

**2009 DRAFTING REQUEST**

**Bill**

Received: **12/07/2009**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Justice**

By/Representing: **Cindy Polzin**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - crimes agnst kids  
Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **polzinm@doj.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Internet crimes against children combination

---

**Instructions:**

See attached--combine -2249 and -2250

*Jacket  
sent to  
sen Lassa 1-26-  
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>
/?	chanaman 12/07/2009	bkraft 12/07/2009		_____			S&L Crime
/1	chanaman 01/11/2010	bkraft 01/12/2010	mduchek 12/08/2009	_____	lparisi 12/08/2009		S&L Crime
/2			phenry 01/12/2010	_____	lparisi 01/12/2010	mbarman 01/25/2010	

FE Sent For:

<END>

→ At  
Intro.

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/?	chanaman 12/07/2009	bkraft 12/07/2009		_____			S&L Crime
/1			mduchek 12/08/2009	_____	lparisi 12/08/2009		

FE Sent For:

12 bjk 1/11

Y  
1/12  
pl

1/12  
ph  
1/15  
<END>

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/?	chanaman	1 bjk <sup>12/7</sup>		_____			
				_____			

FE Sent For:

<END>

**Hanaman, Cathlene**

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**From:** Polzin, Cindy M. [polzincm@doj.state.wi.us]  
**Sent:** Monday, December 07, 2009 9:44 AM  
**To:** Hanaman, Cathlene  
**Subject:** LRB 2249 & LRB 2250  
**Attachments:** 2nd Prelim draft - LRB - 10-19-09.pdf, 09-2249P1 - LRB draft - attempt.pdf

Hi Cathlene -

Thanks for working with Mike Schaeffer in our office on the Internet Crimes against Children legislation. Currently, we have 2 drafts, LRB 2249 and LRB 2250. Can you please combine those two LRBs into one bill? When this is completed, can you please let me know? Thank you!

Cindy

Cindy Polzin  
Policy Advisor  
Office of the Attorney General  
608.266.1221  
[polzincm@doj.state.wi.us](mailto:polzincm@doj.state.wi.us)



State of Wisconsin  
2009 - 2010 LEGISLATURE

In 12/17

FROM  
2250/P2

LRB 2250/P2  
CMH:bjk:md

3955/1  
stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA  
x-ref

Inserts

gen cat

1 AN ACT *to create* 971.23 (11) of the statutes; **relating to:** evidentiary recordings  
of persons under the age of 18 engaging in sexually explicit conduct **and** **INS REL**

**Analysis by the Legislative Reference Bureau**

Under current law, a district attorney must disclose to the defense, and permit the defense to inspect, copy, or photograph, any physical evidence that the district attorney intends to use as evidence against that defendant in a trial. Under this bill, if the evidence is a recording of a child engaging in sexually explicit conduct, the defense may not receive a copy of the recording and may inspect the recording only in a location maintained by the court or a law enforcement agency, one of which must, under this bill, retain possession, custody, and control of the recording and must provide the defense opportunity for examining, inspecting, and viewing the recording.

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

INS  
A

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

3 SECTION 1. 971.23 (11) of the statutes is created to read:

4 971.23 (11) CHILD PORNOGRAPHY RECORDINGS. (a) In this subsection:

INS  
1-3

1           1. "Defense" means the defendant, his or her attorney, and any individual  
2 retained by the defendant or his or her attorney for the purpose of providing  
3 testimony if the testimony is expert testimony that relates to an item or material  
4 included under par. (b).

5           2. "Reasonably available" means sufficient opportunity for inspection, viewing,  
6 and examination at a law enforcement or government facility.

7           3. "Sexually explicit conduct" has the meaning given in s. 948.01 (7).

8           (b) Any undeveloped film, photographic negative, photograph, motion picture,  
9 videotape, or recording, which includes any item or material that would be included  
10 under s. 948.01 (3r), or any copy of the foregoing, that is of a person who has not  
11 attained the age of 18 and who is engaged in sexually explicit conduct and that is in  
12 the possession, custody, and control of the state shall remain in the possession,  
13 custody, and control of a law enforcement agency or a court but shall be made  
14 reasonably available to the defense.

