

2001 ASSEMBLY BILL 304

April 6, 2001 – Introduced by Representatives COLON, MUSSER, TURNER, RYBA, VRAKAS, RILEY and BERCEAU, cosponsored by Senators BURKE, HUELSMAN, ROESSLER and SCHULTZ. 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.

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 304***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 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. 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 15 years, or both.

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 public agency or private 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.

For further information see the ***state and local*** 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:

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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,
4 or of a violation of the law of any other state or federal law that would be a violation
5 of ch. 940, 944, or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45,
6 948.63, or 948.70, if committed in this state, except that a county department or, in
7 a county having a population of 500,000 or more, the department of health and family
8 services may make payments to a person applying for payments under sub. (3m) and
9 a person receiving payments under sub. (3m) may employ in a position in which the
10 person would have regular contact with the child for whom those payments are being
11 made or permit to be an adult resident a person who has been convicted of a violation
12 of 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),
19 945.03, and 945.04 and is ~~invested~~ vested with the powers conferred by law upon
20 sheriffs and municipal police officers in the performance of those duties. This section
21 does not deprive or relieve sheriffs, constables, and other local police officers of the
22 power and duty to enforce those sections, and those officers shall likewise enforce
23 those sections.

24 **SECTION 3.** 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,
3 944.335, 944.34, 946.65, 947.02 (3) and (4), and 948.08.

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

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

6 302.113 (7) (b) If a person is released on extended supervision under a
7 bifurcated sentence imposed for any violation of s. 944.30, 944.31, 944.32, 944.33,
8 944.335, or 944.34, the department may, subject to par. (a), require as a condition of
9 extended supervision that the person avoid the premises where the violation
10 occurred, the geographic area where the violation occurred, or both the premises and
11 the geographic area where the violation occurred. If the department imposes a
12 condition of extended supervision under this paragraph that requires the person to
13 avoid the geographic area where the violation occurred, the department shall specify
14 in detail the geographic area to which the condition applies. This paragraph does not
15 prohibit the department from requiring as a condition of probation that a person
16 placed on probation for any violation of s. 944.30, 944.31, 944.32, 944.33, 944.335, or
17 944.34 avoid the premises where the violation occurred, the geographic area where
18 the violation occurred, or both the premises and the geographic area where the
19 violation occurred.

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

21 304.06 (1z) If a person is paroled from a sentence imposed for any violation of
22 s. 944.30, 944.31, 944.32, 944.33, 944.335, or 944.34, the parole commission or the
23 department may require as a condition of parole that the person avoid the premises
24 where the violation occurred, the geographic area where the violation occurred, or
25 both the premises and the geographic area where the violation occurred. If the parole

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

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

11 944.30 (4g) Masturbates himself or herself in the presence of another person
12 at the request of that other person or offers to masturbate himself or herself in the
13 presence of another person for anything of value.

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

15 **944.335 Acts in furtherance of prostitution.** Any person who intentionally
16 does any of the following is guilty of a Class A misdemeanor:

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

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

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

22 **971.41 Deferred prosecution programs; prostitution cases.** (1) The
23 district attorney may enter into a deferred prosecution agreement under this section
24 with a person accused of or charged with any violation of s. 944.30, 944.31, or 944.335
25 or any misdemeanor violation of s. 944.33 if all of the following apply to the person:

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

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

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

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

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

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

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

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

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

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

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

13 973.01 **(5)** EXTENDED SUPERVISION CONDITIONS. Whenever the court imposes a
14 bifurcated sentence under sub. (1), the court may impose conditions upon the term
15 of extended supervision. If a person is given a bifurcated sentence for any violation
16 of s. 944.30, 944.31, 944.32, 944.33, 944.335, or 944.34, the court may require as a
17 condition of extended supervision that the person avoid the premises where the
18 violation occurred, the geographic area where the violation occurred, or both the
19 premises and the geographic area where the violation occurred. If the court imposes
20 a condition of extended supervision under this subsection that requires the person
21 to avoid the geographic area where the violation occurred, the court shall specify in
22 detail the geographic area to which the condition applies.

23 **SECTION 11.** 973.075 (1) (b) 1m. c. of the statutes is amended to read:

24 973.075 **(1)** (b) 1m. c. In the commission of a crime in violation of s. 944.30,
25 944.31, 944.32, 944.33, 944.335, or 944.34.

