

2011 DRAFTING REQUEST

Bill

Received: 01/17/2011

Received By: **chanaman**

Wanted: **As time permits**

Companion to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Jessica Ford Kelly**

May Contact:

Drafter: **chanaman**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Internet crimes against children combination

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>
/?	chanaman 01/17/2011	kfollett 01/28/2011		_____			S&L Crime
/1	chanaman 04/01/2011	kfollett 04/01/2011	rschluet 01/28/2011	_____	sbasford 01/28/2011		S&L Crime
/2			rschluet 04/01/2011	_____	ggodwin 04/01/2011	ggodwin 04/04/2011	

FE Sent For:

At Introduction

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/?	chanaman	1/15/11 1/28		_____	_____		

FE Sent For:

<END>

Hanaman, Cathlene

From: Kelly, Jessica
Sent: Tuesday, January 11, 2011 1:23 PM
To: Hanaman, Cathlene
Subject: Can you please redraft this for this session?

Attachments: 09-39552.pdf



09-39552.pdf (24
KB)

Jessica Ford Kelly

Office of Senator Julie Lassa
State Capitol, Room 323 South
P.O. Box 7882
Madison, WI 53708
1-800-925-7491 tollfree
608-266-3123 local
608-267-6797 fax



State of Wisconsin
2009 - 2010 LEGISLATURE

1069/1
LRB-2055/2
CMH:bjk:ph

gf

2009 BILL

see aff'd ✓

Regen

1 AN ACT *to create* 939.32 (1) (cr) and (de) and 971.23 (11) of the statutes; **relating**
2 **to:** evidentiary recordings of persons under the age of 18 engaging in sexually
3 explicit conduct and attempt of certain sex crimes against children and
4 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 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 examine, inspect, and view the recording. 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.

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

BILL

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:

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

7 971.23 **(11)** CHILD PORNOGRAPHY RECORDINGS. (a) In this subsection:

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

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

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

15 (b) Any undeveloped film, photographic negative, photograph, motion picture,
16 videotape, or recording, which includes any item or material that would be included
17 under s. 948.01 (3r), or any copy of the foregoing, that is of a person who has not
18 attained the age of 18 and who is engaged in sexually explicit conduct and that is in

BILL

1 the possession, custody, and control of the state shall remain in the possession,
2 custody, and control of a law enforcement agency or a court but shall be made
3 reasonably available to the defense.

4 (c) 1. Notwithstanding sub. (1) (e) and (g), a court shall deny any request by the
5 defense to provide, and a district attorney or law enforcement agency may not
6 provide to the defense, any item or material required in par. (b) to remain in the
7 possession, custody, and control of a law enforcement agency or court, except that a
8 court may order that a copy of an item or material included under par. (b) be provided
9 to the defense if that court finds that a copy of the item or material has not been made
10 reasonably available to the defense. The defense shall have the burden to establish
11 that the item or material has not been made reasonably available.

12 2. If a court orders under subd. 1. a copy of an item or material included under
13 par. (b) to be provided to the defense, the court shall enter a protective order under
14 sub. (6) that includes an order that the copy provided to the defense may not be
15 copied, printed, or disseminated by the defense and shall ^{be} returned to the court or law
16 enforcement agency, whichever is appropriate, at the completion of the trial.

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

SECTION 3. Initial applicability.

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

23 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-107072
CMH:kjf:rs

*** ↓
1069/2

TODAY
no changes

2011 BILL

↑
FROM -1070/2

ref - cut

1 AN ACT *to renumber and amend* 948.055 (2) (a) and 948.055 (2) (b); *to amend*
2 948.055 (1); and *to create* 939.32 (1) (cr) and (de), 948.055 (2) (a) 2., 948.055 (2)
3 (b) 2. and 971.23 (11) of the statutes; **relating to:** evidentiary recordings of
4 persons under the age of 18 engaging in sexually explicit conduct and certain
5 sex offenses 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 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 examine, inspect, and view the recording. 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.

