

1999 ASSEMBLY BILL 733

February 8, 2000 – Introduced by Representatives HUBER, WALKER, ZIEGELBAUER, LADWIG, PLALE, KAUFERT, BOCK, GUNDERSON, WASSERMAN, MUSSER, J. LEHMAN, SPILLNER, BLACK, KELSO, HASENOHRL, GROTHMAN, WILLIAMS, ALBERS, GRONEMUS, SYKORA, KREUSER and BERCEAU, cosponsored by Senators ERPENBACH, HUELSMAN, DECKER, SCHULTZ, CLAUSING, ROESSLER, ROBSON, ROSENZWEIG, BAUMGART and DARLING. Referred to Committee on Criminal Justice.

1 **AN ACT to amend** 51.20 (13) (ct) 2m., 165.70 (1) (b), 301.45 (1) (a), 301.45 (1) (b),
 2 301.45 (1) (bm), 301.45 (1) (c), 301.45 (1) (d), 301.45 (1) (dd), 301.45 (1) (dh),
 3 301.45 (5) (b) 1., 301.46 (2m) (a), 301.46 (2m) (am), 302.045 (2) (c), 938.34 (15m)
 4 (bm), 939.615 (1) (b) 1., 939.62 (2m) (a) 2m. b., 939.74 (2) (c), 948.025 (3), 948.13
 5 (1) (a), 971.17 (1m) (b) 2m., 973.01 (3m), 973.0135 (1) (b) 2., 973.034 and 973.048
 6 (2m); and **to create** 948.075 of the statutes; **relating to:** using a computer to
 7 facilitate having sexual contact or sexual intercourse with a person believed to
 8 be a child and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person may not, with intent to commit any of the following acts, cause or attempt to cause a child to go into a vehicle, building, room or secluded place: (1) having sexual contact or sexual intercourse with the child; (2) causing the child to engage in prostitution; (3) exposing a sex organ to the child or causing the child to expose a sex organ; (4) taking a picture or making an audio recording of the child engaging in sexually explicit conduct; (5) causing bodily or mental harm to the child; and (6) giving or selling to the child a controlled substance or a controlled substance analog.

This bill creates a new crime involving the use of a computer with intent to commit certain sex offenses against a person believed to be a child. Under the bill,

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no person may intentionally use a computerized communication system to communicate with an individual who the person 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. The person's belief that the individual is under 16 (as opposed to the individual's actual age) is an element of the offense. This prohibition does not apply if the person sending the communication reasonably believed that the age of the individual to whom the communication was sent was no more than 30 months less than the sender's own age.

A person who commits this offense may be imprisoned for up to 15 years, fined up to \$10,000 or both. If the person has been previously convicted of two serious felonies (as defined in the "three strikes" law), the person is subject to a sentence of life imprisonment without the possibility of parole or extended supervision.

In addition, the bill also requires that persons convicted of this offense register with the sex offender registry. The bill also prohibits certain persons convicted of the offense from engaging in an occupation or participating in a volunteer position that requires the person to work or interact primarily and directly with children under 16.

For further information see the *state* 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.** 51.20 (13) (ct) 2m. of the statutes is amended to read:

2 51.20 **(13)** (ct) 2m. If the subject individual is before the court on a petition filed
3 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a
4 violation, or to have solicited, conspired or attempted to commit a violation, of s.
5 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
6 948.07, 948.075, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was
7 a minor and the subject individual was not the victim's parent, the court shall require
8 the individual to comply with the reporting requirements under s. 301.45 unless the
9 court determines, after a hearing on a motion made by the individual, that the
10 individual is not required to comply under s. 301.45 (1m).

11 **SECTION 2.** 165.70 (1) (b) of the statutes is amended to read:

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1 165.70 (1) (b) Enforce chs. 945 and 961 and ss. 940.20 (3), 940.201, 941.25 to
2 941.27, 943.01 (2) (c), 943.011, 943.27, 943.28, 943.30, 944.30, 944.31, 944.32, 944.33,
3 944.34, 946.65, 947.02 (3) and (4), 948.075 and 948.08.