15           (c) 1. Notwithstanding sub. (1) (e) and (g), a court shall deny any request by the  
16 defense to provide, and a district attorney or law enforcement agency may not  
17 provide to the defense, any item or material required in par. (b) to remain in the  
18 possession, custody, and control of a law enforcement agency or court, except that a  
19 court may order that a copy of an item or material included under par. (b) be provided  
20 to the defense if that court finds that a copy of the item or material has not been made  
21 reasonably available to the defense. The defense shall have the burden to establish  
22 that the item or material has not been made reasonably available.

23           2. If a court orders under subd. 1. a copy of an item or material included under  
24 par. (b) to be provided to the defense, the court shall enter a protective order under  
25 sub. (6) that ensures that the copy provided to the defense is not copied or

1 disseminated by the defense and is returned to the court or law enforcement agency,  
2 whichever is appropriate, at the completion of the trial.

3 (d) Any item or material that is required under par. (b) to remain in possession,  
4 custody, and control of a law enforcement agency or court is not subject to the right  
5 of inspection or copying under s. 19.35 (1).

6 **SECTION 2. Initial applicability.**

7 (1) This act first applies to any item or material that has not been provided on  
8 the effective date of this subsection.

9 (END)

The treatment of section 971.23<sup>Δ</sup>(11) of the statutes



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2249/P1  
CMH:nwn:ph

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to amend* 948.055 (1) and 948.075 (1r); and *to create* 939.32 (1) (cr) and  
2 (de) of the statutes; **relating to:** attempt of certain sex crimes against children  
3 and providing penalties

INS MEL

~~***Analysis by the Legislative Reference Bureau***~~

Under current law, a person who causes a person under the age of 18 to view or listen to sexually explicit conduct is guilty of a felony if the viewing or listening is for sexual arousal or gratification of the actor or for humiliating or degrading the person under the age of 18. Also under current law, a person who communicates via a computer with an individual whom the person believes is under 16 years old with the intent to have sexual intercourse or sexual contact with an individual under 16 years old is guilty of a felony. This bill makes the attempt to do either of these crimes a felony punishable as the completed crime would currently be punishable.

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.

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

INS  
A

1 SECTION 1. 939.32 (1) (cr) and (de) of the statutes are created to read:

2 939.32 (1) (cr) Whoever attempts to commit a crime under s. 948.055 (1) is  
3 subject to the penalty for the completed act, as provided in s. 948.055 (2).

4 (de) Whoever attempts to commit a crime under s. 948.075 (1r) is subject to the  
5 penalty provided in that subsection for the completed act.

6 SECTION 2. 948.055 (1) of the statutes is amended to read:

7 948.055 (1) Whoever intentionally causes, or attempts to cause, a child who has  
8 not attained 18 years of age to view or listen to sexually explicit conduct may be  
9 penalized as provided in sub. (2) if the viewing or listening is, or would be, for the  
10 purpose of sexually arousing or gratifying the actor or humiliating or degrading the  
11 child.

12 SECTION 3. 948.075 (1r) of the statutes is amended to read:

13 948.075 (1r) Whoever uses a computerized communication system to  
14 communicate or attempt to communicate with an individual who the actor believes  
15 or has reason to believe has not attained the age of 16 years with intent to have sexual  
16 contact or sexual intercourse with ~~the individual~~ an individual who has not attained  
17 the age of 16 years in violation of s. 948.02 (1) or (2) is guilty of a Class C felony.

18 SECTION 4. ~~Initial applicability.~~

19 (1) This act first applies to acts committed ~~on the effective date of this~~  
20 subsection.

1-3  
185

## Hanaman, Cathlene

---

**From:** Schaefer, Michael G. [SchaeferMG@DOJ.STATE.WI.US]  
**Sent:** Thursday, December 10, 2009 1:40 PM  
**To:** Hanaman, Cathlene  
**Cc:** Polzin, Cindy M - DOJ  
**Subject:** LRB - 3955/1 - final comments (this time I mean it)

**Importance:** High

Cathlene,

Cindy Polzin forwarded to me LRB-3955/1 for final review. I am chagrined to say that, despite having passed on the language before, I now have some additional suggestions. Hopefully, they will simplify.

As you know, LRB-3955/1 combines the proposals in LRB-2249 and -2250. I had previously approved them here at DOJ but on reflection have the following thoughts/suggestions. I will refer to the sections, pages, and lines in 3955/1.

