2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB620)

Received:	**2/10/2014**	Received By:	**chanaman**
Wanted:	**As time permits**	Same as LRB:	
For:	**Frederick Kessler (608) 266-5813**	By/Representing:	**Christina**
May Contact:		Drafter:	**chanaman**
Subject:	**Criminal Law - crimes agnst kids** **Criminal Law - law enforcement** **Criminal Law - procedure**	Addl. Drafters:	**gmalaise**
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Kessler@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit charging child victims of trafficking; refer to children in need of protective services

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 2/11/2014	wjackson 2/11/2014		_____ _____			
/1			jmurphy 2/11/2014	_____ _____	srose 2/11/2014	srose 2/11/2014	

FE Sent For:

<END>

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/?	chanaman	/1 WLJ 2/11		JM 2/11			

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<END>

State of Wisconsin
2013 – 2014 LEGISLATURE

Today - Not Floor

ASA to

LRB–3538/1
CMH:wlj:jm

GMM

S0284/1

2013 ASSEMBLY BILL 620

January 14, 2014 – Introduced by Representatives LOUDENBECK, PETRYK, BALLWEG, BERCEAU, BERNIER, BIES, BILLINGS, CZAJA, JOHNSON, KAHL, KAUFERT, KESTELL, KLEEFISCH, KOLSTE, LEMAHIEU, MURTHA, A. OTT, POPE, RICHARDS, SARGENT, STRACHOTA, THIESFELDT, TITTL, TRANEL, WACHS, WEATHERSTON and KRUG, cosponsored by Senators PETROWSKI, HARRIS, VINEHOUT, GUDEX, MOULTON, OLSEN, L. TAYLOR, LAZICH and ELLIS, by request of Attorney General J. B. Van Hollen. Referred to Committee on Criminal Justice.

AN ACT ***to renumber*** 904.04 (2) (b), 944.30, 944.33 (1) and 973.076 (1); ***to renumber and amend*** 940.302 (1) (a), 944.33 (2), 944.33 (3), 973.015 and 973.076 (2); ***to amend*** 6.47 (1) (b), 48.02 (1) (d), 48.355 (2d) (a) 2. a., 48.371 (3) (d), 48.57 (3p) (g) 3., 51.20 (13) (cr), 103.10 (1m) (b) 6., 103.34 (1) (b) 2., 165.60, 165.70 (1) (b), 165.76 (1) (am), 301.048 (2) (bm) 1. a., 301.45 (1p) (a), 301.45 (7) (e) 2., 301.45 (7) (e) 3., 440.312 (2), 440.982 (2), 460.05 (1) (h) 1., 460.14 (2m) (a), 904.04 (2) (a), 938.34 (15) (a) 1., 938.355 (2d) (a) 2., 938.371 (3) (d), 939.615 (1) (b) 2., 940.302 (1) (d), 940.302 (2) (a) 2. i., 940.302 (2) (a) 2. j., 940.302 (2) (b), 946.82 (4), 948.051 (1), 948.07 (3), 948.10 (title), 948.10 (1) (intro.), 949.03 (1) (b), 950.04 (1v) (p), 971.17 (1m) (a) 1., 972.15 (4m), 973.055 (1) (a) 1., 973.075 (1) (a), 973.075 (1) (b) 1m. c., 973.075 (2) (intro.) and 973.075 (5m) (c) (intro.); and ***to create*** 904.04 (2) (b) (title), 940.302 (1) (a) 1., 2. and 3., 940.302 (2) (a) 2. k. and L., 944.30 (2m), 973.015 (2m), 973.015 (3), 973.076 (1) (title) and 973.076 (2m) of the statutes; **relating to:** human trafficking, human

1 trafficking victims, property forfeitures, rights of victims, admitting evidence
2 of past actions, definitions of certain offenses, and providing penalties.

Analysis by the Legislative Reference Bureau

HUMAN TRAFFICKING

Current law defines trafficking as actually, or attempting the action of, recruiting, enticing, harboring, transporting, providing, or obtaining an individual without consent of the individual. This bill eliminates the element that the individual has not consented. Also, under current law, a person who engages in trafficking for the purposes of labor, services, or a commercial sex act is guilty of a felony if the trafficking is done by any specified act, including causing or threatening to cause harm to any individual; restraining or threatening to restrain any individual; or controlling any individual's access to an addictive controlled substance. This bill adds threatening to control any individual's access to an addictive controlled substance; using any scheme, pattern, or other means to coerce, threaten, or intimidate any individual; using or threatening to use force or violence on any individual; and causing or threatening to cause any individual to do any act against the individual's will or without the individual's consent.

