

## 2001 ASSEMBLY BILL 145

February 22, 2001 – Introduced by Representatives LASSA, OLSEN, MUSSER, LADWIG, PLOUFF, GUNDERSON, BOCK, GRONEMUS, M. LEHMAN, WILLIAMS, URBAN, STARZYK, ALBERS, OTT, HUBER and COGGS, cosponsored by Senators BURKE, SHIBILSKI, FARROW, HUELSMAN, DARLING and ROESSLER. Referred to Committee on Judiciary.

1     **AN ACT** *to amend* 944.205 (2) (a), 944.205 (2) (b) and 944.205 (3); and *to create*  
2           944.205 (2) (am) of the statutes; **relating to:** the prohibition against making,  
3           possessing, or distributing a visual representation showing nudity and  
4           providing a penalty.

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

Current law prohibits production, possession, and distribution of a photograph, motion picture, videotape, or other visual representation or reproduction that depicts nudity if the person depicted nude did not consent to the representation or reproduction and if the person who makes, possesses, or distributes the representation or reproduction knows or should know that the person depicted nude did not consent to the nude depiction. Current law exempts from criminal liability parents, guardians, and legal custodians who make and possess visual representations or reproductions of their children that show nudity or distribute them for other than commercial purposes.

The Wisconsin supreme court recently found the state statute prohibiting nude representations unconstitutional, because it prohibits all depictions of nudity made without consent, including artistic, political, and newsworthy depictions that are protected by the First Amendment (*State v. Stevenson*, 236 Wis. 2d 86 (2000)).

This bill narrows the scope of the prohibition against making an original representation that depicts nudity by requiring that, at the time the representation is made, the subject of the depiction be both nude and in a place and circumstance in which he or she can reasonably expect privacy.

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The bill also applies the prohibition against making a reproduction that depicts nudity only to the act of reproducing an original representation that the reproducer knows or should know was made in violation of the prohibition against making an original representation, although the bill exempts a reproducer from criminal liability if the subject of the representation does consent to the reproduction even if he or she did not consent to the original representation. The bill treats the prohibitions against possessing and distributing representations depicting nudity similarly to the prohibition against making reproductions. The bill prohibits possessing or distributing a representation that is unlawfully made, unless the subject of the representation consents to the possession or distribution even if he or she did not consent to the making of the representation.

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

1           **SECTION 1.** 944.205 (2) (a) of the statutes is amended to read:

2           944.205 **(2)** (a) Takes a photograph or makes a motion picture, videotape, or  
3 other visual representation ~~or reproduction~~ that depicts nudity without the  
4 knowledge and consent of the person who is depicted nude while that person is nude  
5 in a place and circumstance in which he or she has a reasonable expectation of  
6 privacy, if the person taking the photograph or making the motion picture, videotape,  
7 or other visual representation knows or has reason to know that the person who is  
8 depicted nude does not know of and consent to the taking ~~or making~~ of the  
9 photograph or the making of the motion picture, videotape, or other visual  
10 representation ~~or reproduction~~.

11           **SECTION 2.** 944.205 (2) (am) of the statutes is created to read:

12           944.205 **(2)** (am) Makes a reproduction of a photograph, motion picture,  
13 videotape, or other visual representation that the person knows or has reason to  
14 know was made in violation of par. (a) and that depicts the nudity depicted in the  
15 representation made in violation of par. (a), if the person depicted nude in the  
16 reproduction did not consent to the making of the reproduction.

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1           **SECTION 3.** 944.205 (2) (b) of the statutes is amended to read:

2           944.205 **(2)** (b) Possesses or distributes a photograph, motion picture,  
3 videotape, or other visual representation or reproduction that depicts nudity and  
4 that was taken or made ~~without the knowledge and consent of the person who is~~  
5 ~~depicted nude in violation of par. (a) or (am)~~, if the person possessing or distributing  
6 the representation or reproduction knows or has reason to know that the photograph,  
7 motion picture, videotape, or other visual representation or reproduction was taken  
8 or made ~~without the knowledge and consent of the person who is depicted nude in~~  
9 ~~violation of par. (a) or (am)~~ and if the person who is depicted nude in the  
10 representation or reproduction did not consent to the possession or distribution.

11           **SECTION 4.** 944.205 (3) of the statutes is amended to read:

12           944.205 **(3)** Notwithstanding sub. (2) (a), ~~(am)~~, and (b), if the person in a  
13 photograph, motion picture, videotape, or other visual representation or  
14 reproduction is a child and the taking of the photograph or the making, possession,  
15 or distribution of the photograph, motion picture, videotape, or other visual  
16 representation or reproduction does not violate s. 948.05 or 948.12, a parent,  
17 guardian, or legal custodian of the child may do any of the following:

18           (a) ~~Make and~~ Take and possess the photograph or make and possess the  
19 ~~photograph,~~ motion picture, videotape, or other visual representation reproduction  
20 of the child.

21           (b) Distribute a photograph, taken or possessed, or a motion picture, videotape  
22 or other visual representation or reproduction made or possessed, under par. (a) if  
23 the distribution is not for commercial purposes.

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(END)