



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3937/P1
MGD: J.S.

1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

FR
12/23
Thanks!

Gen

1 AN ACT ...; relating to: penalties for sexual exploitation of a child and possessing
2 or displaying child pornography, using a computer to facilitate a child sex crime,
3 and child sex offenders working with children, and providing penalties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

INS A

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

4 SECTION 1. 939.617 of the statutes is created to read:
5 **939.617 Mandatory minimum sentence for certain child sex offenses.**
6 If a person is convicted of a violation of s. 948.05 or 948.12, the court shall impose a
7 bifurcated sentence under s. 973.01. The term of confinement in prison portion of the
8 bifurcated sentence shall be at least 5 years. Otherwise the penalties for the crime
9 apply, subject to any applicable penalty enhancement. The court may not place the
10 defendant on probation.

1 SECTION 2. 939.623 of the statutes is renumbered 939.618, and 939.618 (title),
2 as renumbered, is amended to read:

3 939.618 (title) ~~Increased penalty;~~ Mandatory minimum sentence for
4 repeat serious sex crimes.

5 SECTION 3. 939.624 of the statutes is renumbered 939.619, and 939.619 (title),
6 as renumbered, is amended to read:

7 939.619 (title) ~~Increased penalty;~~ Mandatory minimum sentence for
8 repeat serious violent crimes.

9 SECTION 4. 948.05 (1) (intro.) of the statutes is amended to read:

10 948.05 (1) (intro.) Whoever does any of the following with knowledge of the
11 character and content of the sexually explicit conduct involving the child is guilty of
12 a Class F C felony:

13 History: 1987 a. 332; 1999 a. 3; 2001 a. 16, 109.

13 SECTION 5. 948.05 (1m) of the statutes is amended to read:

14 948.05 (1m) Whoever produces, performs in, profits from, promotes, imports
15 into the state, reproduces, advertises, sells, distributes, or possesses with intent to
16 sell or distribute, any recording of a child engaging in sexually explicit conduct is
17 guilty of a Class F C felony if the person knows the character and content of the
18 sexually explicit conduct involving the child and if the person knows or reasonably
19 should know that the child engaging in the sexually explicit conduct has not attained
20 the age of 18 years.

21 History: 1987 a. 332; 1999 a. 3; 2001 a. 16, 109.

21 SECTION 6. 948.05 (2) of the statutes is amended to read:

1 948.05 (2) A person responsible for a child's welfare who knowingly permits,
2 allows or encourages the child to engage in sexually explicit conduct for a purpose
3 proscribed in sub. (1) (a) or (b) or (1m) is guilty of a Class F C felony.

4 History: 1987 a. 332; 1999 a. 3; 2001 a. 16, 109.

4 **SECTION 7.** 948.075 (1) of the statutes is renumbered 948.075 (1r).

5 **SECTION 8.** 948.075 (1g) of the statutes is created to read:

6 948.075 (1g) In this section, "representation" has the meaning given in s.
7 942.09 (1) (c).

8 **SECTION 9.** 948.075 (3) of the statutes is renumbered 948.075 (3) (intro.) and
9 amended to read:

10 948.075 (3) Proof that the actor did an act, other than use a computerized
11 communication system to communicate with the individual, to effect the actor's
12 intent under sub. (1) (1r) shall be necessary to prove that intent. The following are
13 examples of acts that may be used to meet this requirement:

14 History: 2001 a. 109; 2003 a. 321.

14 **SECTION 10.** 948.075 (3) (a) to (k) of the statutes are created to read:

15 948.075 (3) (a) Traveling any distance with the intent to meet the individual.

16 (b) Transmitting a representation of any lewd act to the individual through a
17 computerized communication system.

18 (c) Orally communicating with the individual, including through a telephone
19 or a voice over Internet service.

20 (d) Obtaining any representation of the individual or a person whom the actor
21 believes is the individual through the Internet.

22 (e) Reserving accommodations at any hotel, as defined in s. 254.61 (3)

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With the intent to
meet the individual

1 (f) Making other arrangements related to travel, including making a
 2 reservation for a rental car, renting a car, or making a reservation or purchasing a
 3 ticket for bus, train, or airplane travel.

4 (g) Sending any item by any means, including mail, delivery service, or
 5 personal delivery, with the intent that it be delivered to the individual.

6 (h) Soliciting and receiving any item by any means, including mail, delivery
 7 service, or personal delivery, from the individual.

8 (i) Engaging in surveillance of or a course of conduct, as defined in s. 940.32 (1)
 9 (a), directed at the individual or a person whom the actor believes is the individual.

10 (j) Causing another person to engage in conduct described in par. (i) for the
 11 purpose of enabling the actor to avoid detection by a law enforcement officer.

12 (k) Acquiring sex toys, intimate apparel, or other items that are used primarily
 13 in the course of sexual activity.

