DISCUSSED IN DISCUSSION PAPER 86-1E
(LISTED IN NUMERICAL ORDER)

48.13 JURISDICTION OVER CHILDREN ALLEGED TO BE IN NEED OF PROTECTION OR SERVICES. The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

125.07 UNDERAGE AND INTOXICATED PERSONS; PRESENCE ON LICENSED PREMISES; POSSESSION; PENALTIES. (1) ALCOHOL BEVERAGES; RESTRICTIONS RELATING TO UNDERAGE PERSONS. (a) Restrictions. 1. 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.

2. No licensee or permittee 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.

3. 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.

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

(b) Penalties. 1. In this paragraph, "violation" means a violation of this subsection or a local ordinance which strictly conforms to this subsection.

2. A person who commits a violation is subject to a forfeiture of:

a. Not more than $500 if the person has not committed a previous violation within 12 months of the violation; or

b. Not less than $200 nor more than $500 if the person has committed a previous violation within 12 months of the violation.

3. A court shall suspend any license or permit issued under this chapter to a person for:

a. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;

b. Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or

c. Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 other violations.

4. The court shall promptly mail notice of a suspension under this paragraph to the department and to the clerk of each municipality which has issued a license or permit to the person.

(3) PRESENCE IN PLACES OF SALE; PENALTY. (a) Restrictions. An underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may not enter, knowingly attempt to enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued, for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employe. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This paragraph does not apply to:

1. An underage person who is a resident, employe, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consists or is a part.

2. An underage person who enters or is on a "Class A" retail intoxicating liquor premises for the purpose of purchasing edibles or beverages other than alcohol beverages. An underage person so entering the premises may not remain on the premises after the purchase.

3. Hotels, drug stores, grocery stores, bowling alleys, cars operated by any railroad, regularly established athletic fields, stadiums, or public facilities as defined in s. 125.51 (5) (b) 1. d which are owned by a county or municipality.

4. Premises in the state fair park, concessions authorized on state-owned premises in the state parks and state forests as defined or designated in chs. 27 and 28, and parks owned or operated by agricultural societies.

5. Ski chalets, golf clubhouses, curling clubs, private soccer clubs and private tennis clubs.

6. Premises operated under both a Class "B" or "Class B" license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a Class "B" or "Class B" license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.

7. An underage person who enters or remains on a Class "B" or "Class B" premises for the purpose of transacting business at an auction or market as defined in s. 125.32 (4) (b) 1, if the person does not enter or remain in a room where alcohol beverages are sold or furnished.

8. An underage person who enters or remains in a room on Class "B" or "Class B" licensed premises separate from any room where alcohol beverages are sold or served, if no alcohol beverages are furnished or consumed by any person in the room where the underage person is present and the presence of underage persons is authorized under this subdivision. An underage person may enter and remain on Class "B" or "Class B" premises under this subdivision only if the municipality which issued the Class "B" or "Class B" license adopts an ordinance permitting underage persons to enter and remain on the premises as provided in this subdivision and the law enforcement agency responsible for enforcing the ordinance issues to the Class "B" or "Class B" licensee a written authorization permitting underage persons to be present under this subdivision on the date specified in the authorization. Before issuing the authorization, the law enforcement agency shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the community. The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises.

9. A person who is at least 18 years of age and who is working under a contract with the licensee, permittee or corporate agent to provide entertainment for customers on the premises.

10. An underage person who enters or remains on Class "B" or "Class B" licensed premises on a date specified by the licensee or permittee during times when no alcohol beverages are consumed, sold or given away. During those times, the licensee the agent named in the license if the

licensee is a corporation or a person who has an operator's license shall be on the premises unless all alcohol beverages are stored in a locked portion of the premises. The licensee shall notify the local law enforcement agency, in advance, of the times underage persons will be allowed on the premises under this subdivision.

(b) Penalties. A licensee or permittee who directly or indirectly permits an underage person to enter or be on a licensed premises in violation of par. (a) is subject to a forfeiture of not more than $500.

