

2019 DRAFTING REQUEST

Bill

For: **André Jacque (608) 266-3512** Drafter: **mjohns**
 By: **Himself** Secondary Drafters:
 Date: **12/19/2018** May Contact:

Same as LRB:

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

Pre Topic:

No specific pre topic given

Topic:

Child Erotica

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mjohns 1/9/2019	ccarmich 1/10/2019			
/P1	mjohns 2/6/2019	ccarmich 2/6/2019	lparisi 1/10/2019		Crime
/1			lparisi 2/6/2019	mbarman 2/6/2019	Crime

Handwritten note: **per MLJ** with an arrow pointing to the **Jacketed** column header.

FE Sent For:

<END>

Not Needed

Johns, Melinda

From: Jacque, Andre
Sent: Wednesday, December 19, 2018 10:32 AM
To: Johns, Melinda
Cc: Rettinger2, Nik; Rettinger, Nik; Burri, Lance
Subject: FW: [ICAC-Members] Child Erotica Statutes
Attachments: 3219_S2.PDF

Hello Melinda-

I would like something drafted for next session similar to the attached legislation (described below as well), which I will be calling you about shortly.

Thanks!
André

920-819-8066

From: Valley, James M. [mailto:Valley_JM@co.brown.wi.us]
Sent: Wednesday, December 19, 2018 9:45 AM
To: Jacque, Andre <Andre.Jacque@legis.wisconsin.gov>
Subject: FW: [ICAC-Members] Child Erotica Statutes

Andre

Hope all is well. Is this something we can maybe work on in the future. Current Child pornography statutes require the child to be in a sexual act 948.12. However, many of what we are seeing to get around that that are taking images that have see-through clothing and the picture is meant for gratification. This is how the predators and sex offenders are going around possession of CP.

Thanks

Lieutenant Jim Valley
Investigative Divison/ICAC/HT
Human Trafficking Task Force - Green Bay FBI
Brown County Sheriff's Office
2684 Development Dr.
Green Bay, WI 54311
Office: (920)448-6216
Fax: (920)448-4209
Valley_jm@co.brown.wi.us

From: ICAC Members [mailto:members@LISTS.ICACTASKFORCE.ORG] **On Behalf Of** Derrick Jacobus
Sent: Tuesday, December 18, 2018 12:02 PM
To: members@LISTS.ICACTASKFORCE.ORG
Subject: Re: [ICAC-Members] Child Erotica Statutes

All:

Here is New Jersey's child erotica statute amended in 2017:

The bill criminalizes the possession and distribution of "child erotica," which refers to images that depict nearly naked, suggestively-posed, and inappropriately sexualized children. New Jersey's child pornography statute currently does not criminalize "child erotica," and refers only to a depiction of a child engaging in a prohibited sexual act or simulation of such act.

I attached the complete bill change. I have been successful charging this in recent past, but defense attorney's love to criticize it.

Det. Derrick Jacobus #7104
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Major Crimes Unit
ICAC Internet Crimes Against Children
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Williamstown, NJ 08094
O: (856) 728-9800 x501
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"Always remember that the future comes one day at a time."
- Dean Acheson

From: Thomas Grella <tgrella@RCAO.NET>
Sent: Tuesday, December 18, 2018 10:29
To: members@LISTS.ICACTASKFORCE.ORG
Subject: [ICAC-Members] Child Erotica Statutes

A state representative here in New Hampshire is sponsoring a bill to add the definition of Child Erotica to our existing felony "Possession of Child Pornography" statute. The intent is to be able to charge a person with a Misdemeanor level offense if they are found to be in possession of CE. Thanks to West Virginia who provided me with a copy of their statute several months ago, we were able to compose similar language to be inserted into our existing statute. However, we are early in the process and have already received significant pushback from some law legislators.

The purpose of this email is to see if any of your states have recent favorable decisions with prosecuting the possession of Child Erotica. Furthermore, how many of your states have laws against the possession of CE?

If we can address some of the concerns that are being raised, it's possible we can keep this moving forward and have this become a law in NH.

Thank you,
Tom

Thomas A. Grella, Investigator
Rockingham County Attorney's Office
Deputy Sheriff-Rockingham County Sheriff's Department
Portsmouth PD (Retired)
NH ICAC Commander (2011-2018)
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SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3219

STATE OF NEW JERSEY

DATED: JUNE 19, 2017

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3219 (1R).