14 SECTION 11. 948.12 (1m) (intro.) of the statutes is amended to read:

15 948.12 (1m) (intro.) Whoever possesses any undeveloped film, photographic
 16 negative, photograph, motion picture, videotape, or other recording of a child
 17 engaged in sexually explicit conduct under all of the following circumstances is guilty
 18 of a Class I C felony:

19 History: 1987 a. 332; 1995 a. 67; 2001 a. 16, 109.

20 SECTION 12. 948.12 (2m) (intro.) of the statutes is amended to read:

21 948.12 (2m) (intro.) Whoever exhibits or plays a recording of a child engaged
 22 in sexually explicit conduct, if all of the following apply, is guilty of a Class I C felony:

22 History: 1987 a. 332; 1995 a. 67; 2001 a. 16, 109.

23 SECTION 13. 948.13 (2) (a) of the statutes is amended to read:

24 948.13 (2) (a) Except as provided in pars. (b) and (c), whoever has been
 convicted of a serious child sex offense and subsequently engages in an occupation

INS
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With the intent to meet the individual,

1 or participates in a volunteer position that requires him or her to work or interact
2 ~~primarily and~~ directly with children under 16 years of age is guilty of a Class F felony.

3 History: 1995 a. 265; 1997 a. 130, 220; 1999 a. 3; 2001 a. 97, 109; 2003 a. 321.

SECTION 14. 948.13 (2m) (a) (intro.) of the statutes is amended to read:

4 948.13 (2m) (a) (intro.) A person who has been convicted of a crime under s.
5 948.02 (2) or 948.025 (1) may petition the court in which he or she was convicted to
6 order that the person be exempt from sub. (2) (a) and permitted to engage in an
7 occupation or participate in a volunteer position that requires the person to work or
8 interact ~~primarily and~~ directly with children under 16 years of age. The court may
9 grant a petition filed under this paragraph if the court finds that all of the following
10 apply:

11 History: 1995 a. 265; 1997 a. 130, 220; 1999 a. 3; 2001 a. 97, 109; 2003 a. 321.

SECTION 15. 948.13 (3) of the statutes is amended to read:

12 948.13 (3) Evidence that a person engages in an occupation or participates in
13 a volunteer position relating to any of the following is prima facie evidence that the
14 occupation or position requires him or her to work or interact ~~primarily and~~ directly
15 with children under 16 years of age: teaching children, child care, youth counseling,
16 youth organization, coaching children, parks or playground recreation or school bus
17 driving.

18 History: 1995 a. 265; 1997 a. 130, 220; 1999 a. 3; 2001 a. 97, 109; 2003 a. 321.

(END)

1

analysis INSERT A

This bill makes a number of changes in laws relating to sex offenses against children.

Maximum ^{penalties} and mandatory minimum penalties for child pornography offenses and for sexual exploitation of a child

Current law prohibits a person from knowingly possessing any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct. In addition, current law prohibits a person from knowingly exhibiting or playing a recording of a child engaged in sexually explicit conduct. A person who violates either of these prohibitions is guilty of a Class I felony.

Current law ~~also~~ ^{also} prohibits a person from recording or displaying a child engaged in sexually explicit conduct or from employing, using, persuading, inducing, enticing, or coercing any child to engage in sexually explicit conduct if done for the purpose of recording or displaying the conduct. ^{addition} Similarly, current law prohibits a person from knowingly producing, performing in, profiting from, promoting, importing into the state, reproducing, advertising, selling, or distributing, or possessing with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct. A person who violates one of these prohibitions is guilty of a Class F felony.

*Under
a separate
statute,*

This bill reclassifies the crimes described in the preceding two paragraphs as Class C felonies. (The maximum fine, the maximum sentence length, and the maximum term of confinement for Class C, F, and I felonies are set forth in the table below.) In addition, under the bill, if a person is convicted of a child pornography offense or sexual exploitation of a child, the court must sentence the person to prison and must impose an initial term of confinement of at least five years. The court may not place a defendant who is convicted of one of those offenses on probation.

*One of
those
crimes*

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum sentence length</i>	<i>Maximum term of confinement</i>
Class C felony	\$100,000	40 years	25 years
Class F felony	\$25,000	12.5 years	7.5 years
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“Other acts” in cases alleging the use of a computer to facilitate a child sex crime

Current law prohibits a person from using a computerized communication system to communicate with an individual who the actor believes is under 16 with intent to have sexual contact or sexual intercourse with the individual. In order to show the person’s intent, the state must prove that he or she did an act in furtherance of his or her intent other than use the computerized communication system to communicate with the individual.

This bill specifies some of the acts that may be used to satisfy the “other act” requirement. They include: 1) traveling or making arrangements for travel or a hotel

11

with the intent to meet the individual; 2) transmitting an image of any lewd act to the individual; 3) speaking with the individual; 4) obtaining an image of the individual; 5) sending any item to or receiving other items from the individual; and 6) acquiring sex toys, intimate apparel, or similar items.

Child sex offender working with children

Current law prohibits a person who has committed a serious child sex offense from engaging in an occupation or participating in a volunteer position that requires him or her to work or interact primarily and directly with children who are less than 16 years old. A person who violates this prohibition is guilty of a Class F felony. This bill eliminates the reference to "primarily" in this prohibition, making the prohibition applicable to any occupation or volunteer position that requires a person to work directly with children.

Other information

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

Dsida, Michael

From: Matthews, Pam
Sent: Friday, January 06, 2006 12:01 PM
To: Dsida, Michael
Cc: Hilgemann, Luke; Emerson, Anne
Subject: RE: Internet Sexual Predator bill

Mike,

Mike - an update on the items I mentioned earlier in the attached e-mail....

