



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Senate Bill 580

**Senate Substitute
Amendment 1**

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Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)

Senate Substitute Amendment 1 to 2005 Senate Bill 580 generally increases the penalties for the crimes of sexual exploitation of a child, using a computer to facilitate a child sex crime, and possession of child pornography, imposes a presumptive minimum prison sentence for those offenses, and requires persons convicted of sexual exploitation of a child or possession of child pornography to pay a child pornography surcharge.

PENALTIES FOR CERTAIN CHILD SEX CRIMES

Sexual Exploitation of a Child

Under *current law*, sexual exploitation of a child includes the following:

- Employing, using, persuading, inducing, enticing or coercing any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct or recording or displaying in any way a child engaged in sexually explicit conduct with knowledge of the character and content of the sexually explicit conduct involving the child.
- Producing, performing in, profiting from, promoting, importing into the state, reproducing, advertising, selling, distributing, or possessing with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.
- Knowingly permitting, allowing, or encouraging a child to engage in sexually explicit conduct, as described above, if the person is responsible for the child's welfare.

Sexual exploitation of a child is a ***Class F felony***, punishable by a fine not to exceed \$25,000 and imprisonment not to exceed 12 ½ years (maximum of 7 ½ years confinement in prison and 5 years of extended supervision).

Under ***the substitute amendment***, sexual exploitation of a child is a ***Class C felony***, punishable by a fine not to exceed \$100,000 and imprisonment not to exceed 40 years (maximum of 25 years confinement in prison and 15 years of extended supervision), except that a person who commits sexual exploitation of a child while he or she is less than 18 years of age is guilty of a ***Class F felony***.

Use of a Computer to Facilitate a Child Sex Crime

Under ***current law***, whoever uses a computerized communication system to communicate with an individual whom the actor believes or has reason to believe has not attained the age of 16 years with intent to have sexual contact or sexual intercourse with the individual is guilty of a ***Class D felony***. A Class D felony is punishable by a fine not to exceed \$100,000 and imprisonment not to exceed 25 years (maximum of 15 years confinement in prison and 10 years of extended supervision).

Under ***the substitute amendment***, use of a computer to facilitate a child sex crime is a ***Class C felony***.

Possession of Child Pornography

Under ***current law***, whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances is guilty of possession of child pornography:

- The person knows that he or she possesses the material.
- The person knows the character and content of the sexually explicit conduct in the material.
- The person knows or reasonably should know that the child engaged in sexually explicit conduct has not attained the age of 18 years.

The offense of possession of child pornography also includes exhibiting or playing a recording of a child engaged in sexually explicit conduct, if all of the following apply:

- The person knows that he or she has exhibited or played the recording.
- Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct.
- Before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years.

Possession of child pornography is a ***Class I felony***, punishable by a fine not to exceed \$10,000 and imprisonment not to exceed 3 ½ years (maximum of 1 ½ years confinement in prison and 2 years of extended supervision).

Under *the substitute amendment*, possession of child pornography is a *Class D felony*, except that a person who commits a violation of possession of child pornography while he or she is less than 18 years of age is guilty of a *Class I felony*.

PRESUMPTIVE MINIMUM SENTENCE FOR CERTAIN CHILD SEX OFFENSES

Under *the substitute amendment*, if a person is convicted of sexual exploitation of a child, using a computer to facilitate a child sex crime, or possession of child pornography, the court must generally impose a sentence that includes a term of confinement in prison and a term of extended supervision. The term of confinement in prison must be at least *five years* for violations of sexual exploitation of a child and using a computer to facilitate a child sex crime and must be at least *three years* for violations of possession of child pornography.

The court *may* impose a sentence that is less than the sentence required, or may place the person on probation, *only if* the court finds that the best interests of the community will be served and the public will not be harmed and if the court places its reasons on the record.

The presumptive minimum sentence does *not* apply if the offender was under 18 years of age when the violation occurred.

CHILD PORNOGRAPHY SURCHARGE

Under *the substitute amendment*, when a court sentences a person or places a person on probation for sexual exploitation of a child or possession of child pornography and the person was at least 18 years of age when the crime was committed, the court must impose a child pornography surcharge of \$500 for each image or each copy of an image associated with the crime. The proceeds from the surcharge are distributed as follows under the substitute amendment:

- 50% to the Department of Corrections to operate institutions and to provide field and administrative services.
- 30% to the Department of Justice for investigating child enticement and possession of child pornography offenses.
- 20% to the Office of Justice Assistance (OJA) to provide grants to nonprofit organizations that provide services to victims of sexual assault. OJA must develop criteria and procedures for use in selecting grantees and administering the grant program.

Legislative History

Senator Darling offered Senate Substitute Amendment 1. On April 26, 2006, the Senate Committee on Judiciary, Privacy and Corrections voted unanimously to adopt the substitute amendment and recommended passage of the bill, as amended, on a vote of Ayes, 4; Noes, 1.

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