



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0795/P1  
RLR&MGD:.....

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DOA:.....Statz - Crimes related to computers, obscenity, nudity, and pornography

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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In 1/18/00

D-Note

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1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**CRIMES**

***Crimes related to computers***

\* Under current law no person may willfully, knowingly, and without authorization modify, destroy, copy, take possession of, or access computer data, computer programs, or supporting documentation of a computer system. A person who violates this prohibition may generally be fined not more than \$10,000, imprisoned for not more than nine months, or both. If the violation occurs under certain circumstances, the maximum fine remains the same, but the person may face a longer term of confinement. Specifically, if the person committed the violation in order to defraud another or obtain the property of another a court may impose on the person a sentence, consisting of confinement in prison and extended supervision, not to exceed five years. If the violation causes more than \$2,500 of damage or if it causes an interruption or impairment of governmental operations, public communication, transportation, or a supply of water, gas, or other public service, a court may impose on the person a sentence, consisting of confinement in prison and extended supervision, not to exceed ten years. Finally, if the violation creates a substantial and unreasonable risk of death or great bodily harm to another, a court may impose upon the person a sentence, consisting of confinement in prison and extended supervision, not to exceed 15 years.

This bill prohibits an additional activity related to computers, intentionally interrupting computer service by sending to a computer, computer program, or computer network a message that is too complex, or multiple messages that are too voluminous, for the computer, computer program, or computer network to process. The penalty for intentionally interrupting computer service is a fine not to exceed \$10,000, imprisonment not to exceed nine months, or both. The penalty may be increased if the crime is committed under a circumstance permitting an increased penalty.

The bill also increases the penalties for violations of crimes related to computers that are committed under two additional circumstances. If the violation causes more than \$X of damage, the penalty is a fine not to exceed \$10,000 or a sentence, consisting of a term of confinement in prison and a term of extended supervision, not to exceed      years or both a fine and sentence. If the ~~the~~ violation results in an interruption of computer service to more than X people the penalty is a fine not to exceed \$10,000 or a sentence, consisting of a term of confinement in prison and a term of extended supervision, not to exceed      or both a fine and sentence.

The bill authorizes courts to enhance the penalty for violations of crimes related to computers if the person committing the crime disguises the identity or location of the computer at which he or she is working by accessing another person's computer to commit the violation with the intent to make it less likely that he or she will be identified with the crime. The court may increase the fine by      and may increase the term of confinement by     .

### ***Prohibitions related to images depicting nudity***

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 or possess visual representations depicting their children nude, or who distribute the representations 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, or 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. The bill 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

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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.

### ***Crimes against providing and describing harmful material to children***

Current law criminalizes the acts of providing and describing harmful material to a child and criminalizes possession of harmful material with intent to transfer the material to a child. Harmful material includes nudity, sexually explicit images, and images of torture and brutality. Current law does not require that the state prove that the defendant knows or should know that the recipient of the materials is a child. The law does, however, establish an affirmative defense under which the defendant may avoid criminal liability by proving that he or she reasonably believed that the recipient was 18 years of age or older. In order to prove that he or she reasonably believed the recipient was 18 years of age or older, the defendant must show that the recipient provided the defendant some form of identification documentation purporting to establish that the recipient was at least 18 years of age.

The Wisconsin supreme court recently ruled that the statute that prohibits exposure of a child to harmful materials is unconstitutional as applied to a defendant who sent harmful material over the Internet to a 17-year-old, and to other instances in which the defendant does not have face-to-face contact with the recipient. *State v. Weidner*, 235 Wis. 2d 306 (2000). The supreme court found the statute unconstitutional as applied in this case because knowledge of the recipient's age is not an element of the crime. The supreme court distinguished the case at issue in *Weidner* (transmitting harmful material over the Internet) from instances in which the defendant meets the recipient face-to-face. The supreme court did not disturb a lower court ruling that found the statute constitutional as applied to instances in which the defendant meets the recipient face-to-face, because the face-to-face meeting provides the defendant opportunity to assess the recipient's age.

The bill makes knowledge of the recipient's status as a child an element of the crime if the defendant does not have a face-to-face contact with the child. The bill does not add the knowledge-of-age element for cases in which the defendant has face-to-face contact with the recipient. Instead, in instances in which the defendant does have face-to-face contact with the recipient, the bill maintains the affirmative defense that requires the defendant to prove that he or she reasonably believed that the recipient was at least 18 years of age by showing that the recipient provided documentation of age.

### ***Virtual child pornography***

Current law prohibits production, distribution, sale, and possession of images of a child engaged in sexual conduct, as well as related activities such as advertising and importing into the state images of a child engaged in sexual conduct. Current law does not address images of what appears to be, but is not in actuality, a child engaged in sexual conduct.

This bill creates new crimes relating to recordings of images that are or appear to be those of a child engaged in sexually explicit conduct (virtual child pornography). Under the bill, no person may intentionally produce, distribute, or possess with intent to distribute virtual child pornography if the person advertises, promotes, presents, or describes the virtual child pornography as being or appearing to be a recording of an actual child engaging in sexually explicit conduct. The penalty for violating this prohibition is a fine not to exceed \$10,000 or a sentence, consisting of confinement in prison and extended supervision, not to exceed 15 years or both a fine and sentence. The bill also prohibits a person from intentionally possessing virtual child pornography, if the person knows that the person providing it has marketed it or described it as actual child pornography or if the person knows that it is not protected adult material. "Protected adult material" is defined as a recording of an image of one or more individuals, none of whom are children, engaging in sexually explicit conduct if the recording is not altered to make any of the individuals depicted appear to be a child. The penalty for possession of virtual child pornography is a fine not to exceed \$10,000 or a sentence, consisting of confinement in prison and extended supervision, not to exceed five years or both a fine and sentence.

***Inclusion of computer images in prohibitions related to certain images***

Several criminal laws prohibit activities related to images of nudity, or images and sounds of obscenity or of children engaged in sexually explicit conduct. Those crimes are: 1) making, possessing, reproducing or distributing images of nudity; 2) importing, printing, selling, transferring, exhibiting, or possessing for publication, sale, exhibition, or transfer, obscene material; 3) photographing, filming, videotaping, or making a sound recording of a child engaged in sexually explicit conduct, or enticing a child to go into a secluded place in order to take a picture of make a sound recording of the child engaged in sexually explicit conduct; 4) exposing a child to harmful images and sounds; and 5) producing, performing in, profiting from, importing, possessing, and other activities related to child pornography. These prohibitions do not specifically apply to computer generated images, sounds, or the stored data version of images or sounds.

The bill expands the prohibitions related to images of nudity, and images or sounds of obscenity or of children engaged in sexual conduct, to include images and sounds recorded using digital technology as well as the data that represents an image or a sound.

***New crimes related to invasion of privacy and obscenity***

The bill makes it a crime intentionally to aim a camera or other device for recording images up a person's skirt or down a person's shirt to record an image of nudity or of the person's undergarment without the person's consent. The penalty for violating this prohibition is \_\_\_\_\_.

The bill also makes it a crime to send an unsolicited e-mail message that contains obscenity or sexually explicit conduct, if the person sending the e-mail message does not label the e-mail message as "Adult advertisement" in the subject

line. The penalty for violating the prohibition against obscene e-mail is \_\_\_\_\_.

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

1           **SECTION 1.** 48.371 (3) (d) of the statutes is amended to read:

2           48.371 (3) (d) Any involvement of the child, whether as victim or perpetrator,  
3 in sexual intercourse or sexual contact in violation of s. 940.225, 948.02 or 948.025,  
4 prostitution in violation of s. 944.30, ~~sexual exploitation of a production or~~  
5 distribution of child pornography in violation of s. 948.05, or causing a child to view  
6 or listen to sexual activity in violation of s. 948.055, if the information is necessary  
7 for the care of the child or for the protection of any person living in the foster home,  
8 treatment foster home, group home or child caring institution. The foster parent,  
9 treatment foster parent or operator of a group home or child caring institution  
10 receiving information under this paragraph shall keep the information confidential.

History: 1993 a. 395; 1995 a. 275; 1997 a. 272.