Sue is fine with placing our surcharge under the DNA one. Also,

1) Sue is thinking that the per image fee s/b \$500 and that 50% goes to DOC, 30% to DOJ, an 20% to the Children's **Trust** Fund.

2) We will not be looking at adding additional language to add to 948.12; and

3) We're still hoping to get info from DOJ on Federal language regarding categorizing by number of images, if you have this that would be great. If we can't find good language perhaps you have a suggestion? I think we need to have something since we have the fine per image, otherwise DA's will be reluctant file charges for more than one image.

I'll be available Friday until noon and Monday until noon at 414-466-0234. Ideally we will get this settled Friday.

Thanks,

Pam

From: Matthews, Pam
Sent: Wednesday, January 04, 2006 2:28 PM
To: Dsida, Michael
Cc: 'Sue Jeskewitz'; Emerson, Anne; Hilgemann, Luke
Subject: RE: Internet Sexual Predator bill

Hi Mike - I have answers to these and a couple other things that came out of a meeting this morning. First your answers:

- 1) I thought we were changing it already to a class "C"...is this not in 948.12? If not, what statue are you referring to?
- 2) Sue does not want to change
- 3) Yes

Sue is still looking into these...

In addition to mandatory minimum senteces, she also wants to provide for a mandatory minimum fine - perhaps \$1,000 per image...and she wants to direct those fines to something other than the school fund, maybe DOJ or DOC to help defray costs associated with these crime.

Also, she is looking at language to add to 948.12 that would define newer technologies not listed. We have sent some language to DOJ for their opinion since they talked her out of doing this at our initial meeting. I'll get back to you on that as soon as I can.

One more item, DOJ is concerned that the way the bill is currently drafted that it is saying that for each "count" there is a minimum of 5 years and that may discourage DA's from charging for more than one image. I thought we discussed this at our initial meeting that we woul have some sort of scale, say 1-50 images, 51-100, 101+. Is there a reason why we didn't do that in this bill?

Let's chat at your earliest convenience.

Pam

From: Dsida, Michael
Sent: Wednesday, January 04, 2006 12:27 PM
To: Matthews, Pam

Subject: RE: Internet Sexual Predator bill

1. If the mandatory minimum for possession of child pornography is 3 years instead of 5, do you still want the classification of that felony to change from Class I to Class C? (As you may remember, the crime could no longer be a Class I felony because the maximum term of confinement for a Class I felony is 1.5 years.)
2. A violation of s. 948.075 is a Class D felony. That felony classification does not need to change to account for the mandatory minimum, but the "1" version of the bill changes violations of ss. 948.05 and 948.12 to Class C felonies. Let me know if you want to make a similar change to s. 948.075.
3. When you refer to "distribution," do you intend to cover all of the conduct described in s. 948.05? That statute covers production, advertising, profiting from, and other types of conduct in addition to distribution.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@legis.state.wi.us

From: Matthews, Pam
Sent: Wednesday, January 04, 2006 10:35 AM
To: Warren, James R.; Schigur, Joell E.; Whitehorse, Susan A.
Subject: Internet Sexual Predator bill

Sue and I discussed the draft of her bill that I sent you yesterday. She asked me to let you know that she is planning to make two more changes to the bill: adding 948.075 to 939.617 (mandatory minimum, page 3, line 3) and to change the mandatory minimum on 948.12 to 3 years for possession and 5 years for distribution.

Sue also asked me to let you know that she is anxious to get this introduced and will be sending this out for co-sponsorship on Monday with the above changes unless she hears of any other potential changes you would like to see before then. Sue apologizes for the fast pace, but given the short timeframe feels it is necessary to get this moving.

Please let me know your thoughts on this by Friday, January 6, 2006.

Thank you,

*Pamela B. Matthews
Research Assistant
Office of Representative Sue Jeskewitz*

*Madison: 608.266.3796
Toll free: 888.529.0024
pam.matthews@legis.state.wi.us*

Dsida, Michael

From: Matthews, Pam
Sent: Thursday, January 12, 2006 4:36 PM
To: Dsida, Michael
Subject: RE: Constitutional questions regarding the surcharge

Mike, I'm sure will defer to your knowledge of what will and won't work from a constitutional standpoint. Since Joell's opinion included a judge, let's go with that. If we hear differently from the others, we can always amend. We want to get this draft out. We were reminded today that there are only 11 session days left and we have to get this going if we want to have a prayer of getting it through this session.

Thanks,
Pam

From: Dsida, Michael
Sent: Thursday, January 12, 2006 4:05 PM
To: Schigur, Joell E.; Matthews, Pam; Warren, James R.; Whitehorse, Susan A.
Subject: RE: Constitutional questions regarding the surcharge

Having the prosecutor decide on his or her own is not an option from a constitutional standpoint.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@legis.state.wi.us

From: Schigur, Joell E.
Sent: Thursday, January 12, 2006 3:57 PM
To: Matthews, Pam; Warren, James R.; Whitehorse, Susan A.
Cc: Dsida, Michael
Subject: RE: Constitutional questions regarding the surcharge

I would prefer to have a prosecutor or judge decide how many images are involved.