This bill establishes additional penalties for child pornography crimes. Specifically, the bill expands the definition of child pornography to include the portrayal of a child in a sexual manner; establishes the crime of “leader of child pornography network”; and enhances penalties and revises the sentencing provisions for these crimes. The bill addresses changes in the child pornography industry which are not adequately addressed by current law.

This bill builds upon recent amendments to N.J.S.2C:24-4, pursuant to P.L.2013, c.136, which addressed the newer means of distribution of child pornography, such as computer file-sharing programs. These programs are used to share and distribute files by various means including the Internet or directly between computer systems, such as peer-to-peer networks.

Child Erotica: The bill criminalizes the possession and distribution of “child erotica,” which refers to images that depict nearly naked, suggestively-posed, and inappropriately sexualized children. New Jersey’s child pornography statute currently does not criminalize “child erotica,” and refers only to a depiction of a child engaging in a prohibited sexual act or simulation of such act.

The bill amends the current definition of child pornography (an “item depicting the sexual exploitation or abuse of a child”) to include an item which portrays a child in a sexually suggestive manner. The bill defines the term “portray a child in a sexually suggestive manner” to mean:

-- to depict a child’s less than completely and opaquely covered intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or

-- to depict any form of contact with a child’s intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or

-- to otherwise depict a child for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value.

Leader of a Child Pornography Network: Under the bill, a person is guilty of the crime of "leader of a child pornography network" if the person knowingly conspires with others to establish or maintain a child pornography distribution network through which files containing child pornography are made available to an organized group. Leader of a child pornography network is a crime of the first degree if the offense involves 100,000 or more child pornography items; a crime of the second degree if the offense involves at least 1,000 but less than 100,000 items; and a crime of the third degree if the offense involves less than 1,000 items. A crime of the first degree is punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both; a crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; a crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both; and a crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Enhanced Penalties for Possession of Large Quantities: Under current law, possession of child pornography is increased from a crime of the fourth degree to a crime of the third degree, and carries a presumption of imprisonment if a person possesses 100 or more items of child pornography. Due to rapid advancements in technology, enormous numbers of digital files are capable of being downloaded at very high speeds, and hard drive memory storage has been greatly expanded, increasing both the quantity and frequency of child pornography distribution. These advances also have led to an increase in the number of "super-possessors" who possess thousands to hundreds of thousands of items of child pornography.

Child pornography super-possessors currently may face the same penalties as a defendant possessing 100 items of child pornography. In addition, current law does not differentiate between a single still image of child pornography and an extended video sequence, which could consist of thousands of digital images. This bill creates enhanced penalties for super-possessors by making possession of 100,000 or more items of child pornography a crime of the first degree; possession of less than 100,000 items but greater than 1,000 items a crime of the second degree; and possession of 1,000 items a crime of the third degree. The bill also promotes more equitable sentencing for video images by providing that each video or video segment of child pornography is the equivalent of 10 separate items.

Enhanced Penalties for File Sharing: Under current law, a person convicted of distribution of child pornography is guilty of a

crime of the second degree with a mandatory minimum sentence of one-third to one-half the sentence imposed or five years, whichever is greater. A distributor who is caught transmitting 25 child pornography files currently faces the same penalties as a distributor caught sending 10,000 files. The bill revises the penalties for distribution of child pornography to provide that a person who distributes 1,000 or more items is guilty of a crime of the first degree. Distribution of less than 1,000 items remains a crime of the second degree.

Sentencing Provisions and Fines: Under current law, an offender is referred to the Adult Diagnostic and Treatment Center (ADTC) for sex offender treatment if the court finds that the offender's conduct is characterized by a pattern of repetitive, compulsive behavior and the offender is amenable and willing to participate in sex offender treatment. A psychological examination is ordered for offenders convicted of a number of sex offenses which include the distribution of child pornography, but not possession of child pornography. A prosecutor may make a motion requesting that the court impose a special sentence of parole supervision for life on a person who possesses any amount of child pornography. Judges currently are required to order a psychological examination of certain sex offenders to determine if referral to the ADTC is appropriate.

