



1995 ASSEMBLY BILL 841

February 1, 1996 - Introduced by Representatives HARS DORF, DOBYNS, MUSSER, ALBERS, BRANDEMUEHL, OLSEN, WASSERMAN, AINSWORTH, SCHNEIDERS, KLUSMAN, WARD, SILBAUGH and SERATTI, cosponsored by Senators CLAUSING, RUDE, ANDREA, DRZEWIECKI, BUETTNER and ROSENZWEIG. Referred to Committee on Criminal Justice and Corrections.

- 1 **AN ACT to amend** 946.82 (4); and **to create** 944.205 of the statutes; **relating to:**
2 possession and distribution of certain photographs, motion pictures, videotapes
3 or other visual representations showing nudity and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits sexual exploitation of a child, which includes: 1) having a child engage in sexually explicit conduct for the purpose of photographing or otherwise recording the conduct; 2) photographing or otherwise recording a child engaged in sexually explicit conduct; and 3) producing, distributing or otherwise promoting material showing a child engaged in sexually explicit conduct. A person convicted of sexual exploitation of a child may be fined not more than \$10,000 or imprisoned for not more than 10 years or both. In addition, under current law a person who possesses child pornography (material showing a child engaged in sexually explicit conduct) may be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

This bill prohibits a person from taking a photograph or making a motion picture, videotape or other visual representation or reproduction that shows another person nude or partially nude without the knowledge and consent of the person who is shown nude or partially nude. The bill also prohibits a person from possessing or distributing a photograph, motion picture, videotape or other visual representation or reproduction that shows another person nude or partially nude and that was taken or made without the knowledge and consent of the person who is shown nude or partially nude. A person who violates the prohibitions created by the bill may be fined not more than \$10,000 or imprisoned for not more than 2 years or both. The bill also provides that a parent may give consent for a person to make, possess or distribute a photograph, motion picture, videotape or other visual representation or reproduction of his or her child if the photograph, motion picture, videotape or other visual representation or reproduction does not involve the child engaging in sexually explicit conduct. Finally, the bill provides that the prohibitions created in the bill do

not apply to any of the following: 1) a law enforcement officer acting within the scope of his or her employment; 2) any person who is obtaining or reviewing evidence for a criminal investigation or a pending civil action; 3) a medical professional acting within the scope of his or her employment; or 4) a person who is engaged in the wholesale or retail sale of printed matter, films or other visual representations, if the person is acting in the normal course of his or her business and the person does not have any editorial review or control over the material that he or she is selling.

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

1 **SECTION 1.** 944.205 of the statutes is created to read:

2 **944.205 Photographs, motion pictures, videotapes or other visual**
3 **representations showing nudity.** (1) Whoever does any of the following with
4 knowledge of the character and content of the photograph, motion picture, videotape
5 or other visual representation or reproduction is guilty of a Class E felony:

6 (a) Takes a photograph or makes a motion picture, videotape or other visual
7 representation or reproduction that shows a nude or partially nude human being
8 without the knowledge and consent of the human being who is shown nude or
9 partially nude.

10 (b) Possesses or distributes a photograph, motion picture, videotape or other
11 visual representation or reproduction that shows a nude or partially nude human
12 being and that was taken or made without the knowledge and consent of the human
13 being who is shown nude or partially nude.

14 (2) Notwithstanding sub. (1) (a) and (b), if the human being shown in a
15 photograph, motion picture, videotape or other visual representation or reproduction
16 is a minor and the making, possession or distribution of the photograph, motion
17 picture, videotape or other visual representation or reproduction does not violate s.
18 948.05 or 948.12, a parent of the child may give consent for a person to make, possess

1 or distribute the photograph, motion picture, videotape or other visual
2 representation or reproduction of the child.

3 (3) This section does not apply to any book, pamphlet, magazine, printed
4 matter, photograph, motion picture, videotape or other visual representation or
5 reproduction possessed or distributed by any of the following:

6 (a) A law enforcement officer acting within the scope of his or her employment.

7 (b) Any person who is obtaining or reviewing evidence for a criminal
8 investigation or a pending civil action.

9 (c) A medical professional acting within the scope of his or her employment.

10 (d) A person engaged in the retail or wholesale business of selling books,
11 pamphlets, magazines, printed matter, photographs, motion pictures, videotapes or
12 other visual representations or reproductions, if all of the following apply:

13 1. The possession or distribution of the book, pamphlet, magazine, printed
14 matter, photograph, motion picture, videotape or other visual representation or
15 reproduction is in the normal course of the person's business.

16 2. The content of the book, pamphlet, magazine, printed matter, photograph,
17 motion picture, videotape or other visual representation or reproduction is not
18 subject to the person's editorial review or control.

19 **SECTION 2.** 946.82 (4) of the statutes, as affected by 1995 Wisconsin Act 133,
20 is amended to read:

21 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961
22 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission
23 of any of the felonies specified in: chs. 161 and 945 and ss. 49.49, 134.05, 139.44 (1),
24 180.0129, 181.69, 184.09 (2), 185.825, 215.12, 221.17, 221.31, 221.39, 221.40, 551.41,
25 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (3) to (6), 940.20,

1 940.203, 940.21, 940.30, 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298,
2 941.31, 941.32, 943.01 (2) or (2g), 943.012, 943.013, 943.02, 943.03, 943.04, 943.05,
3 943.06, 943.10, 943.20 (3) (b) to (d), 943.23 (1g), (1m), (1r), (2) and (3), 943.24 (2),
4 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (1) (b) and (c), 943.38, 943.39, 943.40,
5 943.41 (8) (b) and (c), 943.50 (4) (b) and (c), 943.60, 943.70, 944.205, 944.21 (5) (c) and
6 (e), 944.32, 944.33 (2), 944.34, 945.03, 945.04, 945.05, 945.08, 946.10, 946.11, 946.12,
7 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76,
8 947.015, 948.05, 948.08, 948.12 and 948.30.

9 (END)