From: Matthews, Pam
Sent: Thursday, January 12, 2006 11:17 AM
To: Warren, James R.; Schigur, Joell E.; Whitehorse, Susan A.
Cc: Dsida, Michael
Subject: FW: Constitutional questions regarding the surcharge

Hi everyone,

I sure hope this is the last thing to work out because we really want to get this bill done this session! That said, Sue wanted to get your opinions on the attached comment from the drafter.

Please respond ASAP.

Thanks,

Pam

Pamela B. Matthews

01/12/2006

Research Assistant

Office of Representative Sue Jeskewitz

Madison: 608.266.3796

Toll free: 888.529.0024

pam.matthews@legis.state.wi.us

From: Dsida, Michael
Sent: Wednesday, January 11, 2006 4:52 PM
To: Matthews, Pam
Subject: Constitutional questions regarding the surcharge

I have not found any cases regarding whether a surcharge is even a "penalty" under Wisconsin law, but if it became large enough, a court might view it as violating the constitutional prohibition on excessive fines. (The U.S. Supreme Court has ruled that certain penalties other than fines should be treated in the same way as fines for the purpose of this prohibition.) You may not need to worry about this issue though. If a court determines in a given case that the surcharge is excessive, it would probably just reduce it to a level which it would find constitutional.

A more challenging question is who should decide how many images are involved in a given case. Initially, I was thinking that the judge could make that determination. But if the surcharge is large enough to be treated as a penalty for the purpose of the Excessive Fines Clause, it might also be a criminal penalty for the purpose of the Sixth Amendment, meaning that the jury would have to determine how many images are involved. Is that okay?

Dsida, Michael

From: Matthews, Pam
Sent: Monday, January 09, 2006 3:01 PM
To: Dsida, Michael
Subject: RE: Internet Sexual Predator bill

Sue said that the disbursement should be the same percentage for each dollar coming in - no priority.

From: Dsida, Michael
Sent: Monday, January 09, 2006 12:16 PM
To: Matthews, Pam
Subject: RE: Internet Sexual Predator bill

Sorry for all these questions, but here's one more. How do you want the allocation of the child pornography surcharge itself to be prioritized? Let's say that someone does not have enough money to pay the full amount assessed. Does the first chunk of it go to one of the recipients (DOC, DOJ, or CTF), with the last of the three groups only getting money after the others have gotten theirs -- as is the case with the crime victim and witness surcharge under s. 973.045? (Under that statute, all money paid goes first to Part A for victim and witness programs under chs. 949 and 950 before any of it is paid for grants for sexual assault victim services under Part B.) The other option would be to have 50% of every dollar collected go to DOC, 30% of every dollar collected go to DOJ, and 20% of every dollar collected go to CTF.

From: Matthews, Pam
Sent: Monday, January 09, 2006 11:27 AM
To: Dsida, Michael
Subject: RE: Internet Sexual Predator bill

Yes, that is what Sue was thinking.

From: Dsida, Michael
Sent: Monday, January 09, 2006 11:25 AM
To: Matthews, Pam
Subject: RE: Internet Sexual Predator bill

I assume that the surcharge should also apply to crimes under s. 948.05 (which covers the creation of child pornography -- as well as parents who allow children to participate in the making of child pornography). In those cases, should I link the surcharge to the number of copies that are produced, distributed...? Obviously, a producer or distributor has control over the number of copies that are produced and distributed. Counting becomes more difficult for cases under s. 948.05 (3) (allowing a child to participate) or for cases in which the person charged is an employee of a distributor. One option is to just specify that the surcharge is imposed for each copy of the image associated with the offense and let the court determine whether a particular copy is "associated with" the offense in question.

From: Matthews, Pam
Sent: Monday, January 09, 2006 8:53 AM
To: Dsida, Michael
Subject: RE: Internet Sexual Predator bill

I checked with Sue and yes.

From: Dsida, Michael
Sent: Friday, January 06, 2006 5:09 PM
To: Matthews, Pam
Subject: RE: Internet Sexual Predator bill

Is a movie treated as one "image" for the purpose of the surcharge?

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@legis.state.wi.us



2005 BILL

Tues

Regen

1 AN ACT to renumber 948.075 (1); to renumber and amend 939.623, 939.624
 2 and 948.075 (3); to amend 948.05 (1) (intro.), 948.05 (1m), 948.05 (2), 948.12
 3 (1m) (intro.), 948.12 (2m) (intro.), 948.13 (2) (a), 948.13 (2m) (a) (intro.) and
 4 948.13 (3); and to create 939.617, 948.075 (1g) and 948.075 (3) (a) to (k) of the
 5 statutes; relating to: ~~penalties for sexual exploitation of a child and possessing~~
 6 ~~or displaying child pornography, using a computer to facilitate a child sex crime,~~
 7 child sex offenders working with children, ^{making appropriations,} and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes in laws relating to sex offenses against children.

~~Maximum penalties and mandatory minimum penalties~~ ^{surcharges} for child pornography offenses and for sexual exploitation of a child

relating to child pornography

Current law prohibits a person from knowingly possessing any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct. In addition, current law prohibits a person from knowingly exhibiting or playing a recording of a child engaged in sexually explicit conduct. A person who violates either of these prohibitions is guilty of a Class I felony.