11           **SECTION 2.** 938.371 (3) (d) of the statutes is amended to read:

12           938.371 (3) (d) Any involvement of the juvenile, whether as victim or  
13 perpetrator, in sexual intercourse or sexual contact in violation of s. 940.225, 948.02  
14 or 948.025, prostitution in violation of s. 944.30, ~~sexual exploitation of a production~~  
15 or distribution of child pornography in violation of s. 948.05, or causing a child to view  
16 or listen to sexual activity in violation of s. 948.055, if the information is necessary  
17 for the care of the juvenile or for the protection of any person living in the foster home,  
18 treatment foster home, group home, child caring institution or secured correctional  
19 facility. The foster parent, treatment foster parent or operator of a group home, child

1 caring institution or secured correctional facility receiving information under this  
2 paragraph shall keep the information confidential.

History: 1995 a. 77, 275, 352; 1997 a. 35, 272; 1999 a. 32.

3 SECTION 3. 939.615 (1) (b) 1. of the statutes is amended to read:

4 939.615 (1) (b) 1. A violation, or the solicitation, conspiracy or attempt to  
5 commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025  
6 (1), 948.05 (1) ~~or~~ (1m), or (1r), 948.055 (1), 948.06, 948.07, 948.08, 948.11 (2) (a),  
7 948.12 or 948.13.

8 SECTION 4. 943.70 (1) (a) of the statutes is renumbered 943.70 (1) (am). ✓

9 SECTION 5. 943.70 (1) (ag) of the statutes is created to read:

10 943.70 (1) (ag) "Access" means to instruct, communicate with, interact with,  
11 intercept, store data in, retrieve data from, or otherwise use the resources of.

12 SECTION 6. 943.70 (1) (gm) of the statutes is created to read:

13 943.70 (1) (gm) "Interruption in service" means inability to access a computer,

14 (a) computer program, computer system, or computer network, or an inability to  
15 complete a transaction involving a computer.

16 SECTION 7. 943.70 (2) (a) (intro.) of the statutes is amended to read:

17 943.70 (2) (a) (intro.) Whoever ~~wilfully~~ willfully, knowingly and without  
18 authorization does any of the following may be penalized as provided in ~~par.~~ pars. (b)  
19 and (c):

History: 1981 c. 293; 1983 a. 438, 541; 1987 a. 399.

20 SECTION 8. 943.70 (2) (a) 3. of the statutes is amended to read:

21 943.70 (2) (a) 3. Accesses data, computer programs or supporting  
22 documentation.

History: 1981 c. 293; 1983 a. 438, 541; 1987 a. 399.

23 SECTION 9. 943.70 (2) (am) of the statutes is created to read:

1           943.70 (2) (am) Whoever intentionally interrupts service by submitting a  
2 message, or multiple messages, to a computer, computer program, or computer  
3 network that exceeds the processing capacity of the computer, computer program, or  
4 computer network may be penalized as provided in pars. (b) and (c). ✓

5           **SECTION 10.** 943.70 (2) (b) (intro.) of the statutes is amended to read:

6           943.70 (2) (b) (intro.) Whoever violates ~~this subsection~~ par. (a) or (b) is guilty  
7 of:

8 History: 1981 c. 293; 1983 a. 438, 541; 1987 a. 399.

8           **SECTION 11.** 943.70 (2) (b) 1. of the statutes is amended to read:

9           943.70 (2) (b) 1. A Class A misdemeanor unless ~~subd. any of subds. 2., 3. or 4.~~  
10 to 6. applies.

11 History: 1981 c. 293; 1983 a. 438, 541; 1987 a. 399.

11           **SECTION 12.** 943.70 (2) (b) 3. of the statutes is amended to read:

12           943.70 (2) (b) 3. A Class D felony if the damage is greater than \$2,500 ~~or if it~~  
13 ~~causes an interruption or impairment of governmental operations or public~~  
14 ~~communication, of transportation or of a supply of water, gas or other public service~~  
15 but not more than X, and a Class felony if the damage is greater than  
16 X.

17 History: 1981 c. 293; 1983 a. 438, 541; 1987 a. 399.

17           **SECTION 13.** 943.70 (2) (b) 5. of the statutes is created to read:

18           943.70 (2) (b) 5. A Class D felony if the offense causes an interruption or  
19 impairment of governmental operations or public communication, of transportation,  
20 or of a supply of water, gas, or other public service.

21           **SECTION 14.** 943.70 (2) (b) 6. of the statutes is created to read:

22           943.70 (2) (b) 6. A Class \_\_\_\_\_ felony if the offense causes an interruption  
23 in service to more than \_\_\_\_\_ persons.

24           **SECTION 15.** 943.70 (2) (c) of the statutes is created to read:

1           943.70 (2) (c) If a person disguises the identity and location of the computer at  
2 which he or she is working while committing an offense under par. (a) or (am) with  
3 the intent to make it less likely that he or she will be identified with the crime, the  
4 penalties under par. (b) may be increased as follows:

5           1. In the case of a misdemeanor, the maximum fine prescribed by law for the  
6 crime may be increased by not more than \$ \_\_\_\_\_ and the maximum term of  
7 imprisonment prescribed by law for the crime may be increased so that the revised  
8 maximum term of imprisonment is \_\_\_\_\_.

9           2. In the case of a felony, the maximum fine prescribed by law for the crime may  
10 be increased by not more than \$ \_\_\_\_\_ and the maximum term of imprisonment  
11 prescribed by law for the crime may be increased by not more than \_\_\_\_\_.

12           **SECTION 16.** 944.205 (title) of the statutes is amended to read:

13           **944.205 (title) ~~Photographs, motion pictures, videotapes or other visual~~**  
14 **representations <sup>✓</sup>Recordings showing nudity.**

History: 1995 a. 249.

15           **SECTION 17.** 944.205 (1) of the statutes is renumbered 944.205 (1) (intro.) and  
16 amended to read:

17           944.205 (1) (intro.) In this section, <sup>✓</sup>“~~nudity~~”:

18           **(b) “Nudity”** has the meaning given in s. 948.11 (1) (d).

19           **SECTION 18.** 944.205 (1) (a) of the statutes is created to read:

20           944.205 (1) (a) “~~Exhibit~~” <sup>✓</sup>has the meaning given in s. 948.01 (1d). <sup>✓</sup>

21           **SECTION 19.** 944.205 (1) (c) of the statutes is created to read:

22           944.205 (1) (c) “Recording” <sup>✓</sup>has the meaning given in 948.01 (3r). <sup>✓</sup>

23           **SECTION 20.** 944.205 (2) (a) of the statutes is amended to read:



1           944.205 (2) (a) ~~Takes a photograph or makes a motion picture, videotape or~~  
2 ~~other visual representation or reproduction that depicts~~ Records an image of nudity  
3 without the knowledge and consent of the person who is depicted nude while that  
4 person is nude in a place and circumstance in which he or she has a reasonable  
5 expectation of privacy, if the person recording the image knows or has reason to know  
6 that the person who is depicted nude does not know of and consent to the ~~taking or~~  
7 ~~making of the photograph, motion picture, videotape or other visual representation~~  
8 ~~or reproduction~~ recording. ✓

9           SECTION 21. 944.205 (2) (b) of the statutes is repealed and recreated to read:

10           944.205 (2) (b) Copies, possesses, exhibits, stores, or ~~distributes~~ ✓ a recording of  
11 an image if all of the following apply: ✓

12           1. The recording was done in violation of par. (a) ✓ or was previously copied in  
13 violation of this paragraph.

14           2. The actor knows or has reason to know that the violation described under  
15 subd. 1. ✓ has occurred.

16           3. The person depicted nude in the recording did not consent to the copying,  
17 possession, exhibition, storage, or distribution of the recording under par. ✓ (b) (intro.).

18           4. The recording depicts the same nudity recorded in violation of par. (a). ✓

19           SECTION 22. 944.205 (3) of the statutes is amended to read:

20           944.205 (3) Notwithstanding sub. (2) (a) and (b), if the person depicted in a  
21 ~~photograph, motion picture, videotape or other visual representation or reproduction~~  
22 recording of an image is a child and the ~~making~~ recording, copying, possession,  
23 exhibition, storage, or distribution of the photograph, motion picture, videotape or  
24 ~~other visual representation or reproduction~~ recording ✓ does not violate s. 948.05 or  
25 948.12, a parent, guardian, or legal custodian of the child may do any of the following:

1 (a) ~~Make and Record, copy, possess, exhibit, or store~~ the ~~photograph, motion~~  
2 ~~picture, videotape or other visual representation reproduction of the child recording.~~

3 (b) ~~Distribute a photograph, motion picture, videotape or other visual~~  
4 ~~representation or reproduction made or recording that was recorded, copied,~~  
5 ~~possessed, exhibited, or stored~~ under par. (a) if the distribution is not for commercial  
6 purposes.