The bill provides that if a person is convicted of possessing 1,000 or more items of child pornography: the court is required to consider imposing a sentence of parole supervision for life; the person is subject to evaluation for ADTC commitment; and the person is required to register as a sex offender and be subject to the community notification and Internet publication requirements under Megan's Law.

The bill clarifies that for all child pornography manufacturing and distribution offenses, including the crime of leader of a child pornography network established by the bill, a fine is to be imposed and deposited into the Computer Crime Prevention Fund.

The bill is scheduled to take effect on the first day of the seventh month following enactment.

FISCAL IMPACT:

The Administrative Office of the Courts has indicated that the Judiciary has insufficient information to estimate the number of individuals who may be charged with or convicted of a crime created or expanded by the bill. As a result, the Judiciary cannot determine the increase in revenue or expenditures that is expected to result from the bill.

The Office of Legislative Services (OLS) generally agrees with the Judiciary that there is no information available to determine the number of offenders who will be subject to the bill, the cost to the

Judiciary to implement the bill's provisions, or the revenue increase that could result from increased fines.

In addition, the OLS expects the State Parole Board will likely incur indeterminate costs to provide parole supervision for life for those offenders who are sentenced to lifetime supervision as a result of the bill. Insufficient information is available concerning the number of offenders who will be subject to such supervision.

The OLS also expects the Department of Corrections to incur an indeterminate cost increase to house offenders convicted under the bill. The OLS notes that the FY 2016 marginal cost to house an inmate in a State prison facility was \$8.45, per day or \$3,084 annually for food, wages and clothing. As a result, any offender convicted under the bill and incarcerated in a State correctional facility will cost \$3,084 per year. The OLS further notes that the average cost of housing an inmate is about \$47,000 per year. It is unclear at what point the number of inmates added to the State prison population results in the average cost rather than the marginal cost per inmate.

N.J. Stat. § 2C:24-4

This section is current through New Jersey 218th First Annual Session, L. 2018, c. 140, and J.R. 12

LexisNexis® New Jersey Annotated Statutes > Title 2C. The New Jersey Code of Criminal Justice (Subts. 1 — 3) > Subtitle 2. Specific Offenses (Pts. 1 — 6) > Part 3. Offenses Against Other Persons (Chs. 24 — 26) > Chapter 24. Offenses Against Spouse, Children, Elderly and Incompetents (§§ 2C:24-1 — 2C:24-10)

§ 2C:24-4. Endangering welfare of children.

a.

(1) Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree.

(2) Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974, c.119 (C.9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree.

b.

(1) As used in this subsection:

“Child” means any person under 18 years of age.

“Distribute” means to sell, or to manufacture, give, provide, lend, trade, mail, deliver, publish, circulate, disseminate, present, exhibit, display, share, advertise, offer, or make available via the Internet or by any other means, whether for pecuniary gain or not. The term also includes an agreement or attempt to distribute.

“File-sharing program” means a computer program, application, software or operating system that allows the user of a computer on which such program, application, software or operating system is installed to designate files as available for searching by and copying to one or more other computers, to transmit such designated files directly to one or more other computers, and to request the transmission of such designated files directly from one or more other computers. The term “file-sharing program” includes but is not limited to a computer program, application or software that enables a computer user to participate in a peer-to-peer network.

“Internet” means the international computer network of both federal and non-federal interoperable packet switched data networks.

“Item depicting the sexual exploitation or abuse of a child” means a photograph, film, video, an electronic, electromagnetic or digital recording, an image stored or maintained in

a computer program or file or in a portion of a file, or any other reproduction or reconstruction which:

- (a) depicts a child engaging in a prohibited sexual act or in the simulation of such an act; or
- (b) portrays a child in a sexually suggestive manner.

“Peer-to-peer network” means a connection of computer systems through which files are shared directly between the systems on a network without the need of a central server.

“Portray a child in a sexually suggestive manner” means:

- (a) to depict a child’s less than completely and opaquely covered intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or
- (b) to depict any form of contact with a child’s intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or
- (c) to otherwise depict a child for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value.

“Prohibited sexual act” means

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus; or
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or
- (j) Any act of sexual penetration or sexual contact as defined in N.J.S.2C:14-1.

“Reproduction” means, but is not limited to, computer generated images.