Re: the "discovery" proposal in Section 4, proposed section 971.23(11)(c)(2) (at page 3, lines 24-25) now reads: "... the court shall enter a protective order under sub. (6) that ensures that the copy provided to the defense is not copied or ....". I want to assure that the language describing what the protective order *must* ensure or require is not viewed as limiting what the order *can* require. This may be a hyper-technical concern but ... . So I suggest it be changed to read "... the court shall enter a protective order under sub. (6) that ensures includes, but is not limited to, orders that the copy provided to the defense is not copied, printed or ...".

Re: the "attempts" language in Sections 1, 2, and 3 of 3955/1, we believe we can effectively streamline this proposal by simply deleting entirely Sections 2 and 3.

Frankly, I had not previously noticed the significance of what is now Section 1 of 3955/1, creating new sub-paragraphs in the attempt statute, specifically 939.32 (1)(cr) and (de). Those proposed new sub-paragraphs provide that an attempt to commit the crimes in 948.055(1) and 948.075(1r), respectively, are punishable to the same extent as the completed crimes. Sections 2 and 3 then incorporate that same notion in the substantive statute (this was the extent of our original proposal). We question the need to do both and we prefer LRB's approach of simply including the provision in the "Attempt" statute. Such an approach has the benefit of leaving the language of the substantive crime untouched. Existing sections 939.32(1)(c), (cm), (d), (e), (f) and (g) each contain the language that the attempt to commit a certain crime is punishable to the same extent as the completed act. Of those 6 sub-sections, 3 do not contain the repetition in the substantive statute (of course, 3 do). It does not appear to be *necessary* to do both.

Our reason for proposing the provision that made an "attempt" punishable to the same extent as the completed crimes especially for 948.075(1r) was that many cases under that provision were charged as "attempts" by prosecutors because of confusion about what "individual" the actor had to intend to have sex with to complete the crime (if it is an actual child, then the crime can never be completed when the actor is communicating with an adult undercover investigator in a chat room). Part of the reason I now prefer the approach of simply removing Sections 2 and 3 and leaving the substantive language alone is that the newly proposed language in 948.075(1r) (at Section 3, page2, lines 16 -17 of 3955/1) is confusing to me and is unnecessary from a practical perspective if the potential penalty for the completed crime and an attempt is the same. I'm not sure anymore if I proposed that language to begin with, but in looking at it now, I don't like it.

Please advise if you have questions or concerns. We do hope to have this draft hammered out as soon as practicable (given my back and forth).

Michael G. Schaefer  
Assistant Attorney General

WI Dept. of Justice  
17 West Main St.  
PO Box 7857  
Madison, WI 53707-7857  
608.267.2070 / 608.267.2778 (FAX)  
schaefermg@doj.state.wi.us

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## 2009 BILL

SA

Refer cat

1 AN ACT *to amend* 948.055 (1) and 948.075 (1r); and *to create* 939.32 (1) (cr) and  
 2 (de) and 971.23 (11) of the statutes; **relating to:** evidentiary recordings of  
 3 persons under the age of 18 engaging in sexually explicit conduct and attempt  
 4 of certain sex crimes against children and providing penalties.

### *Analysis by the Legislative Reference Bureau*

> Under current law, a district attorney must disclose to the defense, and permit the defense to inspect, copy, or photograph, any physical evidence that the district attorney intends to use as evidence against that defendant in a trial. Under this bill, if the evidence is a recording of a child engaging in sexually explicit conduct, the defense may not receive a copy of the recording and may inspect the recording only in a location maintained by the court or a law enforcement agency, one of which must, under this bill, retain possession, custody, and control of the recording and must provide the defense opportunity ~~to~~ examining, inspecting, and viewing the recording.

Under current law, a person who causes a person under the age of 18 to view or listen to sexually explicit conduct is guilty of a felony if the viewing or listening is for sexual arousal or gratification of the actor or for humiliating or degrading the person under the age of 18. Also under current law, a person who communicates via a computer with an individual whom the person believes is under 16 years old with the intent to have sexual intercourse or sexual contact with an individual under 16 years old is guilty of a felony. This bill makes the attempt to do either of these crimes a felony punishable as the completed crime would currently be punishable.

20# The defense may receive a copy for limited purposes only if a court finds that the defense has not had opportunity to examine, inspect, or view the recording.

**BILL**

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.

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6           **SECTION 2.** 948.055 (1) of the statutes is amended to read:

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17 the age of 16 years in violation of s. 948.02 (1) or (2) is guilty of a Class C felony.

