



2013 ASSEMBLY BILL 10

February 13, 2013 - Introduced by Representatives KLEEFISCH, JACQUE, BIES and T. LARSON, cosponsored by Senator KEDZIE. Referred to Committee on Criminal Justice.

1 **AN ACT to renumber and amend** 942.09 (2) (am) and 942.09 (2) (bm) and (cm);
2 **to amend** 48.685 (1) (c) 2., 51.20 (13) (ct) 2m., 301.45 (1d) (b), 901.08 (1) (b),
3 946.82 (4), 971.17 (1m) (b) 2m., 973.048 (2m) and 995.50 (2) (d); and **to create**
4 948.045 of the statutes; **relating to:** representations depicting nude children
5 and requiring sex offender registration for adults who commit the offense
6 against a child who is under the age of 16.

Analysis by the Legislative Reference Bureau

Under current law, with exceptions, a person commits a Class I felony if he or she does any of the following: 1) takes a photograph or makes a motion picture, videotape, or other visual representation of a nude person without that person's consent when that person has a reasonable expectation of privacy; 2) reproduces such a photograph, motion picture, videotape, or other visual representation; or 3) possesses, distributes, or exhibits such a representation. In addition to the penalty for the felony conviction, the court may order a person to register with the Department of Corrections (DOC) as a sex offender if the court determines that the underlying conduct was sexually motivated and that registration would be in the interest of public protection. Under this bill, if a person who is at least 21 years of age commits the felony and the victim has not attained the age of 16, the court must order the person to register with DOC as a sex offender.

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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.** 48.685 (1) (c) 2. of the statutes is amended to read:

2 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
3 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295,
4 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2), 948.045 (2), 948.05, 948.051,
5 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13,
6 948.21 (1), 948.30, or 948.53.

7 **SECTION 2.** 51.20 (13) (ct) 2m. of the statutes is amended to read:

8 51.20 (13) (ct) 2m. 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, or to have solicited, conspired, or attempted to commit a violation, of s.
11 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051,
12 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am),
13 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s.
14 940.30 or 940.31 if the victim was a minor and the subject individual was not the
15 victim's parent, or of s. 948.045 if the victim had not attained the age of 16 years and
16 the subject individual was at least 21 years of age, the court shall require the
17 individual to comply with the reporting requirements under s. 301.45 unless the
18 court determines, after a hearing on a motion made by the individual, that the
19 individual is not required to comply under s. 301.45 (1m).

20 **SECTION 3.** 301.45 (1d) (b) of the statutes is amended to read:

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1 301.45 (1d) (b) “Sex offense” means a violation, or the solicitation, conspiracy,
2 or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02
3 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.075, 948.08,
4 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2)
5 if s. 940.302 (2) (a) 1. b. applies, ~~or~~ of s. 940.30 or 940.31 if the victim was a minor and
6 the person who committed the violation was not the victim’s parent, or of s. 948.045
7 if the victim had not attained the age of 16 years and the person who committed the
8 violation was at least 21 years of age.

9 **SECTION 4.** 901.08 (1) (b) of the statutes is amended to read:

10 901.08 (1) (b) “Sexual misconduct” includes a violation of s. 940.22 (2), 940.225
11 (1), (2), or (3), 940.32, 942.08, 942.09, 948.02, 948.025, 948.045, 948.05 (1) or (1m),
12 948.055 (1), 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, or 948.11 (2)
13 and includes sexual harassment, as defined in s. 111.32 (13).

14 **SECTION 5.** 942.09 (2) (am) of the statutes is renumbered 942.09 (2), and 942.09
15 (2) (b) and (c), as renumbered, are amended to read:

16 942.09 (2) (b) Makes a reproduction of a representation that the person knows
17 or has reason to know was captured in violation of ~~subd. 1. par. (a)~~ and that depicts
18 the nudity depicted in the representation captured in violation of ~~subd. 1. par. (a)~~,
19 if the person depicted nude in the reproduction did not consent to the making of the
20 reproduction.

21 (c) Possesses, distributes, or exhibits a representation that was captured in
22 violation of ~~subd. 1. par. (a)~~ or a reproduction made in violation of ~~subd. 2. par. (b)~~,
23 if the person knows or has reason to know that the representation was captured in
24 violation of ~~subd. 1. par. (a)~~ or the reproduction was made in violation of ~~subd. 2. par.~~

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1 (b), and if the person who is depicted nude in the representation or reproduction did
2 not consent to the possession, distribution, or exhibition.