Under a separate statute, current law prohibits a person from recording or displaying a child engaged in sexually explicit conduct or from employing, using,

INS A and

BILL

That statute

persuading, inducing, enticing, or coercing any child to engage in sexually explicit conduct if done for the purpose of recording or displaying the conduct. Current law also prohibits a person from knowingly producing, performing in, profiting from, promoting, importing into the state, reproducing, advertising, selling, or distributing, or possessing with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct. A person who violates one of these prohibitions is guilty of a Class F felony.

three This bill reclassifies the crimes described in the preceding two paragraphs as Class C felonies. (The maximum fine, the maximum sentence length, and the maximum term of confinement for Class C, F, and I felonies are set forth in the table below.) In addition, under the bill, if a person is convicted of one of those crimes, the court must sentence the person to prison and must impose an initial term of confinement of at least five years. The court may not place a defendant who is convicted of one of those crimes on probation. *INS B*

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum sentence length</i>	<i>Maximum term of confinement</i>
Class C felony	\$100,000	40 years	25 years
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INS C

"Other acts" in cases alleging the use of a computer to facilitate a child sex crime

Proof of and penalties for using

Current law prohibits a person from using a computerized communication system to communicate with an individual who the actor believes is under 16 with intent to have sexual contact or sexual intercourse with the individual. In order to show the person's intent, the state must prove that he or she did an act in furtherance of his or her intent other than using the computerized communication system to communicate with the individual. *(the other act requirement)*

INS D

This bill, also specifies some of the acts that may be used to satisfy the "other act" requirement. They include: 1) traveling or making arrangements for travel or a hotel with the intent to meet the individual; 2) transmitting an image of any lewd act to the individual; 3) speaking with the individual; 4) obtaining an image of the individual; 5) sending any item to or receiving other items from the individual; and 6) acquiring sex toys, intimate apparel, or similar items.

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10 **939.618 (title) Increased penalty; Mandatory minimum sentence for**
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10 should know that the child engaging in the sexually explicit conduct has not attained
11 the age of 18 years.

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3 (b) Reserving accommodations at any hotel, as defined in s. 254.61 (3), with the
4 intent to meet the individual.

5 (c) With the intent to meet the individual, making other arrangements related
6 to travel, including making a reservation for a rental car, renting a car, or making
7 a reservation or purchasing a ticket for bus, train, or airplane travel.

8 (d) Transmitting a representation of any lewd act to the individual through a
9 computerized communication system.

10 (e) Orally communicating with the individual, including through a telephone
11 or a voice over Internet service.

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13 believes is the individual through the Internet.

14 (g) Sending any item by any means, including mail, delivery service, or
15 personal delivery, with the intent that it be delivered to the individual.

16 (h) Soliciting and receiving any item by any means, including mail, delivery
17 service, or personal delivery, from the individual.

18 (i) Engaging in surveillance of or a course of conduct, as defined in s. 940.32 (1)
19 (a), directed at the individual or a person whom the actor believes is the individual.

20 (j) Causing another person to engage in conduct described in par. (i) for the
21 purpose of enabling the actor to avoid detection by a law enforcement officer.

22 (k) Acquiring sex toys, intimate apparel, or other items that are used primarily
23 in the course of sexual activity.

24 **SECTION 11.** 948.12 (1m) (intro.) of the statutes is amended to read:

BILL

1 948.12 (1m) (intro.) Whoever possesses any undeveloped film, photographic
2 negative, photograph, motion picture, videotape, or other recording of a child
3 engaged in sexually explicit conduct under all of the following circumstances is guilty
4 of a Class I C felony:

5 **SECTION 12.** 948.12 (2m) (intro.) of the statutes is amended to read:

6 948.12 (2m) (intro.) Whoever exhibits or plays a recording of a child engaged
7 in sexually explicit conduct, if all of the following apply, is guilty of a Class I C felony:

8 **SECTION 13.** 948.13 (2) (a) of the statutes is amended to read:

9 948.13 (2) (a) Except as provided in pars. (b) and (c), whoever has been
10 convicted of a serious child sex offense and subsequently engages in an occupation
11 or participates in a volunteer position that requires him or her to work or interact
12 ~~primarily and~~ directly with children under 16 years of age is guilty of a Class F felony.

13 **SECTION 14.** 948.13 (2m) (a) (intro.) of the statutes is amended to read:

14 948.13 (2m) (a) (intro.) A person who has been convicted of a crime under s.
15 948.02 (2) or 948.025 (1) may petition the court in which he or she was convicted to
16 order that the person be exempt from sub. (2) (a) and permitted to engage in an
17 occupation or participate in a volunteer position that requires the person to work or
18 interact ~~primarily and~~ directly with children under 16 years of age. The court may
19 grant a petition filed under this paragraph if the court finds that all of the following
20 apply:

21 **SECTION 15.** 948.13 (3) of the statutes is amended to read:

22 948.13 (3) Evidence that a person engages in an occupation or participates in
23 a volunteer position relating to any of the following is prima facie evidence that the
24 occupation or position requires him or her to work or interact ~~primarily and~~ directly
25 with children under 16 years of age: teaching children, child care, youth counseling,

BILL

1 youth organization, coaching children, parks or playground recreation or school bus
2 driving.

