

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB55)

Received: 06/15/2001

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Senate Democratic Caucus

By/Representing: Keckhaver

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous

Extra Copies: MGD

Submit via email: NO

Requester's email:

Pre Topic:

SDC:.....Keckhaver - CN1514,

Topic:

Prohibition relating to representations depicting nudity

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rryan 06/17/2001	jdyer 06/17/2001	kfollet 06/18/2001	_____	lrb_docadmin 06/18/2001		

FE Sent For:

<END>

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/1	rryan	1/6/17 jld	kyl 6/18	kyl/le 6/18			

FE Sent For:

<END>

Date: June 8, 2001

Re: Caucus Budget Request

Include provisions of 2001 AB 145 relating to prohibition against pornography. (See attached).

CN1514

RLR

2001 ASSEMBLY BILL 145

February 22, 2001 - Introduced by Representatives LASSA, OLSEN, MUSSER, LADWIG, PLOUFF, GUNDERSON, BOCK, GRONEMUS, M. LEHMAN, WILLIAMS, URBAN, STARZYK, ALBERS, OTT, HUBER and COGGS, cosponsored by Senators BURKE, SHIBILSKI, FARROW, HUELSMAN, DARLING and ROESSLER. Referred to Committee on Judiciary.

1 AN ACT *to amend* 944.205 (2) (a), 944.205 (2) (b) and 944.205 (3); and *to create*
2 944.205 (2) (am) of the statutes; **relating to:** the prohibition against making,
3 possessing, or distributing a visual representation showing nudity and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits production, possession, and distribution of a photograph, motion picture, videotape, or other visual representation or reproduction that depicts nudity if the person depicted nude did not consent to the representation or reproduction and if the person who makes, possesses, or distributes the representation or reproduction knows or should know that the person depicted nude did not consent to the nude depiction. Current law exempts from criminal liability parents, guardians, and legal custodians who make and possess visual representations or reproductions of their children that show nudity or distribute them for other than commercial purposes.

The Wisconsin supreme court recently found the state statute prohibiting nude representations unconstitutional, because it prohibits all depictions of nudity made without consent, including artistic, political, and newsworthy depictions that are protected by the First Amendment (*State v. Stevenson*, 236 Wis. 2d 86 (2000)).

This bill narrows the scope of the prohibition against making an original representation that depicts nudity by requiring that, at the time the representation is made, the subject of the depiction be both nude and in a place and circumstance in which he or she can reasonably expect privacy.

ASSEMBLY BILL 145

The bill also applies the prohibition against making a reproduction that depicts nudity only to the act of reproducing an original representation that the reproducer knows or should know was made in violation of the prohibition against making an original representation, although the bill exempts a reproducer from criminal liability if the subject of the representation does consent to the reproduction even if he or she did not consent to the original representation. The bill treats the prohibitions against possessing and distributing representations depicting nudity similarly to the prohibition against making reproductions. The bill prohibits possessing or distributing a representation that is unlawfully made, unless the subject of the representation consents to the possession or distribution even if he or she did not consent to the making of the representation.

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

1 SECTION 1. 944.205 (2) (a) of the statutes is amended to read:
2 944.205 (2) (a) Takes a photograph or makes a motion picture, videotape, or
3 other visual representation ~~or reproduction~~ that depicts nudity without the
4 knowledge and consent of the person who is depicted nude while that person is nude
5 in a place and circumstance in which he or she has a reasonable expectation of
6 privacy, if the person taking the photograph or making the motion picture, videotape,
7 or other visual representation knows or has reason to know that the person who is
8 depicted nude does not know of and consent to the taking ~~or making~~ of the
9 photograph or the making of the motion picture, videotape, or other visual
10 representation ~~or reproduction~~.

11 SECTION 2. 944.205 (2) (am) of the statutes is created to read:
12 944.205 (2) (am) Makes a reproduction of a photograph, motion picture,
13 videotape, or other visual representation that the person knows or has reason to
14 know was made in violation of par. (a) and that depicts the nudity depicted in the
15 representation made in violation of par. (a), if the person depicted nude in the
16 reproduction did not consent to the making of the reproduction.