This bill creates a process under which an individual who has been convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for the crime of prostitution may request a court to vacate the conviction, adjudication, or finding, or to expunge the record. An individual may follow this process if the individual was a victim of trafficking, committed the violation as a result of being a victim, and submits a statement of facts and, if applicable, the reason the individual failed previously to raise an affirmative defense or otherwise allege that the violation was a result of being a trafficking victim. The court may comply with the request if the court, after determining that the individual is qualified, notifies the prosecutor of the request, gives the prosecutor opportunity to respond, and determines that the individual will benefit and society will not be harmed.

Under current law, a person who receives compensation from the earnings of a prostitute is guilty of a Class F felony. This bill adds that a person is guilty of a Class F felony if the person knowingly receives compensation from the earnings of debt bondage or from the earnings of sexual contact or intercourse for which anything of value is given to, promised, or received by any person.

SEX OFFENSES, VICTIMS OF CRIMES, AND DOMESTIC ABUSE

Under current law, a person who, for purposes of sexual arousal or gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is, with some exceptions, guilty of a felony. This bill adds the exposure of "intimate parts," which is defined to include a breast, buttock, anus, or groin of a human being.

Under current law, if a judge receives a presentence investigation report, the judge must disclose the contents of the report to the district attorney prior to sentencing and the district attorney generally must keep the report confidential.

This bill provides the victim the right to view the sentence recommendation on the presentence report and allows the district attorney to share the recommendation.

Under current law, with exceptions, evidence of other crimes, wrongs, or acts may not be admitted in a criminal proceeding to prove the person acted in character. This bill states that, in a prosecution alleging human trafficking, an offense against a child, a serious sex offense, or a crime of domestic abuse or alleging the defendant committed a crime against his or her spouse, an individual with whom the defendant cohabited, or an individual with whom the defendant has a child, evidence of similar acts is generally admissible, and is admissible regardless of whether the victim of the other act is the same as the offense that is the subject of the prosecution.

Under current law, a court may place a person who has committed a serious sex offense on lifetime supervision if the court determines that such placement is necessary to protect the public. Included in the list of serious sex offenses is a violation, or the solicitation, conspiracy, or attempt to commit a violation, of a crime against life and bodily security, a crime against property, a crime against sexual morality, or a crime against a child, if the court determines that the person committed the violation for his or her sexual arousal or gratification. This bill adds to the list of serious sex offenses the violation, or the solicitation, conspiracy, or attempt to commit a violation, of a crime against reputation, privacy, and civil liberties, if the court determines that the person committed the violation for his or her sexual arousal or gratification.

This bill adds the offense of strangulation to several statutes, including to the list of offenses that render the person ineligible to participate in the intensive sanctions program, to the list of crimes for which a victim may be compensated by the Department of Justice, and to the definition of domestic abuse offense for the purpose of keeping confidential the victim's personal information on certain voting documents.

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.** 6.47 (1) (b) of the statutes is amended to read:

2 6.47 **(1)** (b) "Offense relating to domestic abuse, sexual assault, or stalking"
3 means an offense specified in s. 940.19, 940.20 (1m), 940.201, 940.22, 940.225,
4 <u>940.235,</u> 940.32, 947.013, 948.02, 948.025, 948.06, 948.085, 948.09, or 948.095.

1 **SECTION 2.** 48.02 (1) (d) of the statutes is amended to read:

2 48.02 **(1)** (d) Permitting, allowing or encouraging a child to violate s. 944.30
3 (1m).

4 **SECTION 3.** 48.355 (2d) (a) 2. a. of the statutes is amended to read:

5 48.355 **(2d)** (a) 2. a. A violation of s. 940.225, 944.30 (1m), 948.02, 948.025,
6 948.05, 948.051, 948.055, 948.06, 948.085, 948.09 or 948.10.

7 **SECTION 4.** 48.371 (3) (d) of the statutes is amended to read:

8 48.371 **(3)** (d) Any involvement of the child, whether as victim or perpetrator,
9 in sexual intercourse or sexual contact in violation of s. 940.225, 948.02, 948.025, or
10 948.085, prostitution in violation of s. 944.30 (1m), trafficking in violation of s.
11 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, sexual exploitation of a child in violation
12 of s. 948.05, trafficking of a child in violation of s. 948.051, or causing a child to view
13 or listen to sexual activity in violation of s. 948.055, if the information is necessary
14 for the care of the child or for the protection of any person living in the foster home,
15 group home, or residential care center for children and youth or in the home of the
16 relative.