7 SECTION 23. 944.205 (4) of the statutes is amended to read:

8 944.205 (4) This section does not apply to a person who receives a ~~photograph,~~  
9 ~~motion picture, videotape or other visual representation or reproduction of recording~~  
10 ~~of an image depicting~~ a child from a parent, guardian, or legal custodian of the child  
11 under sub. (3) (b), if the possession ~~and, copying, exhibition, storage, or distribution~~  
12 ~~are~~ is not for commercial purposes.

13 SECTION 24. 944.207 of the statutes is created to read:

14 944.207 Video voyeurism. (1) In this section: (a) "Camera" includes a video  
15 camera, a digital camera, and any other mechanical or electronic device that can be  
16 used to record an image.

17 (b) "Nudity" has the meaning given in s. 948.11 (1) (d).

18 (c) "Recording" has the meaning given in s. 948.01 (3r).

19 (d) "Undergarment" means an article of clothing that a person is wearing next  
20 to his or her skin and that is covered by a second article of clothing.

21 (2) Whoever intentionally records an image depicting either nudity or an  
22 undergarment while aiming a camera underneath a person's external layer of  
23 clothing without the knowledge and consent of the person depicted in the recording  
24 is guilty of a \_\_\_\_\_.

25 SECTION 25. 944.21 (2) (am) of the statutes is created to read:

1 944.21 (2) (am) "Exhibit" has the meaning given in s. 948.01 (1d).

2 SECTION 26. 944.21 (2) (c) (intro.) of the statutes is amended to read:

3 944.21 (2) (c) (intro.) "Obscene material" means a writing, picture, sound  
4 ~~recording or film which, or other recording that:~~

History: 1977 c. 173, 272; 1987 a. 416; 1993 a. 399; 1995 a. 27 s. 9154 (1); 1997 a. 27; 1999 a. 9.

5 SECTION 27. 944.21 (2) (dm) of the statutes is created to read:

6 944.21 (2) (dm) "Recording" has the meaning given in s. 948.01 (3r).

7 SECTION 28. 944.21 (3) (a) of the statutes is amended to read:

8 944.21 (3) (a) Imports, prints, sells, has in his or her possession for sale,  
9 publishes, exhibits, plays, or transfers distributes any obscene material.

History: 1977 c. 173, 272; 1987 a. 416; 1993 a. 399; 1995 a. 27 s. 9154 (1); 1997 a. 27; 1999 a. 9.

10 SECTION 29. 944.21 (4) (a) and (b) of the statutes are amended to read:

11 944.21 (4) (a) ~~Transfers or~~ Distributes, exhibits, or plays any obscene material  
12 to a person under the age of 18 years.

13 ~~944.21 (4) (b)~~ Has in his or her possession with intent to ~~transfer or~~ distribute,  
14 exhibit, or play to a person under the age of 18 years any obscene material.

History: 1977 c. 173, 272; 1987 a. 416; 1993 a. 399; 1995 a. 27 s. 9154 (1); 1997 a. 27; 1999 a. 9.

15 SECTION 30. 944.21 (9) of the statutes is amended to read:

16 944.21 (9) In determining whether material is obscene under sub. (2) (c) 1. and  
17 3., a judge or jury shall examine individual pictures, recordings of images, or  
18 passages in the context of the work in which they appear.

History: 1977 c. 173, 272; 1987 a. 416; 1993 a. 399; 1995 a. 27 s. 9154 (1); 1997 a. 27; 1999 a. 9.

19 SECTION 31. 944.25 of the statutes is created to read:

20 944.25 Sending obscene or sexually explicit electronic messages. (1)

21 In this section:

1 (a) "Electronic mail solicitation" means an electronic mail message, including  
2 any attached program or document, that is sent for the purpose of encouraging a  
3 person to purchase property, goods, or services.

4 (b) "Obscene material" has the meaning given in s. 944.21 (2) (c).

5 (c) "Sexually explicit conduct" has the meaning given in s. 948.01 (7).

6 (2) Whoever sends an unsolicited electronic mail solicitation to a person that  
7 contains obscene material or a depiction of sexually explicit conduct without  
8 including the words "ADULT ADVERTISEMENT" in the subject line of the  
9 electronic mail solicitation is guilty of a \_\_\_\_\_.

10 SECTION 32. 948.01 (1b) of the statutes is created to read:

11 948.01 (1b) "Child pornography" means a recording of a child engaging in  
12 sexually explicit conduct or a recording of an image that is virtually  
13 indistinguishable to a reasonable unsuspecting viewer from a recording of an image  
14 of an actual child engaging in sexually explicit conduct.

15 SECTION 33. 948.01 (1d) of the statutes is created to read:

16 948.01 (1d) "Exhibit," with respect to a recording of an image that is not  
17 viewable in its recorded form, means to convert the recording of the image into a form  
18 in which the image may be viewed.

19 SECTION 34. 948.01 (3r) of the statutes is created to read:

20 948.01 (3r) "Recording" includes the creation of a reproduction of an image or  
21 a sound or the storage of data representing an image or a sound.

22 SECTION 35. 948.05 (title) of the statutes is amended to read:

23 948.05 (title) ~~Sexual exploitation of a~~ Production and distribution of  
24 child pornography.

1 SECTION 36. 948.05 (1) (a) of the statutes is amended to read:

2 948.05 (1) (a) Employs, uses, persuades, induces, entices or coerces any child  
3 to engage in sexually explicit conduct for the purpose of ~~photographing, filming,~~  
4 ~~videotaping, recording the sounds of~~ or displaying in any way the conduct.

5 SECTION 37. 948.05 (1) (b) of the statutes is amended to read:

6 948.05 (1) (b) ~~Photographs, films, videotapes, records the sounds of~~ Records or  
7 displays in any way a child engaged in sexually explicit conduct.

8 SECTION 38. 948.05 (1m) of the statutes is amended to read:

9 948.05 (1m) Whoever produces, performs in, profits from, promotes, imports  
10 into the state, reproduces, advertises, sells, distributes, or possesses with intent to  
11 sell or distribute, any ~~undeveloped film, photographic negative, photograph, motion~~  
12 ~~picture, videotape, sound recording or other reproduction~~ of a child engaging in  
13 sexually explicit conduct is guilty of a Class C felony if the person knows the  
14 character and content of the sexually explicit conduct involving the child and if the  
15 person knows or reasonably should know that the child engaging in the sexually  
16 explicit conduct has not attained the age of 18 years.

17 SECTION 39. 948.05 (1r) of the statutes is created to read:

18 948.05 (1r) Whoever intentionally produces, records, profits from, imports into  
19 the state, copies, sells, distributes, or possesses with intent to sell or distribute any  
20 child pornography is guilty of a Class C felony if the person advertises, promotes,  
21 presents, or describes the child pornography as being or appearing to be a recording  
22 of a child engaging in sexually explicit conduct.

23 SECTION 40. 948.07 (4) of the statutes is amended to read:

24 948.07 (4) ~~Taking a picture or making an audio recording of~~ Recording the child  
25 engaging in sexually explicit conduct.

1           **SECTION 41.** 948.11 (1) (ar) 2. of the statutes is amended to read:

2           948.11 (1) (ar) 2. Any book, pamphlet, magazine, printed matter however  
3 reproduced or ~~sound~~ recording that contains any matter enumerated in subd. 1., or  
4 explicit and detailed verbal descriptions or narrative accounts of sexual excitement,  
5 sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and  
6 that, taken as a whole, is harmful to children.

History: 1987 a. 332; 1989 a. 31; 1993 a. 220, 399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9.

7           **SECTION 42.** 948.11 (1) (bm) of the statutes is repealed.

8           **SECTION 43.** 948.11 (1) (c) of the statutes is repealed.

9           **SECTION 44.** 948.11 (2) (a) of the statutes is renumbered 948.11 (2) (a) (intro.)  
10 and amended to read:

11           948.11 (2) (a) (intro.) Whoever, with knowledge of the ~~nature~~ the character and  
12 content of the material, sells, rents, exhibits, ~~transfers~~ plays, distributes, or loans to  
13 a child any harmful material, with or without monetary consideration, is guilty of a  
14 Class E felony: if any of the following applies:

History: 1987 a. 332; 1989 a. 31; 1993 a. 220, 399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9.

