

2001 ASSEMBLY BILL 719

January 14, 2002 – Introduced by Representatives HUBER, KAUFERT, AINSWORTH, ALBERS, BOCK, COGGS, FREESE, GROTHMAN, HINES, HUEBSCH, JESKEWITZ, KESTELL, KREUSER, LADWIG, LA FAVE, LASSA, MILLER, MUSSER, OLSEN, PETROWSKI, PLOUFF, RYBA, SCHNEIDER, SHILLING, STONE, SYKORA, TURNER, URBAN, VRAKAS, WASSERMAN and FRISKE, cosponsored by Senators BAUMGART, HUELSMAN, HANSEN, ROSENZWEIG, DECKER, ROESSLER, SCHULTZ, DARLING and HARS DORF. Referred to Committee on Criminal Justice.

1 **AN ACT** *to amend* 51.20 (13) (ct) 2m., 165.70 (1) (b), 301.45 (1d) (b), 302.045 (2)
 2 (c), 938.34 (15m) (bm), 939.615 (1) (b) 1., 939.62 (2m) (a) 2m. b., 939.74 (2) (c),
 3 948.025 (3), 948.13 (1) (a), 971.17 (1m) (b) 2m., 973.01 (3m), 973.0135 (1) (b) 2.,
 4 973.034 and 973.048 (2m); and *to create* 948.075 of the statutes; **relating to:**
 5 using a computer to facilitate having sexual contact or sexual intercourse with
 6 a person believed to 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; or (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, no person may, with intent to have sexual contact or sexual intercourse with the individual, intentionally use a computerized communication system to communicate with an individual who the person believes or has reason to believe has not attained

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the age of 16 years. 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 24 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 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 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:

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.
5 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055,
6 948.06, 948.07, 948.075, 948.08, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or
7 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the subject individual
8 was not the victim's parent, the court shall require the individual to comply with the
9 reporting requirements under s. 301.45 unless the court determines, after a hearing
10 on a motion made by the individual, that the individual is not required to comply
11 under s. 301.45 (1m).

12 **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 (1d) (b) of the statutes is amended to read:

5 301.45 (1d) (b) “Sex offense” means a violation, or the solicitation, conspiracy,
6 or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02
7 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11
8 (2) (a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31 if the victim was
9 a minor and the person who committed the violation was not the victim’s parent.

10 **SECTION 4.** 302.045 (2) (c) of the statutes is amended to read:

11 302.045 (2) (c) The inmate is incarcerated regarding a violation other than a
12 crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.055, 948.06,
13 948.07, 948.075, 948.08, or 948.095.

14 **SECTION 5.** 938.34 (15m) (bm) of the statutes is amended to read:

15 938.34 (15m) (bm) If the juvenile is adjudicated delinquent on the basis of a
16 violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22
17 (2), 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, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or
19 of s. 940.30 or 940.31 if the victim was a minor and the juvenile was not the victim’s
20 parent, the court shall require the juvenile 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 juvenile, that the juvenile is not required to comply under s.
23 301.45 (1m).

24 **SECTION 6.** 939.615 (1) (b) 1. of the statutes is amended to read:

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

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

6 939.62 (2m) (a) 2m. b. Any felony under s. 940.01, 940.02, 940.03, 940.05,
7 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
8 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m), or (1r), 943.32 (2), 946.43 (1m),
9 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.075, 948.08,
10 948.30 (2), 948.35 (1) (b) or (c), or 948.36.

11 **SECTION 8.** 939.74 (2) (c) of the statutes, as affected by 2001 Wisconsin Act 16,
12 is amended to read:

13 939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),
14 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, or 948.095 shall be
15 commenced before the victim reaches the age of 31 years or be barred, except as
16 provided in sub. (2d) (c).

17 **SECTION 9.** 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
22 occurred outside of the time period applicable under sub. (1). This subsection does
23 not prohibit a conviction for an included crime under s. 939.66 when the defendant
24 is charged with a violation of this section.

25 **SECTION 10.** 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 24 months less than the age of the actor.

9 **(3)** Proof that the actor did an act, other than use a computerized
10 communication system to communicate with the individual, to effect the actor's
11 intent under sub. (1) shall be necessary to prove that intent.

12 **SECTION 11.** 948.13 (1) (a) of the statutes is amended to read:

13 948.13 **(1)** (a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim
14 is under 18 years of age at the time of the offense, or a crime under s. 948.02 (1),
15 948.025 (1), 948.05 (1) or (1m), 948.06 or 948.07 (1), (2), (3), or (4), or 948.075.

16 **SECTION 12.** 971.17 (1m) (b) 2m. of the statutes is amended to read:

17 971.17 **(1m)** (b) 2m. If the defendant under sub. (1) is found not guilty by reason
18 of mental disease or defect for a violation, or for the solicitation, conspiracy, or
19 attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02
20 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11
21 (2) (a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31 if the victim was
22 a minor and the defendant was not the victim's parent, the court shall require the
23 defendant to comply with the reporting requirements under s. 301.45 unless the
24 court determines, after a hearing on a motion made by the defendant, that the
25 defendant is not required to comply under s. 301.45 (1m).

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1 **SECTION 13.** 973.01 (3m) of the statutes is amended to read:

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

9 **SECTION 14.** 973.0135 (1) (b) 2. of the statutes is amended to read:

10 **973.0135 (1) (b) 2.** Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
11 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
12 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m), or (1r), 943.32 (2), 946.43 (1m),
13 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.075, 948.08,
14 948.30 (2), 948.35 (1) (b) or (c), or 948.36.

15 **SECTION 15.** 973.034 of the statutes is 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
21 court shall inform the defendant of the requirements and penalties under s. 948.13.

22 **SECTION 16.** 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, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or
2 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the person was not the
3 victim's parent, the court shall require the person to comply with the reporting
4 requirements under s. 301.45 unless the court determines, after a hearing on a
5 motion made by the person, that the person is not required to comply under s. 301.45
6 (1m).

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(END)