17 **SECTION 5.** 48.57 (3p) (g) 3. of the statutes is amended to read:

18 48.57 **(3p)** (g) 3. The person has been convicted of a violation of ch. 940, 944,
19 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63, or 948.70,
20 or of a violation of the law of any other state or federal law that would be a violation
21 of ch. 940, 944, or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45,
22 948.63, or 948.70, if committed in this state, except that a county department or, in
23 a county having a population of 500,000 or more, the department may make
24 payments to a person applying for payments under sub. (3m) and a person receiving
25 payments under sub. (3m) may employ in a position in which the person would have

1 regular contact with the child for whom those payments are being made or permit
2 to be an adult resident a person who has been convicted of a violation of s. 944.30
3 (1m), 944.31, or 944.33 or of a violation of the law of any other state or federal law
4 that would be a violation of s. 944.30 (1m), 944.31, or 944.33 if committed in this
5 state, if that violation occurred 20 years or more before the date of the investigation.

Insert 5-5

6 **SECTION 6.** 51.20 (13) (cr) of the statutes, as affected by 2013 Wisconsin Act 20,
7 is amended to read:

8 51.20 **(13)** (cr) If the subject individual is before the court on a petition filed
9 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a
10 violation that would be a felony if committed by an adult in this state or a violation
11 of s. 940.225 (3m), 941.20 (1), 944.20, 944.30 (1m), 944.31, 944.33 ~~(1)~~, 946.52, or
12 948.10 (1) (b), the court shall require the individual to provide a biological specimen
13 to the state crime laboratories for deoxyribonucleic acid analysis. The court shall
14 inform the individual that he or she may request expungement under s. 165.77 (4).

15 **SECTION 7.** 103.10 (1m) (b) 6. of the statutes is amended to read:

16 103.10 **(1m)** (b) 6. "Sexual abuse" means conduct that is in violation of s.
17 940.225, 944.30 (1m), 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.085,
18 948.09, or 948.10 or that is in violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b.
19 applies.

20 **SECTION 8.** 103.34 (1) (b) 2. of the statutes is amended to read:

21 103.34 **(1)** (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,
22 940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.21, 940.225 (1), (2), or (3),
23 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03,
24 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, ~~944.33 (2),~~ 944.34, 946.10, 948.02 (1)
25 or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07,

948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1), or 948.30 or of a substantially similar federal law or law of another state.

SECTION 9. 165.60 of the statutes is amended to read:

165.60 Law enforcement. The department of justice is authorized to enforce ss. 101.123 (2), (2m), and (8), 175.60 (17) (e), 944.30 (1m), 944.31, 944.33, 944.34, 945.02 (2), 945.03 (1m), and 945.04 (1m) and ch. 108 and, with respect to a false statement submitted or made under s. 175.60 (7) (b) or (15) (b) 2. or as described under s. 175.60 (17) (c), to enforce s. 946.32 and is invested with the powers conferred by law upon sheriffs and municipal police officers in the performance of those duties. This section does not deprive or relieve sheriffs, constables, and other local police officers of the power and duty to enforce those sections, and those officers shall likewise enforce those sections.

SECTION 10. 165.70 (1) (b) of the statutes is amended to read:

165.70 **(1)** (b) Except as provided in sub. (1m), enforce chs. 945 and 961 and ss. 940.20 (3), 940.201, 941.25 to 941.27, 943.01 (2) (c), 943.011, 943.27, 943.28, 943.30, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 946.65, 947.02 (3) and (4), 948.075, and 948.08.

SECTION 11. 165.76 (1) (am) of the statutes, as created by 2013 Wisconsin Act 20, is amended to read:

165.76 **(1)** (am) Is or was adjudicated delinquent for an act that if committed by an adult in this state would be a felony or for a violation of s. 940.225 (3m), 941.20 (1), 944.20, 944.30 (1m), 944.31, 944.33 ~~(1)~~, 946.52, or 948.10 (1) (b).

SECTION 12. 301.048 (2) (bm) 1. a. of the statutes is amended to read:

301.048 **(2)** (bm) 1. a. A crime specified in s. 940.19 (3), 1999 stats., s. 940.195 (3), 1999 stats., s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 940.01,

940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (4) or (5), 940.195 (4) or (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.235, 940.285 (2) (a) 1. or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2., or 3., 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.30, 943.32, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, or 948.30.

SECTION 13. 301.45 (1p) (a) of the statutes is amended to read:

301.45 **(1p)** (a) If a person is covered under sub. (1g) based solely on an order that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in connection with a delinquency adjudication or a conviction for a violation of s. 942.08 (2) (b), (c), or (d), the person is not required to comply with the reporting requirements under this section if the delinquency adjudication is expunged under s. 938.355 (4m) (b) or if the conviction is expunged under s. 973.015 ~~(2)~~ (1m) (b).