4 **SECTION 3.** 301.45 (1) (a) of the statutes is amended to read:

5 301.45 (1) (a) Is convicted, adjudicated delinquent or found in need of
6 protection or services on or after December 25, 1993, for any violation, or for the
7 solicitation, conspiracy or attempt to commit any violation, of s. 940.22 (2), 940.225
8 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07,
9 948.075, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor
10 and the person was not the victim's parent.

11 **SECTION 4.** 301.45 (1) (b) of the statutes, as affected by 1999 Wisconsin Act 9,
12 is amended to read:

13 301.45 (1) (b) Is in prison, a secured correctional facility, a secured child caring
14 institution or a secured group home or is on probation, extended supervision, parole,
15 supervision or aftercare supervision on or after December 25, 1993, for any violation,
16 or for the solicitation, conspiracy or attempt to commit any violation, of s. 940.22 (2),
17 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
18 948.07, 948.075, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was
19 a minor and the person was not the victim's parent.

20 **SECTION 5.** 301.45 (1) (bm) of the statutes, as affected by 1999 Wisconsin Act
21 9, is amended to read:

22 301.45 (1) (bm) Is in prison, a secured correctional facility, a secured child
23 caring institution or a secured group home or is on probation, extended supervision,
24 parole, supervision or aftercare supervision on or after December 25, 1993, for a
25 violation, or for the solicitation, conspiracy or attempt to commit a violation, of a law

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1 of this state that is comparable to s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02
2 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.11 or 948.30
3 or that is comparable to a violation of s. 940.30 or 940.31 if the victim was a minor
4 and the person was not the victim's parent.

5 **SECTION 6.** 301.45 (1) (c) of the statutes is amended to read:

6 301.45 (1) (c) Is found not guilty or not responsible by reason of mental disease
7 or defect on or after December 25, 1993, and committed under s. 51.20 or 971.17 for
8 any violation, or for the solicitation, conspiracy or attempt to commit any violation,
9 of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05,
10 948.055, 948.06, 948.07, 948.075, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31
11 if the victim was a minor and the person was not the victim's parent.

12 **SECTION 7.** 301.45 (1) (d) of the statutes is amended to read:

13 301.45 (1) (d) Is in institutional care or on conditional transfer under s. 51.35
14 (1) or conditional release under s. 971.17 on or after December 25, 1993, for any
15 violation, or for the solicitation, conspiracy or attempt to commit any violation, of s.
16 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,
17 948.06, 948.07, 948.075, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the
18 victim was a minor and the person was not the victim's parent.

19 **SECTION 8.** 301.45 (1) (dd) of the statutes is amended to read:

20 301.45 (1) (dd) Is in institutional care or on conditional transfer under s. 51.35
21 (1) or conditional release under s. 971.17 on or after December 25, 1993, for a
22 violation, or for the solicitation, conspiracy or attempt to commit a violation, of a law
23 of this state that is comparable to s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02
24 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.11 or 948.30

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1 or that is comparable to a violation of s. 940.30 or 940.31 if the victim was a minor
2 and the person was not the victim's parent.

3 **SECTION 9.** 301.45 (1) (dh) of the statutes is amended to read:

4 301.45 (1) (dh) Is on parole, extended supervision or probation in this state
5 from another state under s. 304.13 or 304.135 on or after December 25, 1993, for a
6 violation, or for the solicitation, conspiracy or attempt to commit a violation, of the
7 law of another state that is comparable to a violation of s. 940.22 (2), 940.225 (1), (2)
8 or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075,
9 948.08, 948.11 or 948.30 or that is comparable to a violation of s. 940.30 or 940.31 if
10 the victim was a minor and the person was not the victim's parent.

11 **SECTION 10.** 301.45 (5) (b) 1. of the statutes is amended to read:

12 301.45 (5) (b) 1. The person has, on 2 or more separate occasions, been convicted
13 or found not guilty or not responsible by reason of mental disease or defect for any
14 violation, or for the solicitation, conspiracy or attempt to commit any violation, of s.
15 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,
16 948.06, 948.07, 948.075, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the
17 victim was a minor and the person was not the victim's parent, or for any violation,
18 or for the solicitation, conspiracy or attempt to commit any violation, of a law of this
19 state or any other state that is comparable to a violation of s. 940.22 (2), 940.225 (1),
20 (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075,
21 948.08, 948.11 or 948.30 or that is comparable to a violation of s. 940.30 or 940.31 if
22 the victim was a minor and the person was not the victim's parent. A conviction that
23 has been reversed, set aside or vacated is not a conviction for purposes of determining
24 under this subdivision whether a person has been convicted on 2 or more separate
25 occasions.