(2) (Deleted by amendment, P.L.2001, c.291).

(3) A person commits a crime of the first degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act or to be portrayed in a sexually suggestive manner if the person knows, has reason to know or intends that the prohibited act or

portrayal may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance.

(4) A person commits a crime of the second degree if he photographs or films a child in a prohibited sexual act or in the simulation of such an act or for portrayal in a sexually suggestive manner or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act or for portrayal in a sexually suggestive manner.

(5)

(a) A person commits a crime if, by any means, including but not limited to the Internet, he:

(i) knowingly distributes an item depicting the sexual exploitation or abuse of a child;

(ii) knowingly possesses an item depicting the sexual exploitation or abuse of a child with the intent to distribute that item; or

(iii) knowingly stores or maintains an item depicting the sexual exploitation or abuse of a child using a file-sharing program which is designated as available for searching by or copying to one or more other computers.

In a prosecution under sub-subparagraph (iii) of this subparagraph, the State shall not be required to offer proof that an item depicting the sexual exploitation or abuse of a child had actually been searched, copied, transmitted or viewed by another user of the file-sharing program, or by any other person, and it shall be no defense that the defendant did not intend to distribute the item to another user of the file-sharing program or to any other person. Nor shall the State be required to prove that the defendant was aware that the item depicting the sexual exploitation or abuse of a child was available for searching or copying to one or more other computers, and the defendant shall be strictly liable for failing to designate the item as not available for searching or copying by one or more other computers.

A violation of this subparagraph that involves 1,000 or more items depicting the sexual exploitation or abuse of a child is a crime of the first degree; otherwise it is a crime of the second degree.

Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, a person whose offense under this subparagraph involved at least 25 but less than 1,000 items depicting the sexual exploitation or abuse of a child shall be sentenced to a mandatory minimum term of imprisonment, which shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall be ineligible for parole.

Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, a person whose offense under this subparagraph involved 1,000 or more items depicting the sexual exploitation or abuse of a child shall be sentenced to a mandatory minimum term of imprisonment, which shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or 10 years, whichever is greater, during which the defendant shall be ineligible for parole.

Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, a person convicted of a second or subsequent offense under this subparagraph shall be sentenced to an extended

term of imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this subparagraph, an offense is considered a second or subsequent offense if the actor has at any time been convicted pursuant to paragraph (3), (4), or (5) of this subsection, or under any similar statute of the United States, this State, or any other state for an offense that is substantially equivalent to paragraph (3), (4), or (5) of this subsection.

For purposes of this subparagraph, the term “possess” includes receiving, viewing, or having under one’s control, through any means, including the Internet.

(b)

(i)A person commits a crime of the first degree if he knowingly possesses, knowingly views, or knowingly has under his control, through any means, including the Internet, 100,000 or more items depicting the sexual exploitation or abuse of a child.

(ii)A person commits a crime of the second degree if he knowingly possesses, knowingly views, or knowingly has under his control, through any means, including the Internet, at least 1,000 but less than 100,000 items depicting the sexual exploitation or abuse of a child.

(iii)A person commits a crime of the third degree if he knowingly possesses, knowingly views, or knowingly has under his control, through any means, including the Internet, less than 1,000 items depicting the sexual exploitation or abuse of a child.

Notwithstanding the provisions of subsection e. of N.J.S.2C:44-1, in any instance where a person was convicted of an offense under this subparagraph that involved 100 or more items depicting the sexual exploitation or abuse of a child, the court shall impose a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, a person convicted of a second or subsequent offense under this subparagraph shall be sentenced to an extended term of imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this subparagraph, an offense is considered a second or subsequent offense if the actor has at any time been convicted pursuant to paragraph (3), (4), or (5) of this subsection, or under any similar statute of the United States, this State, or any other state for an offense that is substantially equivalent to paragraph (3), (4), or (5) of this subsection.

Nothing in this subparagraph shall be construed to preclude or limit any prosecution or conviction for the offense set forth in subparagraph (a) of this paragraph.

(6)For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 18 in any photograph, film, videotape, computer program or file, video game, or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 18. If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act or portrayed in a sexually suggestive manner is under the age of 18, the actor shall be strictly liable and it shall not be a defense that the actor did not know that the child was under the age of 18, nor shall it be a defense that the actor believed that the child was 18 years of age or older, even if such a mistaken belief was reasonable.