SECTION 14. 301.45 (7) (e) 2. of the statutes is amended to read:

301.45 **(7)** (e) 2. The department issues a certificate of discharge under s. 973.015 ~~(2)~~ (1m) (b).

SECTION 15. 301.45 (7) (e) 3. of the statutes is amended to read:

301.45 **(7)** (e) 3. The department receives a certificate of discharge issued under s. 973.015 ~~(2)~~ (1m) (b) by the detaining authority.

SECTION 16. 440.312 (2) of the statutes is amended to read:

440.312 **(2)** The department may not grant a license under this subchapter to any person who has been convicted of an offense under s. 940.22, 940.225, 940.302 (2) (a) 1. b., 944.06, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34,

948.02, 948.025, 948.051, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, or 948.12.

SECTION 17. 440.982 (2) of the statutes is amended to read:

440.982 **(2)** The department may not grant a license under this subchapter to any person who has been convicted of an offense under s. 940.22, 940.225, 944.06, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.051, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, or 948.12 or under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

SECTION 18. 460.05 (1) (h) 1. of the statutes is amended to read:

460.05 **(1)** (h) 1. An offense under s. 940.22, 940.225, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09, 948.095, or 948.10.

SECTION 19. 460.14 (2m) (a) of the statutes is amended to read:

460.14 **(2m)** (a) An offense under s. 940.22, 940.225, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.085, 948.09, 948.095, or 948.10.

SECTION 20. 904.04 (2) (a) of the statutes is amended to read:

904.04 **(2)** (a) *General admissibility.* Except as provided in par. (b) 2., evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

SECTION 21. 904.04 (2) (b) (title) of the statutes is created to read:

904.04 **(2)** (b) *Greater latitude.*

1 **SECTION 22.** 904.04 (2) (b) of the statutes is renumbered 904.04 (2) (b) 2.

2 **SECTION 23.** 938.34 (15) (a) 1. of the statutes, as affected by 2013 Wisconsin Act
3 20, is amended to read:

4 938.34 **(15)** (a) 1. If the juvenile is adjudicated delinquent on the basis of a
5 violation that would be a felony if committed by an adult in this state or of a violation
6 of s. 940.225 (3m), 941.20 (1), 944.20, 944.30 (1m), 944.31, 944.33 ~~(1)~~, 946.52, or
7 948.10 (1) (b), the court shall require the juvenile to comply with the requirement
8 under s. 165.76 (1) (am) by providing a biological specimen to the state crime
9 laboratories for deoxyribonucleic acid analysis. The court shall inform the juvenile
10 that he or she may request expungement under s. 165.77 (4).

11 **SECTION 24.** 938.355 (2d) (a) 2. of the statutes is amended to read:

12 938.355 **(2d)** (a) 2. "Sexual abuse" means a violation of s. 940.225, 944.30 (1m),
13 948.02, 948.025, 948.05, 948.055, 948.06, 948.085, 948.09 or 948.10 or a violation of
14 the law of any other state or federal law if that violation would be a violation of s.
15 940.225, 944.30 (1m), 948.02, 948.025, 948.05, 948.055, 948.06, 948.085 (2), 948.09
16 or 948.10 if committed in this state.

17 **SECTION 25.** 938.371 (3) (d) of the statutes is amended to read:

18 938.371 **(3)** (d) Any involvement of the juvenile, whether as victim or
19 perpetrator, in sexual intercourse or sexual contact in violation of s. 940.225, 948.02,
20 948.025, or 948.085, prostitution in violation of s. 944.30 (1m), sexual exploitation
21 of a child in violation of s. 948.05, or causing a child to view or listen to sexual activity
22 in violation of s. 948.055, if the information is necessary for the care of the juvenile
23 or for the protection of any person living in the foster home, group home, residential
24 care center for children and youth, or juvenile correctional facility.

25 **SECTION 26.** 939.615 (1) (b) 2. of the statutes is amended to read:

939.615 (**1**) (b) 2. A violation, or the solicitation, conspiracy or attempt to commit a violation, under ch. 940, 942, 943, 944 or 948 other than a violation specified in subd. 1., if the court determines that one of the purposes for the conduct constituting the violation was for the actor's sexual arousal or gratification.

SECTION 27. 940.302 (1) (a) of the statutes is renumbered 940.302 (1) (a) (intro.) and amended to read:

940.302 (**1**) (a) (intro.) "Commercial sex act" means ~~sexual contact~~ any of the following for which anything of value is given to, promised, or received, directly or indirectly, by any person~~.~~:

SECTION 28. 940.302 (1) (a) 1., 2. and 3. of the statutes are created to read:

940.302 (**1**) (a) 1. Sexual contact.

