

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3677/P1dn
MGD:cmh:mrc

November 3, 1999

Rep. Huber:

Please review this draft carefully to ensure that it is consistent with your intent. In particular, please note the following:

1. Under current law, if the age of the victim is an element of a crime, a person who avoids prosecution for the completed offense solely because the victim is not a child is nevertheless subject to prosecution for attempting to commit the offense if he or she mistakenly believes the victim is a child. *See State v. Kordas*, 191 Wis. 2d 124, 129-30 (Ct. App. 1995). Thus, if a person mistakenly believes that the individual whom he or she solicits, through e-mail, to engage in prostitution is a child, the person is guilty of violating proposed s. 948.075 (1) and attempting to violate s. 948.08.

In addition, under this bill, if the child is actually under 16 and the person completes (or attempts to complete) the offense of solicitation of a child for prostitution or one of the predicate offense listed in s. 948.075 (2), the person can be charged both with violating s. 948.075 and with the predicate offense (or with attempting to commit the predicate offense). Is this okay?

2. Is the word "facilitate" in proposed s. 948.075 (2) (intro.) too broad? One alternative would entail using the word "solicit" plus descriptions of other acts you want to cover.

3. A person can be convicted under this draft without committing the predicate offense while being punished more severely in certain cases than a person who does. For example, a person who sends an e-mail message to a child (or an individual who the person believes is a child) to induce the child to record himself or herself engaging in sexually explicit conduct is guilty of a Class BC felony, while a person who commits the offense of sexual exploitation of a child is guilty of a Class C felony. Moreover, a person who is convicted of attempted sexual exploitation of a child is subject to only half of the penalty for the Class C felony. This treatment, however, parallels that provided in s. 948.07. If you would like to change it in any way, please let me know.

4. Under the draft, persons who violate proposed s. 948.075 may be subject to lifetime supervision under s. 939.615 (1) (b) 1. In addition, please note that the draft does not refer to any part of proposed s. 948.075 in the exception to the sex offender registration requirements in s. 301.45 (1m) (a). Is this okay?

5. I included a cross-reference to this crime in the sex predator commitment statute (*i.e.*, in s. 980.01 (6) (a)), in s. 969.08 (10), which relates to the commission of a serious

crime by a person released on bail, and in s. 304.06 (2m), which places restrictions on where certain prisoners may be paroled. Is this okay?

6. Do you want the commission of this crime to warrant the non-issuance, suspension or revocation of a driver's license under ss. 343.06 (1) (i) and 343.30 (2d)? (Child enticement is included in both statutes.)

7. Do you want to include proposed s. 948.075 in the list of crimes covered by the victim notification provisions in ss. 301.046 (4), 301.048 (4m) (b), 302.115 (2), 303.068 (4m) (b), 304.06 (1) (d) 1. and 304.063 (2)?

8. Under s. 165.70 (1) (b), the department of justice is responsible for enforcing s. 948.08. Do you want it to be responsible for enforcing proposed s. 948.075 (1) as well?

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