ASSEMBLY BILL 145

1 SECTION 3. 944.205 (2) (b) of the statutes is amended to read:

2 944.205 (2) (b) Possesses or distributes a photograph, motion picture,
3 videotape, or other visual representation or reproduction that depicts nudity and
4 that was taken or made ~~without the knowledge and consent of the person who is~~
5 ~~depicted nude in violation of par. (a) or (am)~~, if the person possessing or distributing
6 the representation or reproduction knows or has reason to know that the photograph,
7 motion picture, videotape, or other visual representation or reproduction was taken
8 or made ~~without the knowledge and consent of the person who is depicted nude in~~
9 ~~violation of par. (a) or (am) and if the person who is depicted nude in the~~
10 representation or reproduction did not consent to the possession or distribution.

11 SECTION 4. 944.205 (3) of the statutes is amended to read:

12 944.205 (3) Notwithstanding sub. (2) (a), ~~(am)~~, and (b), if the person in a
13 photograph, motion picture, videotape, or other visual representation or
14 reproduction is a child and the taking of the photograph or the making, possession,
15 or distribution of the photograph, motion picture, videotape, or other visual
16 representation or reproduction does not violate s. 948.05 or 948.12, a parent,
17 guardian, or legal custodian of the child may do any of the following:

18 (a) ~~Make and~~ Take and possess the photograph or make and possess the
19 photograph, motion picture, videotape, or other visual representation reproduction
20 of the child.

21 (b) Distribute a photograph, taken or possessed, or a motion picture, videotape
22 or other visual representation or reproduction made or possessed, under par. (a) if
23 the distribution is not for commercial purposes.

24 (END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb1049/1

RLR:.....

Jld

SDC:.....Keckhaver - CN1514, Prohibition relating to representations depicting nudity

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

D-Note

substitute amendment ✓

1 At the locations indicated, amend the ~~bill~~ as follows:

2 1. Page 1241, line 19: delete the material beginning with that line and ending

3 with page 1243, line 18, and substitute:

4 "SECTION 3956f. 944.205 (2) (a) ^X of the statutes is amended to read:

5 944.205 (2) (a) Takes a photograph or makes a motion picture, videotape, or
6 other visual representation ~~or reproduction~~ that depicts nudity without the
7 knowledge and consent of the person who is depicted nude while that person is nude
8 in a place and circumstance in which he or she has a reasonable expectation of

9 privacy, if the person ^{OK plain} taking the photograph or making the motion picture, videotape,
10 or other visual representation knows or has reason to know that the person who is

1 depicted nude does not know of and consent to the taking ~~or making~~ of the
2 photograph or the making of the motion picture, videotape, or other visual
3 representation ~~or reproduction~~.

4 **SECTION 3956h.** ^X 944.205 (2) (am) of the statutes is created to read:

5 944.205 (2) (am) Makes a reproduction of a photograph, motion picture,
6 videotape, or other visual representation that the person knows or has reason to
7 know was made in violation of par. (a) [✓] and that depicts the nudity depicted in the
8 representation made in violation of par. (a), if the person depicted nude in the
9 reproduction did not consent to the [✓] making of the reproduction.

10 **SECTION 3957f.** ^X 944.205 (2) (b) of the statutes is amended to read:

11 944.205 (2) (b) Possesses or distributes a photograph, motion picture,
12 videotape, or other visual representation or reproduction that depicts nudity and
13 that was taken or made ~~without the knowledge and consent of the person who is~~
14 ~~depicted nude~~ in violation of par. (a) or (am) [✓], if the person possessing or distributing
15 the representation or reproduction [✓] knows or has reason to know that the photograph,
16 motion picture, videotape, [✓] or other visual representation or reproduction was taken
17 or made ~~without the knowledge and consent of the person who is depicted nude in~~
18 violation of par. (a) or (am) [✓] and if the person who is depicted nude in the
19 representation or reproduction did not consent to the possession or distribution.

20 **SECTION 3958f.** ^{STET} ^X 944.205 (3) of the statutes is amended to read:

21 944.205 (3) Notwithstanding sub. (2) (a), (am) [✓] and (b), if the person in a
22 photograph, motion picture, videotape, or other visual representation or
23 reproduction is a child and the taking of the photograph or the making, possession,
24 or distribution of the photograph, motion picture, videotape, or other visual

1 representation or reproduction does not violate s. 948.05 or 948.12, a parent,
2 guardian, or legal custodian of the child may do any of the following:

3 (a) ~~Make and Take~~ ^{plain} ~~may~~ possess the photograph or make and possess the
4 photograph, motion picture, videotape, or other visual representation reproduction
5 of the child.