15           **SECTION 45.** 948.11 (2) (a) 1. and 2. of the statutes are created to read:

16           948.11 (2) (a) 1. The person knows or reasonably should know that the child  
17 has not attained the age of 18 years.

18           2. The person has ~~face-to-face~~ contact with the child before or during the sale,  
19 rental, exhibit, playing, distribution, or loan.

20           **SECTION 46.** 948.11 (2) (am) of the statutes is renumbered 948.11 (2) (am)  
21 (intro.) and amended to read:

22           948.11 (2) (am) (intro.) Any person who has attained the age of 17 and who, with  
23 knowledge of the ~~nature~~ character and content of the description or narrative  
24 account, verbally communicates, by any means, a harmful description or narrative

1 account to a child, with or without monetary consideration, is guilty of a Class E  
2 felony: if any of the following applies:

3 History: 1987 a. 332; 1989 a. 31; 1993 a. 220, 399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9.

3 SECTION 47. 948.11 (2) (am) 1. and 2. of the statutes are created to read:

4 948.11 (2) (am) 1. The person knows or reasonably should know that the child  
5 has not attained the age of 18<sup>✓</sup> years.

6 2. The person has face-to-face<sup>✓</sup> contact with the child before or during the  
7 communication.

8 SECTION 48. 948.11 (2) (b) of the statutes is renumbered 948.11 (2) (b) (intro.)  
9 and amended to read:

10 948.11 (2) (b) (intro.) Whoever, with knowledge of the nature character and  
11 content of the material, possesses harmful material with the intent to sell, rent,  
12 exhibit, ~~transfer~~ play, distribute, or loan the material to a child is guilty of a Class A  
13 misdemeanor: if any of the following applies:

14 History: 1987 a. 332; 1989 a. 31; 1993 a. 220, 399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9.

14 SECTION 49. 948.11 (2) (b) 1. and 2. of the statutes are created to read:

15 948.11 (2) (b) 1. The person knows or reasonably should know that the child  
16 has not attained the age of 18 years.

17 2. The person has face-to-face contact with the child.

18 SECTION 50. 948.11 (2) (c) of the statutes is amended to read:

19 948.11 (2) (c) It is an affirmative defense to a prosecution for a violation of ~~this~~  
20 ~~section~~ pars. (a) 2., (am) 2., and (b) 2.<sup>✓</sup> if the defendant had reasonable cause to believe  
21 that the child had attained the age of 18 years, and the child exhibited to the  
22 defendant a draft card, driver's license, birth certificate or other official or  
23 apparently official document purporting to establish that the child had attained the

1 age of 18 years. A defendant who raises this affirmative defense has the burden of  
2 proving this defense by a preponderance of the evidence.

NOTE: NOTE: The supreme court in *State v. Weidner*, 2000 WI 52, 235 Wis. 2d 306, concluded that sub. (2) is unconstitutional in the context of the internet and other situations that do not involve face-to-face contact. NOTE:

History: 1987 a. 332; 1989 a. 31; 1993 a. 220, 399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9.

3 SECTION 51. 948.12 of the statutes is renumbered 948.12 (2m), and 948.12 (2m)

4 (intro.) and (b), as renumbered, are amended to read:

5 948.12 (2m) ~~Possession of child pornography~~ (intro.) Whoever possesses any

6 undeveloped film, photographic negative, photograph, motion picture, videotape, or

7 other <sup>plain</sup> ~~pictorial reproduction, or audio recording~~ of a child engaged in sexually explicit

8 conduct under all of the following circumstances is guilty of a Class E felony:

History: 1987 a. 332; 1995 a. 67.

9 (b) The person knows the character and content of the sexually explicit conduct  
10 shown in the material.

History: 1987 a. 332; 1995 a. 67.

11 SECTION 52. 948.12 (1) of the statutes is created to read:

12 948.12 (1) In this section, "protected adult material" means a recording of an  
13 image that meets all of the following requirements:

14 (a) The image is that of an individual engaging in sexually explicit conduct.

15 (b) Each individual described in <sup>par. (a)</sup> ~~sub. (1)~~ was an adult when the image was  
16 recorded.

17 (c) The recording was not altered to make any of the individuals described in  
18 <sup>par. (a)</sup> ~~sub. (1)~~ appear to be a child.

19 SECTION 53. 948.12 (3m) of the statutes is created to read:

20 948.12 (3m) Whoever exhibits or plays a recording of a child engaged in  
21 sexually explicit conduct is guilty of a Class E felony:

22 (a) The person knows that he or she has exhibited or played the recording.

if all of the following apply ✓



1 (b) Before the person exhibited or played the recording, he or she knew the  
2 character and content of the sexually explicit conduct.

3 (c) Before the person exhibited or played the recording, he or she knew or  
4 reasonably should have known that the child engaged in sexually explicit conduct  
5 had not attained the age of 18<sup>✓</sup> years.

6 SECTION 54. 948.12 (4) of the statutes is created to read:

7 948.12 (4) Whoever intentionally possesses, copies, exhibits, or<sup>✓</sup> stores child  
8 pornography is guilty of a Class E felony if<sup>✓</sup> one of the following applies:

9 (a) The actor knows that the person from whom he or she acquired the child  
10 pornography has advertised, promoted, presented, described, or distributed the  
11 recording as being or appearing to be that of a child engaging in sexually explicit  
12 conduct.

13 (b) The actor knows that the child pornography is not<sup>✓</sup> protected adult material.

14 SECTION 55. 948.13 (1) (a) of the statutes is amended to read:

15 948.13 (1) (a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim  
16 is under 18 years of age at the time of the offense, or a crime under s. 948.02 (1),  
17 948.025 (1), 948.05 (1) <sup>SCORE comma</sup> ~~or~~ (1m), or (1r), 948.06 or 948.07 (1), (2), (3) or (4).

18 SECTION 56. 973.034 of the statutes is amended to read:

19 **973.034 Sentencing; restriction on child sex offender working with**  
20 **children.** Whenever a court imposes a sentence or places a defendant on probation  
21 regarding a conviction under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is  
22 under 18 years of age at the time of the offense, or a conviction under s. 948.02 (1),  
23 948.025 (1), 948.05 (1) ~~or~~ (1m), or (1r)<sup>✓</sup>, 948.06 or 948.07 (1), (2), (3) or (4), the court  
24 shall inform the defendant of the requirements and penalties under s. 948.13.

25 SECTION 9359. <sup>✓</sup>Initial applicability; other.

1 (1) CRIMES RELATED TO COMPUTERS. The treatment of sections 939.615 (1) (b) 1.,  
 2 943.70 (1) (ag) ~~2~~ and (2) (a) (intro.) and 3., (am), (b) 1., 3., 5., and 6., and (c), 944.205 ~~1~~  
 3 ~~1~~ (2) ~~1~~ (4), 944.207, 944.21 (2) (am) ~~1~~ and (c) (intro.), (3) (a), (4) (a) and (b), and (9),  
 4 944.25, 948.05 (1) (a) and (b), (1m) and (1r), 948.07 (4), 948.11 (1) (ar) 2. ~~1~~  
 5 ~~1~~ (2m), (3m) and (4) 948.13 (1) (a), and 973.034 of the statutes first apply to  
 6 offenses committed on the effective date of this subsection.  
 7

(END)

(a) and (b), (3), and

and  
(2)(c),

~~NO #~~ , the renumbering and amendment of sections 944.205(1),  
 948.11 (2)(a), (am), and (b), and 948.12 of the statutes,  
 and the creation of sections 948.11 (2)(a) 1. and 2., (am) 1.  
 and 2., and (b) 1. and 2., and 948.12 (3m) and (4) of  
 the statutes ~~NO #~~

944.205(1)(a) and (c),

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0795/P1dn  
RLR&MGD: A:....