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

BILL

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.

Under current law, the crime of causing a child to view or to listen to sexual activity, requires that the victim be under the age of 18. Under this bill, the victim may either be under 18 or be an individual who the person perpetrating the crime believes or has reason to believe is under 18.

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:

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 a child who has not attained 18 years
8 of age, or an individual who the actor believes or has reason to believe has not
9 attained 18 years of age, to view or listen to sexually explicit conduct may be
10 penalized as provided in sub. (2) if the viewing or listening is for the purpose of
11 sexually arousing or gratifying the actor or humiliating or degrading the child or
12 individual.

13 SECTION 3. 948.055 (2) (a) of the statutes is renumbered 948.055 (2) (a) (intro.)
14 and amended to read:

15 948.055 (2) (a) (intro.) A Class F felony if ~~the~~ any of the following applies:

BILL

1 1. The child has not attained the age of 13 years.

2 **SECTION 4.** 948.055 (2) (a) 2. of the[✓] statutes is created to read:

3 948.055 (2) (a) 2. The actor believes or has reason to believe that the child has
4 not attained the age of 13 years.

5 **SECTION 5.** 948.055 (2) (b) of the[✓] statutes is renumbered 948.055 (2) (b) (intro.)
6 and amended to read:

7 948.055 (2) (b) (intro.) A Class H felony if the any of the following applies:

8 1. The child has attained the age of 13 years but has not attained the age of 18
9 years.

10 **SECTION 6.** 948.055 (2) (b) 2. of the[✓] statutes is created to read:

11 948.055 (2) (b) 2. The actor believes or has reason to believe that the child has
12 attained the age of 13 years but has not attained the age of 18 years.

13 **SECTION 7.** 971.23 (11) of the[✓] statutes is created to read:

14 971.23 (11) CHILD PORNOGRAPHY RECORDINGS. (a) In this subsection:

15 1. “Defense” means the defendant, his or her attorney, and any individual
16 retained by the defendant or his or her attorney for the purpose of providing
17 testimony if the testimony is expert testimony that relates to an item or material
18 included under par. (b).

19 2. “Reasonably available” means sufficient opportunity for inspection, viewing,
20 and examination at a law enforcement or government facility.

21 3. “Sexually explicit conduct” has the meaning given in s. 948.01 (7).

22 (b) Any undeveloped film, photographic negative, photograph, motion picture,
23 videotape, or recording, which includes any item or material that would be included
24 under s. 948.01 (3r), or any copy of the foregoing, that is of a person who has not
25 attained the age of 18 and who is engaged in sexually explicit conduct and that is in

BILL

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2 custody, and control of a law enforcement agency or a court but shall be made
3 reasonably available to the defense.

4 (c) 1. Notwithstanding sub. (1) (e) and (g), a court shall deny any request by the
5 defense to provide, and a district attorney or law enforcement agency may not
6 provide to the defense, any item or material required in par. (b) to remain in the
7 possession, custody, and control of a law enforcement agency or court, except that a
8 court may order that a copy of an item or material included under par. (b) be provided
9 to the defense if that court finds that a copy of the item or material has not been made
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12 2. If a court orders under subd. 1. a copy of an item or material included under
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14 sub. (6) that includes an order that the copy provided to the defense may not be
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16 law enforcement agency, whichever is appropriate, at the completion of the trial.

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

SECTION 8. Initial applicability.

21 (1) The treatment of section 948.055 (1) of the statutes, the renumbering and
22 amendment of section 948.055 (2) (a) and (b) of the statutes, and the creation of
23 section 948.055 (2) (a) 2. and (b) 2. of the statutes first apply to acts committed on the
24 effective date of this subsection.

Godwin, Gigi

From: Kelly, Jessica
Sent: Monday, April 04, 2011 3:35 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-1069/2 Topic: Internet crimes against children combination

RUSH

Please Jacket LRB 11-1069/2 for the SENATE.