3 **SECTION 6.** 942.09 (2) (bm) and (cm) of the statutes are renumbered 948.045
4 (2) (b) and (c), and 948.045 (2) (b) (intro.) and (c), as renumbered, are amended to
5 read:

6 948.045 **(2)** (b) (intro.) ~~Notwithstanding par. (am), if the person~~ If a child is
7 depicted nude in a representation or reproduction is ~~a child~~ and the capture,
8 possession, exhibition, or distribution of the representation, or making, possession,
9 exhibition, or distribution of the reproduction, does not violate s. 948.05 or 948.12,
10 a parent, guardian, or legal custodian of the child may do any of the following:

11 (c) This subsection does not apply to a person who receives a representation or
12 reproduction depicting a child from a parent, guardian, or legal custodian of the child
13 under par. ~~(bm)~~ (b) 2., if the possession, exhibition, or distribution is not for
14 commercial purposes.

15 **SECTION 7.** 946.82 (4) of the statutes is amended to read:

16 946.82 **(4)** "Racketeering activity" means any activity specified in 18 USC 1961
17 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
18 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,
19 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,
20 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6),
21 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31, 941.20 (2) and
22 (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011,
23 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e),
24 943.201, 943.203, 943.23 (1g), (2), and (3), 943.24 (2), 943.27, 943.28, 943.30, 943.32,
25 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4)

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1 (bf), (bm), and (c) and (4m), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83, 943.84,
2 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32, 944.33
3 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12,
4 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76,
5 946.79, 947.015, 948.045, 948.05, 948.051, 948.08, 948.12, and 948.30.

6 **SECTION 8.** 948.045 of the statutes is created to read:

7 **948.045 Representations depicting nudity; offenses against a child. (1)**

8 In this section:

9 (a) "Captures a representation" has the meaning given in s. 942.09 (1) (a).

10 (am) "Nude or partially nude child" means any child who has less than fully and
11 opaquely covered genitals, pubic area, or buttocks; any female child who has less
12 than a fully opaque covering over any portion of a breast below the top of the nipple;
13 or any male child with covered genitals in a discernibly turgid state.

14 (b) "Nudity" has the meaning given in s. 948.11 (1) (d).

15 (c) "Representation" has the meaning given in s. 942.09 (1) (c).

16 **(2)** (a) Except as provided in pars. (b) and (c), whoever does any of the following
17 is guilty of a Class I felony:

18 1. Captures a representation that depicts a child nude while that child is nude
19 in a circumstance in which he or she has a reasonable expectation of privacy.

20 2. Makes a reproduction of a representation that the person knows or has
21 reason to know was captured in violation of subd. 1. and that depicts the nudity
22 depicted in the representation captured in violation of subd. 1.

23 3. Possesses, distributes, or exhibits a representation that was captured in
24 violation of subd. 1. or a reproduction made in violation of subd. 2., if the person

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1 knows or has reason to know that the representation was captured in violation of
2 subd. 1. or the reproduction was made in violation of subd. 2.

3 **SECTION 9.** 971.17 (1m) (b) 2m. of the statutes is amended to read:

4 971.17 **(1m)** (b) 2m. If the defendant under sub. (1) is found not guilty by reason
5 of mental disease or defect for a violation, or for the solicitation, conspiracy, or
6 attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02
7 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08,
8 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2)
9 if s. 940.302 (2) (a) 1. b. applies, ~~or~~ of s. 940.30 or 940.31 if the victim was a minor and
10 the defendant was not the victim's parent, or of s. 948.045 if the victim had not
11 attained the age of 16 years and the defendant was at least 21 years of age, the court
12 shall require the defendant to comply with the reporting requirements under s.
13 301.45 unless the court determines, after a hearing on a motion made by the
14 defendant, that the defendant is not required to comply under s. 301.45 (1m).

15 **SECTION 10.** 973.048 (2m) of the statutes is amended to read:

16 973.048 **(2m)** If a court imposes a sentence or places a person on probation for
17 a violation, or for the solicitation, conspiracy, or attempt to commit a violation, of s.
18 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051,
19 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am),
20 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, ~~or~~ of s.
21 940.30 or 940.31 if the victim was a minor and the person was not the victim's parent,
22 or of s. 948.045 if the victim had not attained the age of 16 years and the person was
23 at least 21 years of age, the court shall require the person to comply with the
24 reporting requirements under s. 301.45 unless the court determines, after a hearing

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1 on a motion made by the person, that the person is not required to comply under s.
2 301.45 (1m).

3 **SECTION 11.** 995.50 (2) (d) of the statutes is amended to read:

4 995.50 (2) (d) Conduct that is prohibited under s. 942.09 or 948.045, regardless
5 of whether there has been a criminal action related to the conduct, and regardless
6 of the outcome of the criminal action, if there has been a criminal action related to
7 the conduct.

8 (END)