Jld

date

Andrew,

1. Please fill in the blanks for penalties in s. 943.70. ✓
2. I have attempted to sufficiently narrow the definition of "up-skirting and down-blousing" so that the prohibition against "up-skirting and down-blousing" will not be found unconstitutionally overbroad, however I cannot assure you that courts will uphold the prohibition if it is challenged.
- \* 3. Please be aware that in order to address the concerns raised by the Supreme Court in *State v Stevenson*, 236 Wis. 2d 86 (2000), regarding the prohibition against making a reproduction without the consent of the person depicted nude, this bill does not prohibit making reproductions of a depiction without consent from the subject. Rather, if the subject consents to the original nude depiction, a person can copy or distribute the depiction with immunity.
- \* 4. The bill makes unsolicited e-mailing of obscene material without proper labeling a crime. Please let me know if you would prefer to handle unsolicited obscene e-mail as a regulatory issue rather than a crime. If so, I will move the provision to a chapter on trade and marketing. Also, s. 944.21 (3) (a), as modified by this bill to include computer technology, prohibits sending obscene material by e-mail. A person might therefore be convicted under both ~~s.~~ s. 944.21 (3) (a) and ~~s.~~ s. 944.25. ✓
- \* 5. The provisions of this bill relating to computer-generated child pornography are based in part on provisions contained in the federal Child Pornography Prevention Act (CPPA), 18 U.S.C. § 2252A. The CPPA has been upheld by at least two federal courts of appeal, *U.S. v. Hilton*, 167 F.3d 61 (1st Cir. 1999) and *U.S. v. Acheson*, 195 F.3d 645 (11th Cir. 1999), and ruled unconstitutional by at least one other, *Free Speech Coalition v. Reno*, 198 F.3d 1083 (9th Cir. 1999). In upholding the CPPA, the *Hilton* and the *Acheson* courts each rejected the defendant's argument that the statute is unconstitutionally overbroad. (The *Free Speech Coalition* court disagreed, although it relied on other grounds as well.) In *Hilton*, for example, the court stated that the overbreadth doctrine should be used "only as a last resort." 167 F.3d at 71 (internal citations omitted).

The Wisconsin Supreme Court has used similar language when discussing the overbreadth doctrine, see, e.g., *State v. Stevenson*, 236 Wis. 2d 86, ¶14 (2000) ("courts

should only sparingly utilize the overbreadth doctrine as a tool for statutory invalidation"). In applying that doctrine, however, the supreme court may be more willing to use it to strike down statutes. *See, e.g., id.*, 236 Wis. 2d 86, ¶21. Consequently, it is difficult to determine whether the bill's prohibitions relating to apparent child pornography will withstand constitutional scrutiny.

6. Because a prosecutor might be unable to determine whether the production of a particular item of child pornography involved an actual child or whether it was created in some other way (such as with a computer), the definition of child pornography encompasses child pornography that was created using an actual child. Moreover, nothing in the bill as drafted precludes a person from being convicted with respect to a single recording under both s. 948.05 (1r), on the one hand, and s. 948.05 (1) or (1m), on the other. Similarly, a person may be convicted under both s. 948.12 (2m) and (4) for possession of a single recording. If you want to preclude this, we can include a provision in the next draft authorizing a person to be charged with respect to a single recording under more than one of the provisions under s. 948.05 but precluding the person from being convicted for the same conduct under more than one provision of s. 948.05. We can also insert similar language for s. 948.12.

7. There are quite a few cross-references to s. 948.05 and somewhat fewer cross-references to s. 948.12. Many of the references include violation of s. 948.05 or 948.12 in the definitions of terms such as "abuse," "sexual abuse," "serious crime," and "sex offense." Where a definition referred to all of §§. 948.05, or to s. 948.12 we did not amend the cross-reference to reflect addition of new prohibitions in this bill. For example, violation of the virtual child pornography provision under 948.05 (1r) or 948.12 (4) as created by this bill are treated as serious crimes under s. 50.065 (1) (e) 2. If the cross reference referred to only a portion of s. 948.05 (1) and (1m), we added reference to 948.05 (1r). Please review our handling of the cross-references to make sure it is consistent with your intent.

Apropos of that point, when you review the cross-references, keep note 4. above in mind. District attorneys may prosecute certain cases in which a real child is involved in sexually explicit conduct as virtual child pornography crimes. It is impossible to know, however, how frequently that will occur and how often the defendant, if charged with more than one crime, will be convicted under that s. 948.05 (1r). That may make it difficult to determine whether to include s. 948.05 (1r) in a particular cross-reference. For example, s. 970.03 (4) (a), which authorizes a court to exclude public from trial and refers to protecting a complainant, includes a cross-reference to all of s. 948.05, even though, in a virtual child pornography case in which no child engaged in sexually explicit activity, the complainant may be a law enforcement officer.

8. Please review the drafter's note attached to LRB-0146/1 for considerations of the treatment of s. 948.11 in response to the Supreme Court's decision in *State v. Weidner*, 235 Wis. 2d 306 (2000).

Robin Ryan  
Legislative Attorney  
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E-mail: robin.ryan@legis.state.wi.us

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0795/P1dn  
RLR&MGD:jld:pg

January 22, 2001

Andrew:

1. Please fill in the blanks for penalties in s. 943.70.
2. I have attempted to sufficiently narrow the definition of "up-skirting and down-blousing" so that the prohibition against "up-skirting and down-blousing" will not be found unconstitutionally overbroad, however I cannot assure you that courts will uphold the prohibition if it is challenged.
3. Please be aware that, in order to address the concerns raised by the Supreme Court in *State v Stevenson*, 236 Wis. 2d 86 (2000), regarding the prohibition against making a reproduction without the consent of the person depicted nude, this bill does not prohibit making reproductions of a depiction without consent from the subject. Rather, if the subject consents to the original nude depiction, a person can copy or distribute the depiction with immunity.
4. The bill makes unsolicited e-mailing of obscene material without proper labeling a crime. Please let me know if you would prefer to handle unsolicited obscene e-mail as a regulatory issue rather than a crime. If so, I will move the provision to a chapter on trade and marketing. Also, s. 944.21 (3) (a), as modified by this bill to include computer technology, prohibits sending obscene material by e-mail. A person might therefore be convicted under both ss. 944.21 (3) (a) and 944.25.
5. The provisions of this bill relating to computer-generated child pornography are based in part on provisions contained in the federal Child Pornography Prevention Act (CPPA), 18 U.S.C. § 2252A. The CPPA has been upheld by at least two federal courts of appeal, *U.S. v. Hilton*, 167 F.3d 61 (1st Cir. 1999) and *U.S. v. Acheson*, 195 F.3d 645 (11th Cir. 1999), and ruled unconstitutional by at least one other, *Free Speech Coalition v. Reno*, 198 F.3d 1083 (9th Cir. 1999). In upholding the CPPA, the *Hilton* and the *Acheson* courts each rejected the defendant's argument that the statute is unconstitutionally overbroad. (The *Free Speech Coalition* court disagreed, although it relied on other grounds as well.) In *Hilton*, for example, the court stated that the overbreadth doctrine should be used "only as a last resort." 167 F.3d at 71 (internal citations omitted).

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Robin Ryan  
Legislative Attorney  
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Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867



1/25/01

0795

No virtual porn.  
no up-skirting

p. 7 / line 10

✓	penalties	
✓	< 1000	A misd
✓	1 - 2500	E felony
	> 2500	C

p. 7 line 16 class C (was D)

✓ p. 7 l 20 strike  
✓ line 23 and 27 (strike §14)

✓ p. 8 not more \$1000 / 12 months (misd)  
max incr \$2500 / 2 years (felony)

✓ p. 10 Class A misd. (delete §)

verify obscene email should be  
Class A misd.

Soon

DOA:.....Statz - Crimes related to computers, obscenity, nudity, and pornography

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

RMR

In 1/31/01

Dorigen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**CRIMES**

***Crimes related to computers***

Under current law no person may willfully, knowingly, and without authorization modify, destroy, copy, take possession of, or access computer data, computer programs, or supporting documentation of a computer system. A person who violates this prohibition may generally be fined not more than \$10,000, imprisoned for not more than nine months, or both. If the violation occurs under certain circumstances, the maximum fine remains the same, but the person may face a longer term of confinement. Specifically, if the person committed the violation in order to defraud another or obtain the property of another a court may impose on the person a sentence, consisting of confinement in prison and extended supervision, not to exceed five years. If the violation causes more than \$2,500 of damage or if it causes an interruption or impairment of governmental operations, public communication, transportation, or a supply of water, gas, or other public service, a court may impose on the person a sentence, consisting of confinement in prison and extended supervision, not to exceed ten years. Finally, if the violation creates a substantial and unreasonable risk of death or great bodily harm to another, a court may impose upon the person a sentence, consisting of confinement in prison and extended supervision, not to exceed 15 years.

bifurcated

✓ computer system

✓ computer system

This bill prohibits an additional activity related to computers, intentionally interrupting computer service by sending to a computer, computer program, or computer network a message that is too complex, or multiple messages that are too voluminous, for the computer, computer program, or computer network to process. The penalty for intentionally interrupting computer service is a fine not to exceed \$10,000, imprisonment not to exceed nine months, or both. The penalty may be increased if the crime is committed under a circumstance permitting an increased penalty.