3

(END)

INS 7/2

INS X ←

Section #. CR

25.67(2)(a) 3. ✓
Moneys received under s. ~~25.67(2)(a) 3.~~ 973.042. ✓

[Eds/LPS:
This goes into the insert at 1/17]

as part of any child pornography
surcharge

1 **analysis INSERT A**

no # sexually exploiting a child. Specifically, it prohibits

2 **analysis INSERT B**

no # for a child pornography conviction and at least five years for a conviction for sexually exploiting a child.

3 **analysis INSERT C**

X The bill also requires the court to impose a child pornography surcharge on any person convicted of a child pornography offense or of sexual exploitation of a child. The surcharge is \$500 for each image or copy of an image associated with the offense, with the number of images to be determined by the judge. Fifty percent of the surcharge goes to the Department of Corrections to pay for its operations; 30 percent of the surcharge goes to the Department of Justice to pay for investigating child pornography offenses and sexual exploitation of children; and 20 percent of it goes to the Children's Trust Fund for various grant programs.

4 **analysis INSERT D**

Under this bill, if a person is convicted of this offense, the court must sentence the person to prison and must impose an initial term of confinement of at least five years. The court may not place the defendant on probation. The

5 **INSERT 3/0**

6 **SECTION 1.** 20.410 (1) (gj) of the statutes is created to read:

7 20.410 (1) (gj) *General operations; child pornography surcharge.* All moneys
8 received as part A of any child pornography surcharge imposed under s. 973.042 to
9 operate institutions and to provide field and administrative services.

10 **SECTION 2.** 20.433 (1) (gj) of the statutes is created to read:

11 20.433 (1) (gj) *Grants to organizations; child pornography surcharge.* All
12 moneys received as part C of any child pornography surcharge imposed under s.
13 973.042 for grants to organizations under s. 48.982 (4), (6), and (7).

14 **SECTION 3.** 20.455 (2) (gj) of the statutes is created to read:

15 20.455 (2) (gj) *General operations; child pornography surcharge.* All moneys
16 received as part B of any child pornography surcharge imposed under s. 973.042 for
17 investigating offenses under s. 948.05 or 948.12.

NS
X
(separate insert sheet)

1 **SECTION 4.** 46.07 of the statutes, as affected by 2005 Wisconsin Act 25, is
2 amended to read:

3 **46.07 Property of patients or residents.** All money including wages and
4 other property delivered to an officer or employee of any institution for the benefit
5 of a patient or resident shall immediately be delivered to the steward, who shall enter
6 the money upon the steward's books to the credit of the patient or resident. The
7 property shall be used only under the direction and with the approval of the
8 superintendent and for the crime victim and witness assistance surcharge under s.
9 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34
10 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046, the child
11 pornography surcharge under s. 973.042, the drug offender diversion surcharge
12 under s. 973.043, or the benefit of the patient or resident. If the money remains
13 uncalled for for one year after the patient's or resident's death or departure from the
14 institution, the superintendent shall deposit the money in the general fund. If any
15 patient or resident leaves property, other than money, uncalled for at an institution
16 for one year, the superintendent shall sell the property, and the proceeds shall be
17 deposited in the general fund. If any person satisfies the department, within 5 years
18 after the deposit, of his or her right to the deposit, the department shall direct the
19 department of administration to draw its warrant in favor of the claimant and it shall
20 charge the same to the appropriation made by s. 20.913 (3) (c).

NOTE: NOTE: The bracketed language indicates a word inadvertently omitted by 2005 Wis. Act. 25. Corrective legislation is pending. NOTE:
History: 1979 c. 221 s. 2202 (20); 1983 a. 27; 1989 a. 31, 107; 1993 a. 16; 1997 a. 27; 2005 a. 25.

21 **SECTION 5.** 48.982 (4) (a) of the statutes, as affected by 2005 Wisconsin Act 25,
22 is amended to read:

23 48.982 (4) (a) From the appropriations under s. 20.433 (1) (b), (g), (h), (i), (k),
24 (m), and (q), the board shall award grants to organizations in accordance with the

1 plan developed under sub. (2) (a). In each of the first 2 fiscal years in which grants
2 are awarded, no organization may receive a grant or grants totaling more than
3 \$30,000.

History: 1983 a. 27; 1983 a. 109 s. 6; 1985 a. 29 ss. 930s, 3202 (8); 1987 a. 27, 184, 255; 1989 a. 31, 336; 1991 a. 32, 39; 1993 a. 16, 437, 444, 491; 1995 a. 27 ss. 2622 to 2623d, 9126 (19); 1995 a. 275; 1997 a. 27, 78, 252, 293; 1999 a. 9; 2001 a. 16; 2005 a. 25.

4 **SECTION 6.** 48.982 (6) (a) of the statutes, as affected by 2005 Wisconsin Act 25,
5 is amended to read:

6 48.982 (6) (a) From the appropriations under s. 20.433 (1) (b), (g)[✓], (h), (i), (k),
7 (ma), and (q), the board shall award grants to organizations in accordance with the
8 request-for-proposal procedures developed under sub. (2) (a). No organization may
9 receive a grant or grants under this subsection totaling more than \$150,000 in any
10 year.

