

## 1999 ASSEMBLY BILL 268

April 9, 1999 – Introduced by Representatives COLON, RILEY, KLUSMAN, MUSSER, TURNER, BOCK, STASKUNAS and POWERS, cosponsored by Senators BURKE, DARLING and ROESSLER. Referred to Committee on Criminal Justice.

1     **AN ACT** *to renumber* 302.113 (7); *to amend* 48.57 (3p) (g) 3., 165.60, 165.70 (1)  
2           (b), 973.01 (5), 973.075 (1) (b) 1m. c. and 973.075 (2) (intro.); and *to create*  
3           302.113 (7) (b), 304.06 (1z), 944.30 (4g), 944.335 and 971.41 of the statutes;  
4           **relating to:** prostitution and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

Current law prohibits various conduct related to prostitution. This bill makes several changes in the laws relating to prostitution. Specifically, current law and the changes that the bill makes are as follows:

#### ***The offense of prostitution***

Under current law, the offense of prostitution includes the following: 1) engaging in, offering to engage in or requesting another to engage in sexual intercourse for anything of value; 2) engaging in, offering to engage in or requesting another to engage in certain acts of sexual contact or sexual gratification for anything of value; and 3) masturbating another, offering to masturbate another or requesting to be masturbated by another for anything of value. A person who is found guilty of prostitution may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

This bill provides that a person is guilty of prostitution if he or she masturbates himself or herself in the presence of another person at the request of that other person or offers to masturbate himself or herself in the presence of another person for anything of value.

**ASSEMBLY BILL 268*****Other offenses related to prostitution***

In addition to prohibiting prostitution, current law prohibits certain conduct relating to prostitution. Specifically, current law prohibits patronizing prostitutes, soliciting prostitutes (commanding, encouraging or requesting a person to practice prostitution on an ongoing basis), pandering (assisting a person in engaging a prostitute) and keeping a place of prostitution. A person who is found guilty of patronizing a prostitute may be fined not more than \$10,000 or imprisoned for not more than nine months or both. A person who is found guilty of soliciting prostitutes or keeping a place of prostitution may be fined not more than \$10,000 or imprisoned for not more than five years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than ten years or both, if the offense occurs on or after December 31, 1999. A person who is found guilty of pandering may be fined not more than \$10,000 or imprisoned for not more than nine months or both, except that if he or she received compensation from the earnings of the prostitute he or she may be fined not more than \$10,000 or imprisoned for not more than ten years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than 15 years or both, if the offense occurs on or after December 31, 1999.

This bill prohibits a person from doing any of the following, if they are done with the intent to engage in prostitution, to patronize prostitutes, to solicit prostitutes or to pander: 1) exposing or offering to expose or requesting another to expose his or her intimate parts; and 2) committing or offering to commit or requesting another to commit an act of sexual contact. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

***Disposition of prostitution-related cases***

The bill makes several changes relating to the disposition of cases of persons arrested for or convicted of offenses relating to prostitution. Specifically, the bill provides that when a person convicted of an offense relating to prostitution is released from prison on parole or extended supervision, the person may be required as a condition of parole or extended supervision to avoid the premises where the offense occurred or the geographic area where the offense occurred or both.

Finally, the bill provides for a deferred prosecution program for certain persons accused of or charged with prostitution, patronizing prostitutes, pandering (if the person did not receive compensation from the prostitute's earnings), or acts done with the intent to engage in prostitution, to patronize prostitutes, to solicit prostitutes or to pander. Under the deferred prosecution program, the accused or charged person must agree to abide by certain conditions, including participation in a program designed to educate offenders about the effect of prostitution on the community and its neighborhoods, if such a program is offered by a community organization in the community in which the person lives or in which the violation occurred and if the person has the financial ability to pay any fee required to participate in the program. If the person satisfies the conditions of the deferred prosecution, the case against him or her is not prosecuted; but if he or she fails to satisfy the conditions, the case against him or her may be prosecuted.

