

1999 ASSEMBLY BILL 207

March 15, 1999 – Introduced by Representatives HUEBSCH, RHOADES, PETROWSKI, HUNDERTMARK, SUDER, TOWNSEND, PETTIS, KESTELL, MONTGOMERY, GUNDRUM, KLUSMAN, MUSSER, PORTER, GOETSCH, ALBERS, FREESE, OWENS, LADWIG, M. LEHMAN, STASKUNAS, TURNER, SYKORA, SPILLNER, KELSO, URBAN, OLSEN, JENSEN, HANDRICK, VRAKAS, KAUFERT and GARD, cosponsored by Senators DARLING, ROSENZWEIG, ROESSLER and DRZEWIECKI. Referred to Committee on Judiciary and Personal Privacy.

- 1 **AN ACT** *to repeal* 948.05 (3); and *to amend* 948.05 (1) (intro.) of the statutes;
2 **relating to:** sexual exploitation of a child.

Analysis by the Legislative Reference Bureau

Under current law, a person is guilty of sexual exploitation of a child who has not attained the age of 18 if the person does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child: 1) employs, induces, entices or coerces any child to engage in sexually explicit conduct for the purpose of photographing, recording or displaying the conduct; 2) photographs, records or displays a child engaged in sexually explicit conduct; or 3) produces, performs in, profits from, promotes, sells or distributes any photograph, recording or other reproduction of a child engaging in sexually explicit conduct.

The Wisconsin Supreme Court has decided that part of the current law prohibitions against sexual exploitation of a child is unconstitutional. *State v. Zarnke*, __ Wis. 2d __ (No. 97-1664-CR, decided February 26, 1999). Specifically, the court struck down the prohibition relating to profiting from, promoting, selling or distributing material showing a child engaging in sexually explicit conduct. The court decided that to be held criminally responsible for sexual exploitation of a child the defendant must know that the child had not attained the age of 18. Although current law requires a prosecutor to prove that the child involved in the sexually explicit conduct is under the age of 18, current law does not require the prosecutor to prove that the defendant *knew* that the child is under the age of 18.

Current law does provide that a defendant charged with sexual exploitation of a child has a defense to the charge if the defendant had reasonable cause to believe