History: 1983 a. 27; 1983 a. 109 s. 6; 1985 a. 29 ss. 930s, 3202 (8); 1987 a. 27, 184, 255; 1989 a. 31, 336; 1991 a. 32, 39; 1993 a. 16, 437, 444, 491; 1995 a. 27 ss. 2622 to 2623d, 9126 (19); 1995 a. 275; 1997 a. 27, 78, 252, 293; 1999 a. 9; 2001 a. 16; 2005 a. 25.

11 **SECTION 7.** 48.982 (7) (a) of the statutes, as affected by 2005 Wisconsin Act 25,
12 is amended to read:

13 48.982 (7) (a) From the appropriations under s. 20.433 (1) (b), (g)[✓], (h), (i), (k),
14 and (q), the board shall award grants to organizations in accordance with the plan
15 developed under sub. (2) (a).

History: 1983 a. 27; 1983 a. 109 s. 6; 1985 a. 29 ss. 930s, 3202 (8); 1987 a. 27, 184, 255; 1989 a. 31, 336; 1991 a. 32, 39; 1993 a. 16, 437, 444, 491; 1995 a. 27 ss. 2622 to 2623d, 9126 (19); 1995 a. 275; 1997 a. 27, 78, 252, 293; 1999 a. 9; 2001 a. 16; 2005 a. 25.

16 **SECTION 8.** 301.32 (1) of the statutes, as affected by 2005 Wisconsin Act 25, is
17 amended to read:

18 **301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT.**
19 All money and other property delivered to an employee of any state correctional
20 institution for the benefit of a prisoner or resident shall be delivered to the warden
21 or superintendent, who shall enter the property upon his or her accounts to the credit
22 of the prisoner or resident. The property may be used only under the direction and
23 with the approval of the superintendent or warden and for the crime victim and

1 witness assistance surcharge under s. 973.045 (4), the delinquency victim and
 2 witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid
 3 analysis surcharge under s. 973.046, the child pornography surcharge under s.
 4 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the
 5 prisoner or resident. If the money remains uncalled for for one year after the
 6 prisoner's or resident's death or departure from the state correctional institution, the
 7 superintendent shall deposit it in the general fund. If any prisoner or resident leaves
 8 property, other than money, uncalled for at a state correctional institution for one
 9 year, the superintendent shall sell the property and deposit the proceeds in the
 10 general fund, donate the property to a public agency or private, nonprofit
 11 organization or destroy the property. If any person satisfies the department, within
 12 5 years after the deposit, of his or her right to the deposit, the department shall direct
 13 the department of administration to draw its warrant in favor of the claimant and
 14 it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

History: 1989 a. 31 ss. 980, 981, 2569; 1991 a. 189, 315; 1993 a. 16; 1995 a. 27, 417; 1997 a. 27, 283, 289; 2001 a. 103; 2005 a. 25.

15 **SECTION 9.** 302.13 of the statutes, as affected by 2005 Wisconsin Act 25, is
 16 amended to read:

17 **302.13 Preservation of property an inmate brings to prison.** The
 18 department shall preserve money and effects, except clothes, in the possession of an
 19 inmate when admitted to the prison and, subject to the crime victim and witness
 20 assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis
 21 surcharge under s. 973.046, the child pornography surcharge under s. 973.042, and
 22 the drug offender diversion surcharge under s. 973.043, shall restore the money and
 23 effects to the inmate when discharged.

History: 1973 c. 90; 1983 a. 27; 1985 a. 120; 1989 a. 31 s. 1632; Stats. 1989 s. 302.13; 1993 a. 16; 2005 a. 25.

1 **SECTION 10.** 303.01 (8) (b) of the statutes, as affected by 2005 Wisconsin Act 25,
2 is amended to read:

3 303.01 (8) (b) The department shall distribute earnings of an inmate or
4 resident, other than an inmate or resident employed under sub. (2) (em), for the crime
5 victim and witness assistance surcharge under s. 973.045 (4), for the delinquency
6 victim and witness assistance surcharge under s. 938.34 (8d) (c), for the
7 deoxyribonucleic acid analysis surcharge under s. 973.046 (4) and for compliance
8 with s. 303.06 (2) and may distribute earnings for the support of the inmate's or
9 resident's dependents and for other obligations either acknowledged by the inmate
10 or resident in writing or which have been reduced to judgment that may be satisfied
11 according to law. The department may also distribute earnings for the child
12 pornography surcharge under s. 973.042 or the drug offender diversion surcharge
13 under s. 973.043, but only if the inmate or resident has first provided for the
14 reasonable support of his or her dependents.

History: 1975 c. 41 s. 52; 1975 c. 224, 396; 1977 c. 26 ss. 42, 75; 1983 a. 27; 1983 a. 189 s. 329 (28); 1983 a. 524; 1987 a. 27; 1989 a. 31 s. 1673c; Stats. 1989 s. 303.01; 1989 a. 283; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 27, 36; 1999 a. 9, 32; 2001 a. 16; 2005 a. 25.

15 **SECTION 11.** 303.01 (8) (c) 7m. of the statutes is created to read:

16 303.01 (8) (c) 7m. Payment of the child pornography surcharge under s.
17 973.042.