18           **SECTION 4.** 971.23 (11) of the statutes is created to read:

19           971.23 (11) CHILD PORNOGRAPHY RECORDINGS. (a) In this subsection:

**BILL**

1           1. "Defense" means the defendant, his or her attorney, and any individual  
2 retained by the defendant or his or her attorney for the purpose of providing  
3 testimony if the testimony is expert testimony that relates to an item or material  
4 included under par. (b).

5           2. "Reasonably available" means sufficient opportunity for inspection, viewing,  
6 and examination at a law enforcement or government facility.

7           3. "Sexually explicit conduct" has the meaning given in s. 948.01 (7).

8           (b) Any undeveloped film, photographic negative, photograph, motion picture,  
9 videotape, or recording, which includes any item or material that would be included  
10 under s. 948.01 (3r), or any copy of the foregoing, that is of a person who has not  
11 attained the age of 18 and who is engaged in sexually explicit conduct and that is in  
12 the possession, custody, and control of the state shall remain in the possession,  
13 custody, and control of a law enforcement agency or a court but shall be made  
14 reasonably available to the defense.

15           (c) 1. Notwithstanding sub. (1) (e) and (g), a court shall deny any request by the  
16 defense to provide, and a district attorney or law enforcement agency may not  
17 provide to the defense, any item or material required in par. (b) to remain in the  
18 possession, custody, and control of a law enforcement agency or court, except that a  
19 court may order that a copy of an item or material included under par. (b) be provided  
20 to the defense if that court finds that a copy of the item or material has not been made  
21 reasonably available to the defense. The defense shall have the burden to establish  
22 that the item or material has not been made reasonably available.

23           2. If a court orders under subd. 1. a copy of an item or material included under  
24 par. (b) to be provided to the defense, the court shall enter a protective order under  
25 sub. (6) that ~~ensures~~ that the copy provided to the defense ~~is~~ not copied or

includes  
an order

may

printed

**BILL**

shall be

1 disseminated by the defense and ~~is~~ returned to the court or law enforcement agency,  
2 whichever is appropriate, at the completion of the trial.

3 (d) Any item or material that is required under par. (b) to remain in possession,  
4 custody, and control of a law enforcement agency or court is not subject to the right  
5 of inspection or copying under s. 19.35 (1).

6 **SECTION 5. Initial applicability.**

7 (1) The treatment of section 971.23 (11) of the statutes first applies to any item  
8 or material that has not been provided on the effective date of this subsection.

9 (END)

**Basford, Sarah**

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**From:** Polzin, Cindy M. [polzincm@doj.state.wi.us]

**Sent:** Monday, January 25, 2010 3:11 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 09-3955/2 Topic: Internet crimes against children combination

Please Jacket LRB 09-3955/2 for the SENATE.

01/25/2010

**Parisi, Lori**

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**From:** Polzin, Cindy M. [polzinm@doj.state.wi.us]  
**Sent:** Tuesday, January 26, 2010 8:52 AM  
**To:** Parisi, Lori  
**Subject:** RE: Draft review: LRB 09-3955/2 Topic: Internet crimes against children combination

Can this LRB, when jacketed for the Senate, be sent to Senator Julie Lassa's office, Room 323 South. Thanks!

---

**From:** Parisi, Lori [mailto:Lori.Parisi@legis.wisconsin.gov]  
**Sent:** Tuesday, January 12, 2010 2:22 PM  
**To:** Polzin, Cindy M.  
**Subject:** Draft review: LRB 09-3955/2 Topic: Internet crimes against children combination

**State of Wisconsin - Legislative Reference Bureau**  
**One East Main Street - Suite 200 - Madison**

**The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent.** If you have any questions concerning the draft or would like to have it redrafted, please contact Cathlene M. Hanaman, Deputy Chief, at (608) 267-9810, at [cathlene.hanaman@legis.wisconsin.gov](mailto:cathlene.hanaman@legis.wisconsin.gov), or at One East Main Street, Suite 200.

**If you would like to jacket the draft for introduction, please click on the appropriate button below. Please select only one button.** If you wish to introduce this draft in both houses please contact the drafting attorney to have a companion bill drafted.

**Jacket for the  
ASSEMBLY**

**Jacket for the  
SENATE**

**Please allow one day for jacketing. If this is a "rush" please make a note in your response e-mail so we are aware that we need to give this request a high priority.**

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at [LRB.Legal@legis.wisconsin.gov](mailto:LRB.Legal@legis.wisconsin.gov) or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

**Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.**