2. Sexual intercourse.

3. Except as provided in sub. (2) (c), any of the following:

a. Sexually explicit performance.

b. Any other conduct done for the purpose of sexual humiliation, degradation, arousal, or gratification.

SECTION 29. 940.302 (1) (d) of the statutes is amended to read:

940.302 (**1**) (d) "Trafficking" means recruiting, enticing, harboring, transporting, providing, or obtaining, or attempting to recruit, entice, harbor, transport, provide, or obtain, an individual ~~without consent of the individual~~.

SECTION 30. 940.302 (2) (a) 2. i. of the statutes is amended to read:

940.302 (**2**) (a) 2. i. Controlling or threatening to control any individual's access to an addictive controlled substance.

SECTION 31. 940.302 (2) (a) 2. j. of the statutes is amended to read:

940.302 **(2)** (a) 2. j. Using any scheme ~~or~~, pattern, or other means to ~~cause an~~ directly or indirectly coerce, threaten, or intimidate any individual ~~to believe that any individual would suffer bodily harm, financial harm, restraint, or other harm~~.

SECTION 32. 940.302 (2) (a) 2. k. and L. of the statutes are created to read:

940.302 **(2)** (a) 2. k. Using or threatening to use force or violence on any individual.

L. Causing or threatening to cause any individual to do any act against the individual's will or without the individual's consent.

SECTION 33. 940.302 (2) (b) of the statutes is amended to read:

940.302 **(2)** (b) Whoever benefits in any manner from a violation of par. (a) is guilty of a Class D felony if the person knows or reasonably should have known that the benefits come from or are derived from an act or scheme described in par. (a).

SECTION 34. 944.30 of the statutes is renumbered 944.30 (1m).

SECTION 35. 944.30 (2m) and (3m) of the statutes ~~is~~ are created to read:

944.30 **(2m)** If the person under sub. (1m) has not attained the age of 18 years and if the court determines that the best interests of the person are served and society will not be harmed, the court may enter a consent decree under s. 938.32 or a deferred prosecution agreement in accordance with s. 938.245, 971.39, or 971.40.

SECTION 36. 944.33 (1) of the statutes is renumbered 944.33.

WS 11-19

SECTION 37. 944.33 (2) of the statutes is renumbered 940.302 (2) (c) and amended to read:

940.302 **(2)** (c) ~~If the person received~~ Whoever knowingly receives compensation from the earnings of ~~the~~ debt bondage, a prostitute, ~~such person~~ or a commercial sex act, as described in sub. (1) (a) 1. and 2., is guilty of a Class F felony.

1 **SECTION 38.** 944.33 (3) of the statutes is renumbered 904.04 (2) (b) 1. and
2 amended to read:
3 904.04 **(2)** (b) 1. In ~~a prosecution under this section, it is competent for the state~~
4 ~~to prove other~~ criminal proceeding alleging a violation of s. 940.302 (2) or of ch. 948,
5 alleging the commission of a serious sex offense, as defined in s. 939.615 (1) (b), or
6 of domestic abuse, as defined in s. 968.075 (1) (a), or alleging an offense that,
7 following a conviction, is subject to the surcharge in s. 973.055, evidence of any
8 similar acts by the accused ~~for the purpose of showing the accused's intent and~~
9 ~~disposition~~ is admissible, and is admissible without regard to whether the victim of
10 the crime that is the subject of the proceeding is the same as the victim of the similar
11 act.
12 **SECTION 39.** 946.82 (4) of the statutes is amended to read:
13 946.82 **(4)** "Racketeering activity" means any activity specified in 18 USC 1961
14 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
15 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,
16 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,
17 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6),
18 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31, 941.20 (2) and
19 (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011,
20 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e),
21 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.27, 943.28, 943.30, 943.32,
22 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4)
23 (bf), (bm), and (c) and (4m), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83, 943.84,
24 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32, ~~944.33~~
25 ~~(2),~~ 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12,

946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 946.79, 947.015, 948.05, 948.051, 948.08, 948.12, and 948.30.

SECTION 40. 948.051 (1) of the statutes is amended to read:

948.051 **(1)** Whoever knowingly recruits, entices, provides, obtains, or harbors, or knowingly attempts to recruit, entice, provide, obtain, or harbor, any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a), ~~or sexually explicit performance~~ is guilty of a Class C felony.

SECTION 41. 948.07 (3) of the statutes is amended to read:

948.07 **(3)** Exposing ~~a sex organ~~ genitals, pubic area, or intimate parts to the child or causing the child to expose ~~a sex organ~~ genitals, pubic area, or intimate parts in violation of s. 948.10.