State of Wisconsin
2019 - 2020 LEGISLATURE

DWE 1/10/19

LRB-1127(?)

MLJ:cde

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SLA ✓
X-ref ✓
S/C ✓

gc

1 **AN ACT** ...; **relating to:** possession of child pornography and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, in order for an image or video to be child pornography, the child must be engaged in sexually explicit conduct. Under this bill, an image or video is child pornography if it depicts the child in a sexually suggestive manner, which means that it depicts: (1) a child's less than completely and opaquely covered genitals, pubic area, or intimate parts in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; (2) any form of contact with a child's genitals, pubic area, or intimate parts in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or (3) a child in any other way that is for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value.

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.

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

2 **SECTION 1.** 948.12 (1) of the statutes is created to read:

1 948.12 (1) In this section, “sexually suggestive manner” means any of the
2 following:

3 (a) Depicting a child’s less than completely and opaquely covered genitals,
4 pubic area, or intimate parts in a manner that, by means of the posing, composition,
5 format, or animated sensual details, emits sensuality with sufficient impact to
6 concentrate prurient interest on the child.

7 (b) Depicting any form of contact with a child’s genitals, pubic area, or intimate
8 parts in a manner that, by means of the posing, composition, format, or animated
9 sensual details, emits sensuality with sufficient impact to concentrate prurient
10 interest on the child.

11 (c) Depicting a child for the purpose of sexual stimulation or gratification of any
12 person who may view the depiction where the depiction does not have serious
13 literary, artistic, political, or scientific value.

14 **SECTION 2.** 948.12 (1m) (intro.) of the statutes is amended to read:

15 948.12 (1m) (intro.) Whoever possesses, or accesses in any way with the intent
16 to view, any undeveloped film, photographic negative, photograph, motion picture,
17 videotape, or other recording of a child engaged in sexually explicit conduct or
18 portrayed in a sexually suggestive manner under all of the following circumstances
19 may be penalized under sub. (3):

20 **SECTION 3.** 948.12 (1m) (b) of the statutes is amended to read:

21 948.12 (1m) (b) The person knows, or reasonably should know, that the
22 material that is possessed or accessed contains depictions of sexually explicit conduct
23 or sexually suggestive imagery.

24 **SECTION 4.** 948.12 (1m) (c) of the statutes is amended to read:

1 948.12 (1m) (c) The person knows or reasonably should know that the child
2 depicted in the material who is engaged in sexually explicit conduct or portrayed in
3 a sexually suggestive manner has not attained the age of 18 years.

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

5 948.12 (2m) (intro.) Whoever exhibits or plays a recording of a child engaged
6 in sexually explicit conduct or portrayed in a sexually suggestive manner, if all of the
7 following apply, may be penalized under sub. (3):

8 **SECTION 6.** 948.12 (2m) (b) of the statutes is amended to read:

9 948.12 (2m) (b) Before the person exhibited or played the recording, he or she
10 knew the character and content of the sexually explicit conduct or sexually
11 suggestive imagery.

12 **SECTION 7.** 948.12 (2m) (c) of the statutes is amended to read:

13 948.12 (2m) (c) Before the person exhibited or played the recording, he or she
14 knew or reasonably should have known that the child engaged in sexually explicit
15 conduct or portrayed in a sexually suggestive manner had not attained the age of 18
16 years.

17 **SECTION 8.** 971.23 (11) (b) of the statutes is amended to read:

18 971.23 (11) (b) Any undeveloped film, photographic negative, photograph,
19 motion picture, videotape, or recording, which includes any item or material that
20 would be included under s. 948.01 (3r), or any copy of the foregoing, that is of a person
21 who has not attained the age of 18 and who is engaged in sexually explicit conduct
22 or portrayed in a sexually suggestive manner and that is in the possession, custody,
23 and control of the state shall remain in the possession, custody, and control of a law
24 enforcement agency or a court but shall be made reasonably available to the defense.

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1127/P1ins
MLJ:...

1

INSERT 3-25

****NOTE: As currently drafted, this provision applies only to possession of child pornography. Do you also want it to apply to production of child pornography?



