



## 1995 SENATE BILL 254

June 13, 1995 – Introduced by Senators PETAK, HUELSMAN, LEEAN, PANZER, A. LASEE, FARROW, BUETTNER, ZIEN, DRZEWIECKI, DARLING, WEEDEN, ROSENZWEIG and FITZGERALD, cosponsored by Representatives ALBERS, WOOD, DUFF, GREEN, DOBYNS, KLUSMAN, SCHNEIDERS, FREESE, LADWIG, OURADA, GARD, UNDERHEIM, VRAKAS, OTTE, NASS, SILBAUGH, WARD, WALKER, LAZICH, SERATTI, GROTHMAN, OWENS, HUEBSCH, HANDRICK, POWERS and RYBA. Referred to Committee on Judiciary.

1     **AN ACT to repeal** 165.25 (3m) and 944.21 (7); **to amend** 59.07 (64m), 944.21 (2)  
2           (c) 2. and 944.21 (2) (d) 2.; and **to create** 944.21 (2) (em) of the statutes; **relating**  
3           **to: obscenity.**

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### *Analysis by the Legislative Reference Bureau*

Under current obscenity law, there are penalties for selling or transferring obscene material or producing or performing in an obscene performance and related offenses. This bill makes the following changes in this obscenity law.

1. Currently, the district attorney may prosecute an obscenity violation only if he or she obtained the approval of the attorney general. This bill removes this requirement to obtain the attorney general's approval before prosecuting these violations.

2. Currently, obscene material and performances are determined based on 3-part tests. One of the requirements involves the fact that the material or performance shows sexual conduct in a patently offensive way. This bill specifies that the sexual conduct may be either actual or simulated sexual conduct.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

4           **SECTION 1.** 59.07 (64m) of the statutes is amended to read:  
5           59.07 (64m) REGULATION OF OBSCENITY. Enact an ordinance to prohibit conduct  
6           that is the same as that prohibited by s. 944.21. ~~A county may bring an action for~~

1 ~~a violation of the ordinance regardless of whether the attorney general has~~  
2 ~~determined under s. 165.25 (3m) that an action may be brought. The ordinance may~~  
3 provide for a forfeiture not to exceed \$10,000 for each violation.

4 **SECTION 2.** 165.25 (3m) of the statutes is repealed.

5 **SECTION 3.** 944.21 (2) (c) 2. of the statutes is amended to read:

6 944.21 (2) (c) 2. Under contemporary community standards, describes or shows  
7 actual or simulated sexual conduct in a patently offensive way; and

8 **SECTION 4.** 944.21 (2) (d) 2. of the statutes is amended to read:

9 944.21 (2) (d) 2. Under contemporary community standards, describes or  
10 shows actual or simulated sexual conduct in a patently offensive way; and

11 **SECTION 5.** 944.21 (2) (em) of the statutes is created to read:

12 944.21 (2) (em) "Simulated sexual conduct" means the explicit depiction or  
13 description of sexual conduct that creates the appearance of actual sexual conduct.

14 **SECTION 6.** 944.21 (7) of the statutes is repealed.

15 **SECTION 7. Initial applicability.**

16 (1) This act first applies to offenses committed on the effective date of this  
17 subsection, but does not preclude the counting of other offenses as prior offenses for  
18 sentencing a person.

19 (END)