SECTION 42. 948.10 (title) of the statutes is amended to read:

948.10 (title) **Exposing genitals ~~or~~, pubic area, or intimate parts.**

SECTION 43. 948.10 (1) (intro.) of the statutes is amended to read:

948.10 **(1)** (intro.) Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals ~~or~~, pubic area, or intimate parts or exposes genitals ~~or~~, pubic area, or intimate parts to a child is guilty of the following:

SECTION 44. 949.03 (1) (b) of the statutes is amended to read:

949.03 **(1)** (b) The commission or the attempt to commit any crime specified in s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.235, 940.24, 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32, 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86, 943.87, 948.02, 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.075, 948.08, 948.085, 948.09, 948.095, 948.20, 948.30 or 948.51.

1 **SECTION 45.** 950.04 (1v) (p) of the statutes is amended to read:

2 950.04 **(1v)** (p) To have the person preparing a presentence investigation under
3 s. 972.15 make a reasonable attempt to contact the victim, as provided in s. 972.15
4 (2m), and to view the sentence recommendation and any victim information included
5 on the presentence investigation report, as provided in s. 972.15 (4m).

6 **SECTION 46.** 971.17 (1m) (a) 1. of the statutes, as affected by 2013 Wisconsin
7 Act 20, is amended to read:

8 971.17 **(1m)** (a) 1. If the defendant under sub. (1) is found not guilty by reason
9 of mental disease or defect for a felony or a violation of s. 165.765 (1), 2011 stats., or
10 of s. 940.225 (3m), 941.20 (1), 944.20, 944.30 (1m), 944.31, 944.33 ~~(1)~~, 946.52, or
11 948.10 (1) (b), the court shall require the person to provide a biological specimen to
12 the state crime laboratories for deoxyribonucleic acid analysis. The judge shall
13 inform the person that he or she may request expungement under s. 165.77 (4).

14 **SECTION 47.** 972.15 (4m) of the statutes, as affected by 2013 Wisconsin Act 108,
15 is amended to read:

16 972.15 **(4m)** The district attorney, the defendant's attorney, and, following a
17 conviction for a felony in which an assistant attorney general has original
18 jurisdiction, served at the request of a district attorney under s. 978.05 (8) (b), or
19 served as a special prosecutor under s. 978.045, the assistant attorney general are
20 entitled to have and keep a copy of the presentence investigation report. If the
21 defendant is not represented by counsel, the defendant is entitled to view the
22 presentence investigation report but may not keep a copy of the report. ~~A~~ Except
23 as provided in s. 950.04 (1v) (p), a district attorney, the defendant's attorney, or an
24 assistant attorney general who receives a copy of the report shall keep it confidential.

A defendant who views the contents of a presentence investigation report shall keep the information in the report confidential.

SECTION 48. 973.015 of the statutes is renumbered 973.015 (1m), and 973.015 (1m) (a) 1., as renumbered, is amended to read:

973.015 **(1m)** (a) 1. Subject to ~~par. (b)~~ subd. 2. and except as provided in ~~par. (c)~~ subd. 3., when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition. This subsection does not apply to information maintained by the department of transportation regarding a conviction that is required to be included in a record kept under s. 343.23 (2) (a).

SECTION 49. 973.015 (2m) of the statutes is created to read:

973.015 **(2m)** At any time after a person has been convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for a violation of s. 944.30, a court may, upon the motion of the person, vacate the conviction, adjudication, or finding, or may order that the record of the violation of s. 944.30 be expunged, if all of the following apply:

(a) The person was a victim of trafficking for the purposes of a commercial sex act, as defined in s. 940.302 (1) (a), under s. 940.302 or 948.051 or under 22 USC 7101 to 7112.

(b) The person committed the violation of s. 944.30 as a result of being a victim of trafficking for the purposes of a commercial sex act.

1 (c) The person submitted a motion that complies with s. 971.30, that contains
2 a statement of facts and, if applicable, the reason the person did not previously raise
3 an affirmative defense under s. 939.46 or allege that the violation was committed as
4 a result of being a victim of trafficking for the purposes of a commercial sex act, and
5 that may include any of the following:

6 1. Certified records of federal or state court proceedings.

7 2. Certified records of approval notices, law enforcement certifications, or
8 similar documents generated from federal immigration proceedings.

9 3. Official documentation from a federal, state, or local government agency.

10 4. Other relevant and probative evidence of sufficient credibility in support of
11 the motion.

12 (d) The person made the motion with due diligence subject to reasonable
13 concern for the safety of himself or herself, family members, or other victims of
14 trafficking for the purposes of a commercial sex act or subject to other reasons
15 consistent with the safety of persons.