**ASSEMBLY BILL 268**

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:***

1           **SECTION 1.** 48.57 (3p) (g) 3. of the statutes is amended to read:

2           48.57 (3p) (g) 3. The person has been convicted of a violation of ch. 940, 944 or  
3           948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, or  
4           of a violation of the law of any other state or federal law that would be a violation of  
5           ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63  
6           or 948.70, if committed in this state, except that a county department or, in a county  
7           having a population of 500,000 or more, the department of health and family services  
8           may make payments to a person applying for payments under sub. (3m) and a person  
9           receiving payments under sub. (3m) may employ in a position in which the person  
10          would have regular contact with the child for whom those payments are being made  
11          or permit to be an adult resident a person who has been convicted of a violation of  
12          s. 944.30, 944.31 ~~or~~, 944.33 or 944.335 or of a violation of the law of any other state  
13          or federal law that would be a violation of s. 944.30, 944.31 ~~or~~, 944.33 or 944.335 if  
14          committed in this state, if that violation occurred 20 years or more before the date  
15          of the investigation.

16          **SECTION 2.** 165.60 of the statutes is amended to read:

17          **165.60 Law enforcement.** The department of justice is authorized to enforce  
18          ss. 101.123 (2), (5) and (8), 944.30, 944.31, 944.33, 944.335, 944.34, 945.02 (2), 945.03  
19          and 945.04 and is ~~invested~~ vested with the powers conferred by law upon sheriffs and  
20          municipal police officers in the performance of those duties. This section does not

**ASSEMBLY BILL 268**

1 deprive or relieve sheriffs, constables and other local police officers of the power and  
2 duty to enforce those sections, and those officers shall likewise enforce those sections.

3 **SECTION 3.** 165.70 (1) (b) of the statutes is amended to read:

4 165.70 (1) (b) Enforce chs. 945 and 961 and ss. 940.20 (3), 940.201, 941.25 to  
5 941.27, 943.01 (2) (c), 943.011, 943.27, 943.28, 943.30, 944.30, 944.31, 944.32, 944.33,  
6 944.335, 944.34, 946.65, 947.02 (3) and (4) and 948.08.

7 **SECTION 4.** 302.113 (7) of the statutes is renumbered 302.113 (7) (a).

8 **SECTION 5.** 302.113 (7) (b) of the statutes is created to read:

9 302.113 (7) (b) If a person is released on extended supervision under a  
10 bifurcated sentence imposed for any violation of s. 944.30, 944.31, 944.32, 944.33,  
11 944.335 or 944.34, the department may, subject to par. (a), require as a condition of  
12 extended supervision that the person avoid the premises where the violation  
13 occurred, the geographic area where the violation occurred or both the premises and  
14 the geographic area where the violation occurred. If the department imposes a  
15 condition of extended supervision under this paragraph that requires the person to  
16 avoid the geographic area where the violation occurred, the department shall specify  
17 in detail the geographic area to which the condition applies. This paragraph does not  
18 prohibit the department from requiring as a condition of probation that a person  
19 placed on probation for any violation of s. 944.30, 944.31, 944.32, 944.33, 944.335 or  
20 944.34 avoid the premises where the violation occurred, the geographic area where  
21 the violation occurred or both the premises and the geographic area where the  
22 violation occurred.

23 **SECTION 6.** 304.06 (1z) of the statutes is created to read:

24 304.06 (1z) If a person is paroled from a sentence imposed for any violation of  
25 s. 944.30, 944.31, 944.32, 944.33, 944.335 or 944.34, the parole commission or the

**ASSEMBLY BILL 268**

1 department may require as a condition of parole that the person avoid the premises  
2 where the violation occurred, the geographic area where the violation occurred or  
3 both the premises and the geographic area where the violation occurred. If the parole  
4 commission or the department imposes a condition of parole under this subsection  
5 that requires the person to avoid the geographic area where the violation occurred,  
6 the parole commission or the department, whichever is applicable, shall specify in  
7 detail the geographic area to which the condition applies. This subsection does not  
8 prohibit the department from requiring as a condition of probation that a person  
9 placed on probation for any violation of s. 944.30, 944.31, 944.32, 944.33, 944.335 or  
10 944.34 avoid the premises where the violation occurred, the geographic area where  
11 the violation occurred or both the premises and the geographic area where the  
12 violation occurred.