ASSEMBLY BILL 733**SECTION 11**

1 **SECTION 11.** 301.46 (2m) (a) of the statutes is amended to read:

2 301.46 **(2m)** (a) If an agency with jurisdiction confines a person under s.
3 301.046, provides a person entering the intensive sanctions program under s.
4 301.048 with a sanction other than a placement in a Type 1 prison or a jail, or releases
5 a person from confinement or institutional care, and the person has, on one occasion
6 only, been convicted or found not guilty or not responsible by reason of mental disease
7 or defect for any violation, or for the solicitation, conspiracy or attempt to commit any
8 violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025,
9 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.11 or 948.30, or of s. 940.30 or
10 940.31 if the victim was a minor and the person was not the victim's parent, or a law
11 of this state that is comparable to s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02
12 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.11 or 948.30,
13 or that is comparable to s. 940.30 or 940.31 if the victim was a minor and the person
14 was not the victim's parent, the agency with jurisdiction may notify the police chief
15 of any community and the sheriff of any county in which the person will be residing,
16 employed or attending school if the agency with jurisdiction determines that such
17 notification is necessary to protect the public. Notification under this paragraph may
18 be in addition to providing access to information under sub. (2) or to any other
19 notification that an agency with jurisdiction is authorized to provide.

20 **SECTION 12.** 301.46 (2m) (am) of the statutes is amended to read:

21 301.46 **(2m)** (am) If an agency with jurisdiction confines a person under s.
22 301.046, provides a person entering the intensive sanctions program under s.
23 301.048 with a sanction other than a placement in a Type 1 prison or a jail, or releases
24 a person from confinement or institutional care, and the person has been found to be
25 a sexually violent person under ch. 980 or has, on 2 or more separate occasions, been

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1 convicted or found not guilty or not responsible by reason of mental disease or defect
2 for any violation, or for the solicitation, conspiracy or attempt to commit any
3 violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025,
4 948.05, 948.055, 948.06, 948.07, 948.075, 948.08 or 948.11 or a law of this state that
5 is comparable to s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025,
6 948.05, 948.055, 948.06, 948.07, 948.075, 948.08 or 948.11, the agency with
7 jurisdiction shall notify the police chief of any community and the sheriff of any
8 county in which the person will be residing, employed or attending school.
9 Notification under this paragraph shall be in addition to providing access to
10 information under sub. (2) and to any other notification that an agency with
11 jurisdiction is authorized to provide.

12 **SECTION 13.** 302.045 (2) (c) of the statutes is amended to read:

13 302.045 (2) (c) The inmate is incarcerated regarding a violation other than a
14 crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.055, 948.06,
15 948.07, 948.075, 948.08 or 948.095.

16 **SECTION 14.** 938.34 (15m) (bm) of the statutes is amended to read:

17 938.34 (15m) (bm) If the juvenile is adjudicated delinquent on the basis of a
18 violation, or the solicitation, conspiracy or attempt to commit a violation, of s.
19 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06,
20 948.07, 948.075, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was
21 a minor and the juvenile was not the victim's parent, the court shall require the
22 juvenile to comply with the reporting requirements under s. 301.45 unless the court
23 determines, after a hearing on a motion made by the juvenile, that the juvenile is not
24 required to comply under s. 301.45 (1m).

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1 **SECTION 15.** 939.615 (1) (b) 1. of the statutes, as affected by 1999 Wisconsin Act
2 3, is amended to read:

3 939.615 **(1)** (b) 1. A violation, or the solicitation, conspiracy or attempt to
4 commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025
5 (1), 948.05 (1) or (1m), 948.055 (1), 948.06, 948.07, 948.075, 948.08, 948.11 (2) (a),
6 948.12 or 948.13.

7 **SECTION 16.** 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

8 939.62 **(2m)** (a) 2m. b. Any felony under s. 940.01, 940.02, 940.03, 940.05,
9 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
10 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43,
11 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.075, 948.08,
12 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

13 **SECTION 17.** 939.74 (2) (c) of the statutes is amended to read:

14 939.74 **(2)** (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),
15 948.05, 948.06, 948.07 (1), (2), (3) or (4), 948.075, 948.08 or 948.095 shall be
16 commenced before the victim reaches the age of 31 years or be barred.