State of Wisconsin
2019 - 2020 LEGISLATURE

DUE 2/6/19

LRB-1127/P1
MLJ:cdc

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to amend** 948.12 (1m) (intro.), 948.12 (1m) (b), 948.12 (1m) (c), 948.12
2 (2m) (intro.), 948.12 (2m) (b), 948.12 (2m) (c) and 971.23 (11) (b); and **to create**
3 948.12 (1) of the statutes; **relating to:** possession of child pornography and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, in order for an image or video to be child pornography, the child must be engaged in sexually explicit conduct. Under this bill, an image or video is child pornography if it depicts the child in a sexually suggestive manner, which means that it depicts: 1) a child's less than completely and opaquely covered genitals, pubic area, or intimate parts in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; 2) any form of contact with a child's genitals, pubic area, or intimate parts in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or 3) a child in any other way that is for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value.

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.

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

1 **SECTION 1.** 948.12 (1) of the statutes is created to read:

2 948.12 (1) In this section, “sexually suggestive manner” means any of the
3 following:

4 (a) Depicting a child’s less than completely and opaquely covered genitals,
5 pubic area, or intimate parts in a manner that, by means of the posing, composition,
6 format, or animated sensual details, emits sensuality with sufficient impact to
7 concentrate prurient interest on the child.

8 (b) Depicting any form of contact with a child’s genitals, pubic area, or intimate
9 parts in a manner that, by means of the posing, composition, format, or animated
10 sensual details, emits sensuality with sufficient impact to concentrate prurient
11 interest on the child.

12 (c) Depicting a child for the purpose of sexual stimulation or gratification of any
13 person who may view the depiction where the depiction does not have serious
14 literary, artistic, political, or scientific value.

15 **SECTION 2.** 948.12 (1m) (intro.) of the statutes is amended to read:

16 948.12 (1m) (intro.) Whoever possesses, or accesses in any way with the intent
17 to view, any undeveloped film, photographic negative, photograph, motion picture,
18 videotape, or other recording of a child engaged in sexually explicit conduct or
19 portrayed in a sexually suggestive manner under all of the following circumstances
20 may be penalized under sub. (3):

1 **SECTION 3.** 948.12 (1m) (b) of the statutes is amended to read:

2 948.12 (1m) (b) The person knows, or reasonably should know, that the
3 material that is possessed or accessed contains depictions of sexually explicit conduct
4 or sexually suggestive imagery.

5 **SECTION 4.** 948.12 (1m) (c) of the statutes is amended to read:

6 948.12 (1m) (c) The person knows or reasonably should know that the child
7 depicted in the material who is engaged in sexually explicit conduct or portrayed in
8 a sexually suggestive manner has not attained the age of 18 years.

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

10 948.12 (2m) (intro.) Whoever exhibits or plays a recording of a child engaged
11 in sexually explicit conduct or portrayed in a sexually suggestive manner, if all of the
12 following apply, may be penalized under sub. (3):

13 **SECTION 6.** 948.12 (2m) (b) of the statutes is amended to read:

14 948.12 (2m) (b) Before the person exhibited or played the recording, he or she
15 knew the character and content of the sexually explicit conduct or sexually
16 suggestive imagery.

17 **SECTION 7.** 948.12 (2m) (c) of the statutes is amended to read:

18 948.12 (2m) (c) Before the person exhibited or played the recording, he or she
19 knew or reasonably should have known that the child engaged in sexually explicit
20 conduct or portrayed in a sexually suggestive manner had not attained the age of 18
21 years.

22 **SECTION 8.** 971.23 (11) (b) of the statutes is amended to read:

23 971.23 (11) (b) Any undeveloped film, photographic negative, photograph,
24 motion picture, videotape, or recording, which includes any item or material that
25 would be included under s. 948.01 (3r), or any copy of the foregoing, that is of a person

1 who has not attained the age of 18 and who is engaged in sexually explicit conduct
2 or portrayed in a sexually suggestive manner and that is in the possession, custody,
3 and control of the state shall remain in the possession, custody, and control of a law
4 enforcement agency or a court but shall be made reasonably available to the defense.

5 ******NOTE:** As currently drafted, this provision applies only to possession of child pornography. Do you also want it to apply to production of child pornography?

(END)