161.41 PROHIBITED ACTS A--PENALTIES. (1) Except as authorized by this chapter, it is unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance classified in schedule I or II which is a narcotic drug, may be fined not more than $25,000 or imprisoned not more than 15 years or both;

(b) Except as provided in par. (c), any other controlled substance classified in schedule I, II or III, may be fined not more than $15,000 or imprisoned not more than 5 years or both;

(c) A controlled substance included under s. 161.16 (2) (b), is subject to the following penalties:

1. If the amount manufactured or delivered is 10 grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than 5 years.

2. If the amount manufactured or delivered is more than 10 grams but not more than 30 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than 6 months nor more than 5 years.

3. If the amount manufactured or delivered is more than 30 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 15 years.

(d) A substance classified in schedule IV, may be fined not more than $10,000 or imprisoned not more than 3 years or both;

(e) A substance classified in schedule V, may be fined not more than $5,000 or imprisoned not more than one year or both.

161.46 DISTRIBUTION TO PERSONS UNDER AGE 18. (1) Any person 18 years of age or over who violates s. 161.41 (1) by distributing a controlled substance listed in schedule I or II which is a narcotic drug to a person under 18 years of age who is at least 3 years his or her junior is punishable by the fine authorized by s. 161.41 (1) (a) or a term of imprisonment of up to twice that authorized by s. 161.41 (1) (a), or both.

(2) Except as provided in sub. (3), any person 18 years of age or over who violates s. 161.41 (1) by distributing any other controlled substance listed in schedule I, II, III, IV or V to a person under 18 years of age who is at least 3 years his or her junior is punishable by the fine authorized by s. 161.41 (1) (b), (d) or (e) or a term of imprisonment of up to twice that authorized by s. 161.41 (1) (b), (d) or (e) or both.

(3) If any person 18 years of age or over violates s. 161.41 (1) (c) by distributing a controlled substance included under s. 161.16 (2) (b) to a person under 18 years of age who is at least 3 years his or her junior, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c) are doubled.

161.48 SECOND OR SUBSEQUENT OFFENSES. (1) Except as provided in subs. (2) and (4), any person convicted of a 2nd or subsequent offense under this chapter may be fined an amount up to twice that otherwise authorized or imprisoned for a term up to twice the term otherwise authorized or both.

(2) If any person is convicted of a 2nd or subsequent offense under this chapter which is specified in s. 161.41 (1) (c), (1m) (c) or (3m), any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 161.41 (1) (c), (1m) (c) or (3m) are doubled. A 2nd offense under s. 161.41 (3m) is a felony and the person may be imprisoned in state prison.

(3) For purposes of this section, an offense is considered a 2nd or subsequent offense if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to controlled substance, narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

(4) This section does not apply to offenses under s. 161.41 (2r) and (3).

161.49 DISTRIBUTION ON SCHOOL GROUNDS; COCAINE OR ECGONINE. If any person violates s. 161.41 (1) (c) by distributing a controlled substance included under s. 161.16 (2) (b) while within 1,000 feet of any private or public school building, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years.

939.50 CLASSIFICATION OF FELONIES. (1) Except as provided in ss. 946.83 and 946.85, felonies in chs. 939 to 948 are classified as follows:

(a) Class A felony.

(b) Class B felony.

(c) Class C felony.

(d) Class D felony.

(e) Class E felony.

(2) A felony is a Class A, B, C, D or E felony when it is so specified in chs. 939 to 948.

(3) Penalties for felonies are as follows:

(a) For a Class A felony, life imprisonment.

(b) For a Class B felony, imprisonment not to exceed 20 years.

(c) For a Class C felony, a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both.

(d) For a Class D felony, a fine not to exceed $10,000 or imprisonment not to exceed 5 years, or both.

(e) For a Class E felony, a fine not to exceed $10,000 or imprisonment not to exceed 2 years, or both.

939.51 CLASSIFICATION OF MISDEMEANORS. (1) Misdemeanors in chs. 939 to 948 are classified as follows:

(a) Class A misdemeanor.

(b) Class B misdemeanor.