Insert  
2 at 8

~~The bill also increases the penalties for violations of crimes related to computers that are committed under two additional circumstances. If the violation causes more than \$X of damage, the penalty is a fine not to exceed \$10,000 or a sentence, consisting of a term of confinement in prison and a term of extended supervision, not to exceed \_\_\_\_\_ years or both a fine and sentence. If the violation results in an interruption of computer service to more than X people the penalty is a fine not to exceed \$10,000 or a sentence, consisting of a term of confinement in prison and a term of extended supervision, not to exceed \_\_\_\_\_ or both a fine and sentence.~~

The bill authorizes courts to enhance the <sup>penalties</sup> penalty for violations of crimes related to computers if the person committing the crime disguises the identity or location of the computer at which he or she is working by accessing another person's computer to commit the violation with the intent to make it less likely that he or she will be identified with the crime. ~~The court may increase the fine by \_\_\_\_\_ and may increase the term of confinement by \_\_\_\_\_~~

Insert 2 at 23

**Prohibitions related to images depicting nudity**

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 or possess visual representations depicting their children nude, or who distribute the representations 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, or 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. The bill 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.

***Crimes against providing and describing harmful material to children***

Current law criminalizes the acts of providing and describing harmful material to a child and criminalizes possession of harmful material with intent to transfer the harmful material to a child. Harmful material includes nudity, sexually explicit images, and images of torture and brutality. Current law does not require that the state prove that the defendant knows or should know that the recipient of the materials is a child. The law does, however, establish an affirmative defense under which the defendant may avoid criminal liability by proving that he or she reasonably believed that the recipient was 18 years of age or older. In order to prove that he or she reasonably believed the recipient was 18 years of age or older, the defendant must show that the recipient provided the defendant some form of identification documentation purporting to establish that the recipient was at least 18 years of age.

The Wisconsin supreme court recently ruled that the statute that prohibits exposure of a child to harmful materials is unconstitutional as applied to a defendant who sent harmful material over the Internet to a 17-year-old, and to other instances in which the defendant does not have face-to-face contact with the recipient. *State v. Weidner*, 235 Wis. 2d 306 (2000). The supreme court found the statute unconstitutional as applied in this case because knowledge of the recipient's age is not an element of the crime. The supreme court distinguished the case at issue in *Weidner* (transmitting harmful material over the Internet) from instances in which the defendant meets the recipient face-to-face. The supreme court did not disturb a lower court ruling that found the statute constitutional as applied to instances in which the defendant meets the recipient face-to-face, because the face-to-face meeting provides the defendant opportunity to assess the recipient's age.

The bill makes knowledge of the recipient's status as a child an element of the crime if the defendant does not have a face-to-face contact with the child. The bill does not add the knowledge-of-age element for cases in which the defendant has face-to-face contact with the recipient. Instead, in instances in which the defendant does have face-to-face contact with the recipient, the bill maintains the affirmative defense that requires the defendant to prove that he or she reasonably believed that the recipient was at least 18 years of age by showing that the recipient provided documentation of age.

***Virtual child pornography***

Current law prohibits production, distribution, sale, and possession of images of a child engaged in sexual conduct, as well as related activities such as advertising and importing into the state images of a child engaged in sexual conduct. Current law does not address images of what appears to be, but is not in actuality, a child engaged in sexual conduct.

This bill creates new crimes relating to recordings of images that are or appear to be those of a child engaged in sexually explicit conduct (virtual child pornography). Under the bill, no person may intentionally produce, distribute, or possess with intent to distribute virtual child pornography if the person advertises, promotes, presents, or describes the virtual child pornography as being or appearing to be a recording of an actual child engaging in sexually explicit conduct. The penalty for violating this prohibition is a fine not to exceed \$10,000 or a sentence, consisting of confinement in prison and extended supervision, not to exceed 15 years or both a fine and sentence. The bill also prohibits a person from intentionally possessing virtual child pornography, if the person knows that the person providing it has marketed it or described it as actual child pornography or if the person knows that it is not protected adult material. "Protected adult material" is defined as a recording of an image of one or more individuals, none of whom are children, engaging in sexually explicit conduct if the recording is not altered to make any of the individuals depicted appear to be a child. The penalty for possession of virtual child pornography is a fine not to exceed \$10,000 or a sentence, consisting of confinement in prison and extended supervision, not to exceed five years or both a fine and sentence.

***Inclusion of computer images in prohibitions related to certain images***

Several criminal laws prohibit activities related to images of nudity, or images and sounds of obscenity or of children engaged in sexually explicit conduct. Those crimes are: 1) making, possessing, reproducing or distributing images of nudity; 2) importing, printing, selling, transferring, exhibiting, or possessing for publication, sale, exhibition, or transfer, obscene material; 3) photographing, filming, videotaping, or making a sound recording of a child engaged in sexually explicit conduct, or enticing a child to go into a secluded place in order to take a picture of make a sound recording of the child engaged in sexually explicit conduct; 4) exposing a child to harmful images and sounds; and 5) producing, performing in, profiting from, importing, possessing, and other activities related to child pornography. These prohibitions do not specifically apply to computer-generated images, sounds, or the stored data version of images or sounds.

The bill expands the prohibitions related to images of nudity, and images or sounds of obscenity or of children engaged in sexual conduct, to include images and sounds recorded using digital technology as well as the data that represents an image or a sound.

***New crimes related to ~~invasion of privacy and obscenity~~***

The bill makes it a crime intentionally to aim a camera or other device for recording images up a person's skirt or down a person's shirt to record an image of nudity or of the person's undergarment without the person's consent. The penalty for violating this prohibition is \_\_\_\_\_.

The bill also makes it a crime to send an unsolicited e-mail message that contains obscenity or sexually explicit conduct, if the person sending the e-mail message does not label the e-mail message as "Adult advertisement" in the subject

line. The penalty for violating the prohibition against obscene e-mail is ~~with~~ <sup>a fine not to exceed \$10,000 or imprisonment not to exceed nine</sup> ~~1 month, or both.~~ ✓

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

1 **SECTION 1.** 48.371 (3) (d) of the statutes is amended to read:

2 48.371 (3) (d) Any involvement of the child, whether as victim or perpetrator,  
3 in sexual intercourse or sexual contact in violation of s. 940.225, 948.02 or 948.025,  
4 prostitution in violation of s. 944.30, ~~sexual exploitation of a production or~~  
5 distribution of child pornography in violation of s. 948.05, or causing a child to view  
6 or listen to sexual activity in violation of s. 948.055, if the information is necessary  
7 for the care of the child or for the protection of any person living in the foster home,  
8 treatment foster home, group home or child caring institution. The foster parent,  
9 treatment foster parent or operator of a group home or child caring institution  
10 receiving information under this paragraph shall keep the information confidential.

11 **SECTION 2.** 938.371 (3) (d) of the statutes is amended to read:

12 938.371 (3) (d) Any involvement of the juvenile, whether as victim or  
13 perpetrator, in sexual intercourse or sexual contact in violation of s. 940.225, 948.02  
14 or 948.025, prostitution in violation of s. 944.30, ~~sexual exploitation of a production~~  
15 or distribution of child pornography in violation of s. 948.05, or causing a child to view  
16 or listen to sexual activity in violation of s. 948.055, if the information is necessary  
17 for the care of the juvenile or for the protection of any person living in the foster home,  
18 treatment foster home, group home, child caring institution or secured correctional  
19 facility. The foster parent, treatment foster parent or operator of a group home, child  
20 caring institution or secured correctional facility receiving information under this  
21 paragraph shall keep the information confidential.

1 **SECTION 3.** 939.615 (1) (b) 1. of the statutes is amended to read:

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

6 **SECTION 4.** 943.70 (1) (a) of the statutes is renumbered 943.70 (1) (am).

7 **SECTION 5.** 943.70 (1) (ag) of the statutes is created to read:

8 943.70 (1) (ag) "Access" means to instruct, communicate with, interact with,  
9 intercept, store data in, retrieve data from, or otherwise use the resources of.

10 **SECTION 6.** 943.70 (1) (gm) of the statutes is created to read:

11 943.70 (1) (gm) "Interruption in service" means inability to access a computer,  
12 computer program, computer system, or computer network, or an inability to  
13 complete a transaction involving a computer.