17 **SECTION 18.** 948.025 (3) of the statutes is amended to read:

18 948.025 **(3)** The state may not charge in the same action a defendant with a
19 violation of this section and with a felony violation involving the same child under
20 ch. 944 or a violation involving the same child under s. 948.02, 948.05, 948.06,
21 948.07, 948.075, 948.08, 948.10, 948.11 or 948.12, unless the other violation occurred
22 outside of the time period applicable under sub. (1). This subsection does not prohibit
23 a conviction for an included crime under s. 939.66 when the defendant is charged
24 with a violation of this section.

25 **SECTION 19.** 948.075 of the statutes is created to read:

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1 **948.075 Use of a computer to facilitate a child sex crime. (1)** Whoever
2 uses a computerized communication system to communicate with an individual who
3 the actor believes or has reason to believe has not attained the age of 16 years with
4 intent have sexual contact or sexual intercourse with the individual in violation of
5 s. 948.02 (1) or (2) is guilty of a Class C felony.

6 **(2)** This section does not apply if, at the time of the communication, the actor
7 reasonably believed that the age of the person to whom the communication was sent
8 was no more than 30 months less than the age of the actor.

9 **SECTION 20.** 948.13 (1) (a) of the statutes, as affected by 1999 Wisconsin Act 3,
10 is amended to read:

11 948.13 **(1)** (a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim
12 is under 18 years of age at the time of the offense, or a crime under s. 948.02 (1),
13 948.025 (1), 948.05 (1) or (1m), 948.06 or 948.07 (1), (2), (3) or (4) or 948.075.

14 **SECTION 21.** 971.17 (1m) (b) 2m. of the statutes is amended to read:

15 971.17 **(1m)** (b) 2m. If the defendant under sub. (1) is found not guilty by reason
16 of mental disease or defect for a violation, or for the solicitation, conspiracy or
17 attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02
18 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.11 or 948.30,
19 or of s. 940.30 or 940.31 if the victim was a minor and the defendant was not the
20 victim's parent, the court shall require the defendant to comply with the reporting
21 requirements under s. 301.45 unless the court determines, after a hearing on a
22 motion made by the defendant, that the defendant is not required to comply under
23 s. 301.45 (1m).

24 **SECTION 22.** 973.01 (3m) of the statutes is amended to read:

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1 **973.01 (3m)** CHALLENGE INCARCERATION PROGRAM ELIGIBILITY. When imposing
2 a bifurcated sentence under this section on a person convicted of a crime other than
3 a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.055, 948.06,
4 948.07, 948.075, 948.08 or 948.095, the court shall, as part of the exercise of its
5 sentencing discretion, decide whether the person being sentenced is eligible or
6 ineligible for the challenge incarceration program under s. 302.045 during the term
7 of confinement in prison portion of the bifurcated sentence.

8 **SECTION 23.** 973.0135 (1) (b) 2. of the statutes is amended to read:

9 **973.0135 (1) (b) 2.** Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
10 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
11 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43,
12 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.075, 948.08,
13 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

14 **SECTION 24.** 973.034 of the statutes, as affected by 1999 Wisconsin Act 3, is
15 amended to read:

16 **973.034 Sentencing; restriction on child sex offender working with**
17 **children.** Whenever a court imposes a sentence or places a defendant on probation
18 regarding a conviction under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is
19 under 18 years of age at the time of the offense, or a conviction under s. 948.02 (1),
20 948.025 (1), 948.05 (1) or (1m), 948.06 or 948.07 (1), (2), (3) or (4) or 948.075, the court
21 shall inform the defendant of the requirements and penalties under s. 948.13.

22 **SECTION 25.** 973.048 (2m) of the statutes is amended to read:

23 **973.048 (2m)** If a court imposes a sentence or places a person on probation for
24 a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s.
25 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,

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1 948.06, 948.07, 948.075, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the
2 victim was a minor and the person was not the victim's parent, the court shall require
3 the person to comply with the reporting requirements under s. 301.45 unless the
4 court determines, after a hearing on a motion made by the person, that the person
5 is not required to comply under s. 301.45 (1m).

6

(END)