16 (e) A copy of the motion has been served on the office of the district attorney
17 that prosecuted the case that resulted in the conviction, adjudication, or finding
18 except that failure to serve a copy does not deprive the court of jurisdiction and is not
19 grounds for dismissal of the motion.

20 (f) The court in which the motion was made notified the appropriate district
21 attorney's office of the motion and has given the district attorney's office an
22 opportunity to respond to the motion.

23 (g) The court determines that the person will benefit and society will not be
24 harmed by a disposition.

25 **SECTION 50.** 973.015 (3) of the statutes is created to read:

973.015 **(3)** A special disposition under this section is not a basis for a claim under s. 775.05.

SECTION 51. 973.055 (1) (a) 1. of the statutes is amended to read:

973.055 **(1)** (a) 1. The court convicts the person of a violation of a crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19, 940.20 (1m), 940.201, 940.21, 940.225, 940.23, 940.235, 940.285, 940.30, 940.305, 940.31, 940.32, 940.42, 940.43, 940.44, 940.45, 940.48, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01 (1), 947.012 or 947.0125 or of a municipal ordinance conforming to s. 940.201, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01 (1), 947.012 or 947.0125; and

SECTION 52. 973.075 (1) (a) of the statutes is amended to read:

973.075 **(1)** (a) All property, real or personal, including money, used in the course of, intended for use in the course of, or directly or indirectly derived from or realized through the commission of any crime.

SECTION 53. 973.075 (1) (b) 1m. c. of the statutes is amended to read:

973.075 **(1)** (b) 1m. c. In the commission of a crime in violation of s. 940.302, 944.30 (1m), 944.31, 944.32, 944.33 ~~or~~, 944.34, 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.09, 948.10, 948.12, or 948.14.

SECTION 54. 973.075 (2) (intro.) of the statutes is amended to read:

973.075 **(2)** (intro.) A law enforcement officer may seize property subject to this section upon process issued by any court of record having jurisdiction over the property. Except for vehicles used in the commission of a crime in violation of s. 940.302, 944.30 (1m), 944.31, 944.32, 944.33 ~~or~~, 944.34, 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.09, 948.10, 948.12, or 948.14, seizure without process may be made under any of the following circumstances:

1 **SECTION 55.** 973.075 (5m) (c) (intro.) of the statutes is amended to read:

2 973.075 **(5m)** (c) (intro.) If, by the forfeiture action deadline, a summons,
3 complaint and affidavit have not been filed under s. 973.076 ~~(2) (a)~~ (1) (b) 1. with
4 respect to property seized under sub. (1) (e), the prosecutor shall notify the victim,
5 if known, by certified mail no later than 7 days after the forfeiture action deadline.
6 The prosecutor shall then return the property to the person from whom it was seized
7 no earlier than 60 days and no later than 90 days after the forfeiture action deadline
8 unless one of the following applies:

9 **SECTION 56.** 973.076 (1) (title) of the statutes is created to read:

10 973.076 **(1)** (title) CIVIL FORFEITURES.

11 **SECTION 57.** 973.076 (1) of the statutes is renumbered 973.076 (1) (a).

12 **SECTION 58.** 973.076 (2) of the statutes is renumbered 973.076 (1) (b), and
13 973.076 (1) (b) 3., as renumbered, is amended to read:

14 973.076 **(1)** (b) 3. In counties having a population of 500,000 or more, the
15 district attorney or the corporation counsel may proceed under ~~par. (a).~~ subd. 1.

16 **SECTION 59.** 973.076 (2m) of the statutes is created to read:

17 973.076 **(2m)** CRIMINAL FORFEITURES. (a) In addition to any penalties under this
18 chapter, the court shall, with due provision for the rights of innocent persons, order
19 forfeiture of any property specified in s. 973.075 (1) in accordance with pars. (b), (c),
20 and (d).

21 (b) A criminal complaint must allege the extent of property subject to forfeiture
22 under this subsection. At trial, the court or the jury shall return a special verdict
23 determining the extent of property, if any, that is subject to forfeiture under this
24 subsection. When a special verdict contains a finding of property subject to a

1 forfeiture under this subsection, a judgment of criminal forfeiture shall be entered
2 along with the judgment of conviction under s. 972.13.

3 (c) An injured person has a right or claim to forfeited property or the proceeds
4 derived from forfeited property under this subsection that is superior to any right or
5 claim the state has in the property or proceeds. This paragraph does not grant the
6 injured person priority over state claims or rights by reason of a tax lien or other basis
7 not covered by this section or by s. 973.075 or 973.077. All rights, titles, and interest
8 in property specified in s. 973.075 (1) vest in the state upon the commission of the act
9 giving rise to forfeiture under this subsection.