(c) Class C misdemeanor.

(2) A misdemeanor is a Class A, B or C misdemeanor when it is so specified in chs. 939 to 948.

(3) Penalties for misdemeanors are as follows:

(a) For a Class A misdemeanor, a fine of not to exceed $10,000 or imprisonment not to exceed 9 months, or both.

(b) For a Class B misdemeanor, a fine not to exceed $1,000 or imprisonment not to exceed 90 days, or both.

(c) For a Class C misdemeanor, a fine not to exceed $500 or imprisonment not to exceed 30 days, or both.

939.52 CLASSIFICATION OF FORFEITURES. (1) Except as provided in s. 946.85, forfeitures in chs. 939 to 948 are classified as follows:

(a) Class A forfeiture.

(b) Class B forfeiture.

(c) Class C forfeiture.

(d) Class D forfeiture.

(2) A forfeiture is a Class A, B, C or D forfeiture when it is so specified in chs. 939 to 948.

(3) Penalties for forfeitures are as follows:

(a) For a Class A forfeiture, a forfeiture not to exceed $10,000.

(b) For a Class B forfeiture, a forfeiture not to exceed $1,000.

(c) For a Class C forfeiture, a forfeiture not to exceed $500.

(d) For a Class D forfeiture, a forfeiture not to exceed $200.

947.08 CRIME COMICS. (1) LEGISLATIVE FINDING AND DECLARATION. It is declared as a legislative finding of fact that exercise of this state's police power to minimize all incentives to crime, particularly in the field of sanguinary or salacious publications with their stimulation of juvenile delinquency is important; and that the publication, sale and distribution to minors or possession by minors of books, magazines, or other printed matter consisting of narrative material in pictorial form, commonly known as comic books and which depict, in substantial part, acts of indecency, horror, terror, physical torture or brutality, have the effect of inciting, encouraging, or advocating the commission of crime, and are a source of crime, particularly among minors, and a contributing factor in impairing the moral and ethical development of our youth and a danger to the health, safety, morals and well-being of the people of the state. Therefore, the provisions hereinafter prescribed are enacted and their necessity in the public interest is hereby declared as a matter of legislative determination.

(2) Whoever does any of the following is guilty of a Class B misdemeanor:

(a) Sells or distributes commercially a crime comic to a minor; or

(b) Has a crime comic in his possession with intent to sell or distribute it commercially to a minor; or

(c) Distributes a crime comic commercially to a retailer with knowledge that such retailer intends to distribute it to a minor.

(3) In this section "crime comic" means any book, magazine or other printed matter consisting of narrative material in pictorial form, commonly known as a comic book and which depicts, in substantial part, acts of indecency, horror, terror, physical torture or brutality.

(4) This section does not apply to the portrayal of historical or current events or of literary works of recognized merit unless acts are so depicted as to demonstrate a purpose to incite, advocate or encourage the commission of crime or to exploit minors' interest in the commission of acts of indecency, horror, terror, physical torture or brutality.

947.15 CONTRIBUTING TO THE DELINQUENCY OF CHILDREN; NEGLECT; NEGLECT CONTRIBUTING TO DEATH. (1) The following persons are guilty of a Class A misdemeanor, and if death is a consequence are guilty of a Class D felony:

(a) Any person 18 or older who intentionally encourages or contributes to the delinquency of any child as defined in s. 48.02 (3m) or the neglect of any child. This subsection includes intentionally encouraging or contributing to an act by a child under the age of 12 which would be a delinquent act if committed by a child 12 years of age or older; or

(b) Any parent, guardian or legal custodian who by neglect, or disregard of the morals, health or welfare of his or her child contributes to the delinquency of that child. This subsection includes neglect or disregard on the part of the parents which results in the commission or probable commission by a child under the age of 12 of an act which would be a delinquent act if committed by a child 12 years of age or older.

(2) An act or failure to act contributes to the delinquency or neglect of a child, although the child does not actually become neglected or delinquent, if the natural and probable consequences of that act or failure to act would be to cause the child to become delinquent or neglected.