13 **SECTION 7.** 944.30 (4g) of the statutes is created to read:

14 944.30 (4g) Masturbates himself or herself in the presence of another person  
15 at the request of that other person or offers to masturbate himself or herself in the  
16 presence of another person for anything of value.

17 **SECTION 8.** 944.335 of the statutes is created to read:

18 **944.335 Acts in furtherance of prostitution.** Any person who intentionally  
19 does any of the following is guilty of a Class A misdemeanor:

20 (1) Exposes or offers to expose or requests another to expose his or her intimate  
21 parts with intent to commit a violation of s. 944.30, 944.31, 944.32 or 944.33.

22 (2) Commits or offers to commit or requests another to commit an act of sexual  
23 contact with intent to commit a violation of s. 944.30, 944.31, 944.32 or 944.33.

24 **SECTION 9.** 971.41 of the statutes is created to read:

1           **971.41 Deferred prosecution programs; prostitution cases. (1)** The  
2 district attorney may enter into a deferred prosecution agreement under this section  
3 with a person accused of or charged with any violation of s. 944.30, 944.31 or 944.335  
4 or any misdemeanor violation of s. 944.33 if all of the following apply to the person:

5           (a) The person has not previously been convicted of any state or federal crime.

6           (b) The person is not also accused of or charged with any crime other than a  
7 violation of s. 944.30, 944.31 or 944.335 or a misdemeanor violation of s. 944.33.

8           **(2)** A deferred prosecution agreement under sub. (1) shall provide that the  
9 prosecution will be suspended for a specified period not to exceed one year if the  
10 person complies with conditions specified in the agreement. The agreement shall be  
11 in writing, shall be signed by the district attorney or his or her designee and the  
12 person, and shall provide all of the following:

13           (a) That the person waives his or her right to a speedy trial during the period  
14 of the agreement.

15           (b) That the agreement will toll any applicable civil or criminal statute of  
16 limitations during the period of the agreement.

17           (c) That the person shall file with the district attorney a monthly written report  
18 certifying his or her compliance with the conditions specified in the agreement.

19           **(3)** If a community organization in the community in which the person lives or  
20 in which the violation occurred offers a program designed to educate offenders about  
21 the effect of prostitution on the community and its neighborhoods, a deferred  
22 prosecution agreement under sub. (1) shall provide, as one of its conditions, that the  
23 person must participate in the program, except that if the program requires a  
24 participant to pay a fee, the person may be required to participate in the program  
25 only if he or she has the financial ability to pay the fee.

**ASSEMBLY BILL 268**

1           **(4)** The written agreement shall be terminated and the prosecution may  
2 resume upon written notice by either the person or the district attorney to the other  
3 prior to completion of the period of the agreement.

4           **(5)** Upon completion of the period of the agreement, if the agreement has not  
5 been terminated under sub. (4), the court shall dismiss, with prejudice, any charge  
6 or charges against the person in connection with the crime specified in sub. (1), or  
7 if no such charges have been filed, none may be filed.

8           **(6)** Consent to a deferred prosecution under this section is not an admission of  
9 guilt and the consent may not be admitted in evidence in a trial for the crime specified  
10 in sub. (1), unless the consent is relevant to questions concerning the statute of  
11 limitations or lack of speedy trial. No statement relating to the crime, made by the  
12 person in connection with any discussions concerning deferred prosecution or made  
13 to any person involved in a program in which the person must participate as a  
14 condition of the agreement, is admissible in a trial for the crime specified in sub. (1).

15           **SECTION 10.** 973.01 (5) of the statutes is amended to read:

16           973.01 **(5)** EXTENDED SUPERVISION CONDITIONS. Whenever the court imposes a  
17 bifurcated sentence under sub. (1), the court may impose conditions upon the term  
18 of extended supervision. If a person is given a bifurcated sentence for any violation  
19 of s. 944.30, 944.31, 944.32, 944.33, 944.335 or 944.34, the court may require as a  
20 condition of extended supervision that the person avoid the premises where the  
21 violation occurred, the geographic area where the violation occurred or both the  
22 premises and the geographic area where the violation occurred. If the court imposes  
23 a condition of extended supervision under this subsection that requires the person  
24 to avoid the geographic area where the violation occurred, the court shall specify in  
25 detail the geographic area to which the condition applies.