18 **SECTION 12.** 303.065 (5) (cg) of the statutes is created to read:

19 303.065 (5) (cg) Payment of the child pornography surcharge under s. 973.042.

20 **SECTION 13.** 814.75 (1) of the statutes is renumbered 814.75 (1r).

21 **SECTION 14.** 814.75 (1g) of the statutes is created to read:

22 814.75 (1g) The child pornography surcharge under s. 973.042.

23 **SECTION 15.** 814.76 (1) of the statutes is renumbered 814.76 (1r).

24 **SECTION 16.** 814.76 (1g) of the statutes is created to read:

1 814.76 (1g) The child pornography surcharge under s. 973.042.

2 **INSERT 3/5**

3 ~~no~~ for violations of s. 948.05 or 948.075 and 3 years for violations of s. 948.12.

4 **INSERT 7/2**

5 SECTION 17. 973.042 of the statutes is created to read:

6 **973.042 Child pornography surcharge.** (1) In this section, "image"
7 includes a video recording, a visual representation, a positive or negative image on
8 exposed film, and data representing a visual image.

9 (2) If a court imposes a sentence or places a person on probation for a crime
10 under s. 948.05 or 948.12, the court shall impose a child pornography surcharge of
11 \$500 for each image or each copy of an image associated with the crime. The court
12 shall determine the number or images or copies of images associated with the crime
13 by a preponderance of the evidence and without a jury.

14 (3) The clerk shall record any surcharge imposed under this section in 3 parts
15 as follows:

16 (a) Part A is 50 percent of any amount collected.

17 (b) Part B is 30 percent of any amount collected.

18 (c) Part C is 20 percent of any amount collected.

19 (4) After determining the amount due, the clerk of court shall collect and
20 transmit the amount to the county treasurer under s. 59.40 (2) (m). The county
21 treasurer shall then make payment to the secretary of administration under s. 59.25
22 (3) (f) 2.

23 (5) The secretary of administration shall credit part A of the surcharge to the
24 appropriation account under s. 20.410 (1) (gj). The secretary of administration shall
25 credit part B of the surcharge to the appropriation account under s. 20.455 (2) (gj).

1 The secretary of administration shall deposit part C of the surcharge in the children's trust
2 fund and credit it to the appropriation account under s. 20.433 (1) (gj).

3 (6) If an inmate in a state prison or a person sentenced to a state prison has
4 not paid the ~~drug offender diversion~~ surcharge under this section, the department
5 shall assess and collect the amount owed from the inmate's wages or other moneys.
6 Any amount collected under this subsection shall be transmitted to the secretary of
7 administration.

8 SECTION 18. 973.05 (2m) of the statutes, as affected by 2005 Wisconsin Act 25,
9 is amended to read:

10 973.05 (2m) Payments under this section shall be applied first to payment of
11 the penalty surcharge until paid in full, shall then be applied to the payment of the
12 jail surcharge until paid in full, shall then be applied to the payment of part A of the
13 crime victim and witness assistance surcharge until paid in full, shall then be
14 applied to part B of the crime victim and witness assistance surcharge until paid in
15 full, shall then be applied to the crime laboratories and drug law enforcement
16 surcharge until paid in full, shall then be applied to the deoxyribonucleic acid
17 analysis surcharge until paid in full, shall then be applied to the child pornography
18 surcharge until paid in full, shall then be applied to the drug abuse program
19 improvement surcharge until paid in full, shall then be applied to the drug offender
20 diversion surcharge until paid in full, shall then be applied to payment of the driver
21 improvement surcharge until paid in full, shall then be applied to the truck driver
22 education surcharge if applicable until paid in full, shall then be applied to payment
23 of the domestic abuse surcharge until paid in full, shall then be applied to payment
24 of the consumer protection surcharge until paid in full, shall then be applied to
25 payment of the natural resources surcharge if applicable until paid in full, shall then

1 be applied to payment of the natural resources restitution surcharge until paid in
 2 full, shall then be applied to the payment of the environmental surcharge if
 3 applicable until paid in full, shall then be applied to the payment of the wild animal
 4 protection surcharge if applicable until paid in full, shall then be applied to payment
 5 of the weapons surcharge until paid in full, shall then be applied to payment of the
 6 uninsured employer surcharge until paid in full, shall then be applied to payment
 7 of the enforcement surcharge under s. 253.06 (4) (c), if applicable, until paid in full,
 8 and shall then be applied to payment of the fine and the costs and fees imposed under
 9 ch. 814.

History: 1977 c. 29; 1979 c. 34, 111; 1981 c. 20, 88, 352; 1983 a. 27, 535; 1985 a. 36; 1987 a. 27, 339, 398; 1989 a. 64, 107, 359; 1991 a. 39; 1993 a. 16; 1995 a. 227, 438, 448; 1997 a. 3, 27, 35, 148, 248; 1999 a. 9, 32; 2001 a. 16, 56, 105; 2003 a. 139; 2005 a. 25.

10 **SECTION 19. Initial applicability.**

11 (1) The treatment of section 973.042[✓] of the statutes first applies to violations
 12 of section 948.05[✓] or 948.12[✓] of the statutes that are committed on the effective date
 13 of this subsection.[✓]