14 **SECTION 7.** 943.70 (2) (a) (intro.) of the statutes is amended to read:

15 943.70 (2) (a) (intro.) Whoever ~~wilfully~~ willfully, knowingly and without  
16 authorization does any of the following may be penalized as provided in ~~par.~~ pars. (b)  
17 and (c):

18 **SECTION 8.** 943.70 (2) (a) 3. of the statutes is amended to read:

19 943.70 (2) (a) 3. Accesses ~~data~~, computer programs or supporting  
20 documentation.

21 **SECTION 9.** 943.70 (2) (am) of the statutes is created to read:

22 943.70 (2) (am) Whoever intentionally ~~interrupts~~ <sup>causes an interruption in</sup> service by submitting a  
23 message, or multiple messages, to a computer, computer program, computer system,  
24 or computer network that exceeds the processing capacity of the computer, computer

1 program, computer system, or computer network may be penalized as provided in  
2 pars. (b) and (c).

3 SECTION 10. 943.70 (2) (b) (intro.) of the statutes is amended to read: (am) ✓

4 943.70 (2) (b) (intro.) Whoever violates this subsection par. (a) or ~~is~~ is guilty  
5 of:

6 SECTION 11. 943.70 (2) (b) 1. of the statutes is amended to read:

7 943.70 (2) (b) 1. A Class A misdemeanor unless ~~subd. any of subds. 2., 3. or 4.~~ plain  
8 ~~to~~ applies. offense results in

9 SECTION 12. 943.70 (2) (b) 3. of the statutes is amended to read:

10 943.70 (2) (b) 3. A Class ~~D~~ <sup>E</sup> felony if the damage is greater than \$2,500 or if it  
11 causes an interruption or impairment of governmental operations or public  
12 communication, of transportation or of a supply of water, gas or other public service  
13 but not more than ~~X~~, and a Class ~~felony if the damage is greater than~~

14 ~~keep~~  
15 SECTION 13. 943.70 (2) (b) ~~3~~ <sup>3r</sup> of the statutes is created to read:

16 943.70 (2) (b) ~~3~~ <sup>3r</sup> A Class ~~3~~ <sup>C</sup> felony if the offense causes an interruption or  
17 impairment of governmental operations or public communication, of transportation,  
18 or of a supply of water, gas, or other public service.

19 SECTION 14. 943.70 (2) (b) 6. of the statutes is created to read:

20 943.70 (2) (b) 6. A Class ~~felony if the offense causes an interruption~~  
21 in service to more than ~~persons.~~

22 SECTION 15. 943.70 (2) (c) of the statutes is created to read:

23 943.70 (2) (c) If a person disguises the identity <sup>or</sup> ~~and~~ location of the computer at  
24 which he or she is working while committing an offense under par. (a) or (am) with

Section # 943.70(2)(b) 3g. ✓ of the statutes is created to read:  
943.70(2)(b) 3g. A Class D felony if the offense results in  
damage valued at more than \$ 2,500. ✓



1 the intent to make it less likely that he or she will be identified with the crime, the  
2 penalties under par. (b) may be increased as follows:

3 1. In the case of a misdemeanor, the maximum fine prescribed by law for the  
4 crime may be increased by not more than ~~\$1,000~~<sup>\$1,000</sup> and the maximum term of  
5 imprisonment prescribed by law for the crime may be increased so that the revised  
6 maximum term of imprisonment is ~~12 months~~<sup>12 months</sup>

7 2. In the case of a felony, the maximum fine prescribed by law for the crime may  
8 be increased by not more than ~~\$1,500~~<sup>\$2,500</sup> and the maximum term of imprisonment  
9 prescribed by law for the crime may be increased by not more than ~~1 year~~<sup>2 years</sup>

10 SECTION 16. 944.205 (title) of the statutes is amended to read:

11 944.205 (title) ~~Photographs, motion pictures, videotapes or other~~  
12 ~~visual representations~~ Recordings showing nudity.

13 SECTION 17. 944.205 (1) of the statutes is renumbered 944.205 (1) (intro.) and  
14 amended to read:

15 944.205 (1) (intro.) In this section, "nudity":

16 (b) "Nudity" has the meaning given in s. 948.11 (1) (d).

17 SECTION 18. 944.205 (1) (a) of the statutes is created to read:

18 944.205 (1) (a) "Exhibit" has the meaning given in s. 948.01 (1d).

19 SECTION 19. 944.205 (1) (c) of the statutes is created to read:

20 944.205 (1) (c) "Recording" has the meaning given in 948.01 (3r).

21 SECTION 20. 944.205 (2) (a) of the statutes is amended to read:

22 944.205 (2) (a) ~~Takes a photograph or makes a motion picture, videotape or~~  
23 ~~other visual representation or reproduction that depicts~~ Records an image of nudity  
24 without the knowledge and consent of the person who is depicted nude while that  
25 person is nude in a place and circumstance in which he or she has a reasonable

1 expectation of privacy, if the person recording the image knows or has reason to know  
2 that the person who is depicted nude does not know of and consent to the ~~taking or~~  
3 ~~making of the photograph, motion picture, videotape or other visual representation~~  
4 ~~or reproduction~~ recording.

5 SECTION 21. 944.205 (2) (b) of the statutes is repealed and recreated to read:

6 944.205 (2) (b) Copies, possesses, exhibits, stores, or distributes a recording of  
7 an image if all of the following apply:

8 1. The recording was done in violation of par. (a) or was previously copied in  
9 violation of this paragraph.

10 2. The actor knows or has reason to know that the violation described under  
11 subd. 1. has occurred.

12 3. The person depicted nude in the recording did not consent to the copying,  
13 possession, exhibition, storage, or distribution of the recording under par. (b) (intro.).

14 4. The recording depicts the same nudity recorded in violation of par. (a).

15 SECTION 22. 944.205 (3) of the statutes is amended to read:

16 944.205 (3) Notwithstanding sub. (2) (a) and (b), if the person depicted in a  
17 photograph, motion picture, videotape or other visual representation or reproduction  
18 recording of an image is a child and the making recording, copying, possession,  
19 exhibition, storage, or distribution of the photograph, motion picture, videotape or  
20 other visual representation or reproduction recording does not violate s. 948.05 or  
21 948.12, a parent, guardian, or legal custodian of the child may do any of the following:

22 (a) Make and Record, copy, possess, exhibit, or store the photograph, motion  
23 picture, videotape or other visual representation reproduction of the child recording.

24 (b) Distribute a photograph, motion picture, videotape or other visual  
25 representation or reproduction made or recording that was recorded, copied,

1 possessed, exhibited, or stored under par. (a) if the distribution is not for commercial  
2 purposes.

3 **SECTION 23.** 944.205 (4) of the statutes is amended to read:

4 944.205 (4) This section does not apply to a person who receives a ~~photograph,~~  
5 ~~motion picture, videotape or other visual representation or reproduction of recording~~  
6 of an image depicting a child from a parent, guardian, or legal custodian of the child  
7 under sub. (3) (b), if the possession ~~and, copying, exhibition, storage, or distribution~~  
8 are is not for commercial purposes. 9

9 **SECTION 24.** 944.207 of the statutes is created to read:

10 **944.207 Video voyeurism.** (1) In this section:

11 (a) "Camera" includes a video camera, a digital camera, and any other  
12 mechanical or electronic device that can be used to record an image.

13 (b) "Nudity" has the meaning given in s. 948.11 (1) (d).

14 (c) "Recording" has the meaning given in s. 948.01 (3r).

15 (d) "Undergarment" means an article of ~~clothing~~ that a person is wearing next  
16 to his or her skin and that is covered by a second article of clothing.

17 (2) Whoever intentionally records an image depicting either nudity or an  
18 undergarment while aiming a camera underneath a person's external layer of  
19 clothing without the knowledge and consent of the person depicted in the recording  
20 is guilty of a ~~\_\_\_\_\_~~

21 **SECTION 25.** 944.21 (2) (am) of the statutes is created to read:

22 944.21 (2) (am) "Exhibit" has the meaning given in s. 948.01 (1d).

23 **SECTION 26.** 944.21 (2) (c) (intro.) of the statutes is amended to read:

24 944.21 (2) (c) (intro.) "Obscene material" means a writing, picture, sound  
25 recording or film which, or other recording that:

1           **SECTION 27.** 944.21 (2) (dm) of the statutes is created to read:

2           944.21 (2) (dm) “Recording” has the meaning given in s. 948.01 (3r).