10 (d) An injured or innocent person may petition the court for relief from the
11 judgment of criminal forfeiture entered under par. (b) within 30 days after it is
12 entered. The person filing the petition has the burden of satisfying or convincing to
13 a reasonable certainty by the greater weight of the evidence that the person has a
14 bona fide perfected security interest in the property subject to forfeiture in s. 973.075
15 (1) or any other property subject to forfeiture in sub. (4). The court may order that
16 a person with a bona fide perfected security interest be paid from the proceeds of the
17 forfeiture or any other equitable relief necessary so as to do substantial justice to the
18 person.

19 **SECTION 60. Effective dates.** This act takes effect on the day after publication,
20 except as follows:

21 (1) The treatment of sections 51.20 (13) (cr), 165.76 (1) (am), 938.34 (15) (a) 1.,
22 and 971.17 (1m) (a) 1. of the statutes takes effect on April 1, 2015.

23 **(END)**

(INSERT 5-5)

1 **SECTION 1.** 48.981 (3) (a) 2. e. of the statutes is created to read:

2 48.981 **(3)** (a) 2. e. Cases in which a child has committed a violation of s. 944.30
3 (1m) under the circumstances described in s. 944.30 (3m).

4 **SECTION 2.** 48.981 (3) (a) 2d. of the statutes is amended to read:

5 48.981 **(3)** (a) 2d. ~~The~~ Except as provided in subd. 2. e., the sheriff or police
6 department may refer to the county department or, in a county having a population
7 of 500,000 or more, the department or a licensed child welfare agency under contract
8 with the department a case reported to the sheriff or police department in which a
9 person who is not a caregiver is suspected of abuse or of threatened abuse of a child.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185; 2011 a. 32, 81, 87; 2013 a. 20.

10 **SECTION 3.** 48.981 (3) (c) 1. a. of the statutes is amended to read:

11 48.981 **(3)** (c) 1. a. Immediately after receiving a report under par. (a), the
12 agency shall evaluate the report to determine whether there is reason to suspect that
13 a caregiver has abused or neglected the child, has threatened the child with abuse
14 or neglect, or has facilitated or failed to take action to prevent the suspected or
15 threatened abuse or neglect of the child or that the child has committed a violation
16 of s. 944.30 (1m) under the circumstances described in s. 944.30 (3m). Except as
17 provided in sub. (3m), if the agency determines that a caregiver is suspected of abuse
18 or neglect or of threatened abuse or neglect of the child, determines that a caregiver
19 is suspected of facilitating or failing to take action to prevent the suspected or
20 threatened abuse or neglect of the child, or cannot determine who abused or
21 neglected the child, within 24 hours after receiving the report the agency shall, in
22 accordance with the authority granted to the department under s. 48.48 (17) (a) 1.

1 or the county department under s. 48.57 (1) (a), initiate a diligent investigation to
2 determine if the child is in need of protection or services. If the agency determines
3 that a person who is not a caregiver is suspected of abuse or of threatened abuse <u>or</u>
4 <u>that the child has committed a violation of s. 944.30 (1m) under the circumstances</u>
5 <u>described in s. 944.30 (3m)</u>, the agency may, in accordance with that authority,
6 initiate a diligent investigation to determine if the child is in need or protection or
7 services. Within 24 hours after receiving a report under par. (a) of suspected unborn
8 child abuse, the agency, in accordance with that authority, shall initiate a diligent
9 investigation to determine if the unborn child is in need of protection or services. An
10 investigation under this subd. 1. a. shall be conducted in accordance with standards
11 established by the department for conducting child abuse and neglect investigations
12 or unborn child abuse investigations.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185; 2011 a. 32, 81, 87; 2013 a. 20.

(INSERT 5–5)

pn2 &

State of Wisconsin
2013 – 2014 LEGISLATURE

LRBa1589/1
CMH:jld:rs

ASSEMBLY AMENDMENT ,

TO ASSEMBLY BILL 620

At the locations indicated, amend the bill as follows:

1. Page 11, line 18: after that line insert:

"**SECTION 35d.** 944.30 (3m) of the statutes is created to read:

944.30 **(3m)** A person is not in violation of, and may not be charged with a violation of, sub. (1m) if all of the following apply:

(a) The person has not attained the age of 18.

(b) The person was a victim of trafficking for the purposes of a commercial sex act, as defined in s. 940.302 (1) (a), under s. 940.302 or 948.051 or under 22 USC 7101 to 7112, regardless of whether anyone was charged with, prosecuted for, or convicted of a violation of s. 940.302 or 948.051 or 22 USC 7101 to 7112.

(c) The person committed the violation of sub. (1m) as a result of being a victim of trafficking for the purposes of a commercial sex act".

(END)

INS 11-19