6 (b) Distribute a photograph, taken or possessed, or a motion picture, videotape,
7 or other visual representation or reproduction made or possessed, under par. (a) if
8 the distribution is not for commercial purposes.”

9 Insert
3-8

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1049/1dn

RLR:.....

date

JLD

2001 Senate Bill 55, as approved by the Joint Committee on Finance, treats s. 944.205[✓] (representations depicting nudity) to address the portions of the crime that the Wisconsin Supreme Court found unconstitutional in *State v. Stevenson*, 236 Wis. 2d 86 (2000) and to update the crime to prohibit representations of nudity made, reproduced, or displayed on computers and other types of modern technology. SB₅₅, as approved^{*} by the Joint Committee on Finance, also makes updates for technology to other crimes^{*} for which images are relevant.

This amendment treats s. 944.205[✓] to address the portions of s. 944.205 found unconstitutional by the Wisconsin Supreme Court, but does not make updates for technology.

Robin Ryan
Legislative Attorney
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2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1049/lins
RLR:.....

1 **Insert at 3 after 8:**

- (2) ^{Fix component} 1. Page 1414, line 6: delete "(title)," [✓] and substitute "(2)(a), (am), and" [✓]. (2)(a) and
- 3 2. Page 1414, line 7: delete "(b), (3), and (4)" and substitute "(b) and (3)". ✓
- 4 3. Page 1414, line 10: delete "944.205 (1)". ✓
- (5) ^{Fix component} 4. Page 1414, line 11: delete "944.205 (1) (a)" and substitute "944.205 (2) (am)". ✓
- 6 5. Page 1414, line 12: delete "and (c)".
- # Page 1414, line 12: delete "(b) 1. and 2.," and substitute
"(b) 1. and 2.".

(end ins 3-8)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1049/1dn
RLR:jld:kjf

June 18, 2001

2001 Senate Bill 55, as approved by the Joint Committee on Finance, treats s. 944.205 (representations depicting nudity) to address the portions of the crime that the Wisconsin Supreme Court found unconstitutional in *State v. Stevenson*, 236 Wis. 2d 86 (2000) and to update the crime to prohibit representations of nudity made, reproduced, or displayed on computers and other types of modern technology. SB-55, as approved by the Joint Committee on Finance, also makes updates for technology to other crimes for which images are relevant.

This amendment treats s. 944.205 to address the portions of s. 944.205 found unconstitutional by the Wisconsin Supreme Court, but does not make updates for technology.

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SDC:.....Keckhaver – CN1514, Prohibition relating to representations depicting nudity

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8 in a place and circumstance in which he or she has a reasonable expectation of
9 privacy, if the person taking the photograph or making the motion picture, videotape,
10 or other visual representation knows or has reason to know that the person who is

1 depicted nude does not know of and consent to the taking ~~or making~~ of the
2 photograph or the making of the motion picture, videotape, or other visual
3 representation ~~or reproduction~~.

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7 know was made in violation of par. (a) and that depicts the nudity depicted in the
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9 reproduction did not consent to the making of the reproduction.

10 **SECTION 3957f.** 944.205 (2) (b) of the statutes is amended to read:

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13 that was taken or made ~~without the knowledge and consent of the person who is~~
14 depicted nude in violation of par. (a) or (am), if the person possessing or distributing
15 the representation or reproduction knows or has reason to know that the photograph,
16 motion picture, videotape, or other visual representation or reproduction was taken
17 or made ~~without the knowledge and consent of the person who is depicted nude in~~
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2 guardian, or legal custodian of the child may do any of the following:

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4 ~~photograph~~, motion picture, videotape, or other visual representation reproduction
5 of the child.

6 (b) Distribute a photograph, taken or possessed, or a motion picture, videotape
7 or other visual representation or reproduction made or possessed, under par. (a) if
8 the distribution is not for commercial purposes.”.

9 **2.** Page 1414, line 6: delete “(title), (2) (a) and” and substitute “(2) (a), (am),
10 and”.

11 **3.** Page 1414, line 7: delete “(b), (3), and (4)” and substitute “(b) and (3)”.

12 **4.** Page 1414, line 10: delete “944.205 (1),”.

13 **5.** Page 1414, line 11: delete “944.205 (1) (a)”.

14 **6.** Page 1414, line 12: delete “and (c),”.

15 **7.** Page 1414, line 12: delete “(b) 1. and 2.,” and substitute “(b) 1. and 2.”.

16 (END)