3           **SECTION 28.** 944.21 (3) (a) of the statutes is amended to read:

4           944.21 (3) (a) Imports, prints, sells, has in his or her possession for sale,  
5 publishes, exhibits, plays, or ~~transfers~~ distributes any obscene material.

6           **SECTION 29.** 944.21 (4) (a) and (b) of the statutes are amended to read:

7           944.21 (4) (a) ~~Transfers or~~ Distributes, exhibits, or plays any obscene material  
8 to a person under the age of 18 years.

9           (b) Has in his or her possession with intent to ~~transfer or~~ distribute, exhibit,  
10 or play to a person under the age of 18 years any obscene material.

11           **SECTION 30.** 944.21 (9) of the statutes is amended to read:

12           944.21 (9) In determining whether material is obscene under sub. (2) (c) 1. and  
13 3., a judge or jury shall examine individual pictures, recordings of images, or  
14 passages in the context of the work in which they appear.

15           **SECTION 31.** 944.25 of the statutes is created to read:

16           **944.25 Sending obscene or sexually explicit electronic messages. (1)**

17           In this section:

18           (a) “Electronic mail solicitation” means an electronic mail message, including  
19 any attached program or document, that is sent for the purpose of encouraging a  
20 person to purchase property, goods, or services.

21           (b) “Obscene material” has the meaning given in s. 944.21 (2) (c).

22           (c) “Sexually explicit conduct” has the meaning given in s. 948.01 (7).

23           **(2)** Whoever sends an unsolicited electronic mail solicitation to a person that  
24 contains obscene material or a depiction of sexually explicit conduct without

1 including the words "ADULT ADVERTISEMENT" in the subject line of the  
2 electronic mail solicitation is guilty of a ~~felony~~ Class A misdemeanor

3 ~~SECTION 32. 948.01 (1b) of the statutes is created to read:~~

4 948.01 (1b) "Child pornography" means a recording of a child engaging in  
5 sexually explicit conduct or a recording of an image that is virtually  
6 indistinguishable to a reasonable unsuspecting viewer from a recording of an image  
7 of an actual child engaging in sexually explicit conduct.

8 SECTION 33. 948.01 (1d) of the statutes is created to read:

9 948.01 (1d) "Exhibit," with respect to a recording of an image that is not  
10 viewable in its recorded form, means to convert the recording of the image into a form  
11 in which the image may be viewed.

12 SECTION 34. 948.01 (3r) of the statutes is created to read:

13 948.01 (3r) "Recording" includes the creation of a reproduction of an image or  
14 a sound or the storage of data representing an image or a sound.

15 SECTION 35. 948.05 (title) of the statutes is amended to read:

16 948.05 (title) ~~Sexual exploitation of a Production and distribution of~~  
17 child pornography.

18 SECTION 36. 948.05 (1) (a) of the statutes is amended to read:

19 948.05 (1) (a) Employs, uses, persuades, induces, entices, or coerces any child  
20 to engage in sexually explicit conduct for the purpose of ~~photographing, filming,~~  
21 ~~videotaping,~~ recording the sounds of or displaying in any way the conduct.

22 SECTION 37. 948.05 (1) (b) of the statutes is amended to read:

23 948.05 (1) (b) ~~Photographs, films, videotapes, records the sounds of~~ Records or  
24 displays in any way a child engaged in sexually explicit conduct.

25 SECTION 38. 948.05 (1m) of the statutes is amended to read:

1           **948.05 (1m)** Whoever produces, performs in, profits from, promotes, imports  
2 into the state, reproduces, advertises, sells, distributes, or possesses with intent to  
3 sell or distribute, any undeveloped film, photographic negative, photograph, motion  
4 picture, videotape, sound recording or other reproduction of a child engaging in  
5 sexually explicit conduct is guilty of a Class C felony if the person knows the  
6 character and content of the sexually explicit conduct involving the child and if the  
7 person knows or reasonably should know that the child engaging in the sexually  
8 explicit conduct has not attained the age of 18 years.

9           **SECTION 39.** 948.05 (1r) of the statutes is created to read:

10           **948.05 (1r)** Whoever intentionally produces, records, profits from, imports into  
11 the state, copies, sells, distributes, or possesses with intent to sell or distribute any  
12 child pornography is guilty of a Class C felony if the person advertises, promotes,  
13 presents, or describes the child pornography as being or appearing to be a recording  
14 of a child engaging in sexually explicit conduct.

15           **SECTION 40.** 948.07 (4) of the statutes is amended to read:

16           **948.07 (4)** ~~Taking a picture or making an audio recording of~~ Recording the child  
17 engaging in sexually explicit conduct.

18           **SECTION 41.** 948.11 (1) (ar) 2. of the statutes is amended to read:

19           **948.11 (1) (ar) 2.** Any book, pamphlet, magazine, printed matter however  
20 reproduced or sound recording that contains any matter enumerated in subd. 1., or  
21 explicit and detailed verbal descriptions or narrative accounts of sexual excitement,  
22 sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and  
23 that, taken as a whole, is harmful to children.

24           **SECTION 42.** 948.11 (1) (bm) of the statutes is repealed.

25           **SECTION 43.** 948.11 (1) (c) of the statutes is repealed.

1           **SECTION 44.** 948.11 (2) (a) of the statutes is renumbered 948.11 (2) (a) (intro.)  
2 and amended to read:

3           948.11 (2) (a) (intro.) Whoever, with knowledge of the ~~nature~~ the character and  
4 content of the material, sells, rents, exhibits, ~~transfers~~ plays, distributes, or loans to  
5 a child any harmful material, with or without monetary consideration, is guilty of a  
6 Class E felony: if any of the following applies:

7           **SECTION 45.** 948.11 (2) (a) 1. and 2. of the statutes are created to read:

8           948.11 (2) (a) 1. The person knows or reasonably should know that the child  
9 has not attained the age of 18 years.

10           2. The person has face-to-face contact with the child before or during the sale,  
11 rental, exhibit, playing, distribution, or loan.

12           **SECTION 46.** 948.11 (2) (am) of the statutes is renumbered 948.11 (2) (am)  
13 (intro.) and amended to read:

14           948.11 (2) (am) (intro.) Any person who has attained the age of 17 and who, with  
15 knowledge of the ~~nature~~ character and content of the description or narrative  
16 account, verbally communicates, by any means, a harmful description or narrative  
17 account to a child, with or without monetary consideration, is guilty of a Class E  
18 felony: if any of the following applies:

19           **SECTION 47.** 948.11 (2) (am) 1. and 2. of the statutes are created to read:

20           948.11 (2) (am) 1. The person knows or reasonably should know that the child  
21 has not attained the age of 18 years.

22           2. The person has face-to-face contact with the child before or during the  
23 communication.

24           **SECTION 48.** 948.11 (2) (b) of the statutes is renumbered 948.11 (2) (b) (intro.)  
25 and amended to read:

1           948.11 (2) (b) (intro.) Whoever, with knowledge of the nature character and  
2 content of the material, possesses harmful material with the intent to sell, rent,  
3 exhibit, transfer play, distribute, or loan the material to a child is guilty of a Class A  
4 misdemeanor. if any of the following applies:

5           **SECTION 49.** 948.11 (2) (b) 1. and 2. of the statutes are created to read:

6           948.11 (2) (b) 1. The person knows or reasonably should know that the child  
7 has not attained the age of 18 years.

8           2. The person has face-to-face contact with the child.

9           **SECTION 50.** 948.11 (2) (c) of the statutes is amended to read:

10          948.11 (2) (c) It is an affirmative defense to a prosecution for a violation of ~~this~~  
11 ~~section pars. (a) 2., (am) 2., and (b) 2.~~ if the defendant had reasonable cause to believe  
12 that the child had attained the age of 18 years, and the child exhibited to the  
13 defendant a draft card, driver's license, birth certificate or other official or  
14 apparently official document purporting to establish that the child had attained the  
15 age of 18 years. A defendant who raises this affirmative defense has the burden of  
16 proving this defense by a preponderance of the evidence.

17          **SECTION 51.** 948.12 of the statutes is renumbered 948.12 <sup>(1m)</sup> ~~(2m)~~, and 948.12 ~~(2m)~~ <sup>(1m)</sup>  
18 (intro.) and (b), as renumbered, are amended to read:

19          948.12 <sup>(1m)</sup> ~~(2m)~~ <sup>(3)</sup> (intro.) Whoever possesses any undeveloped film, photographic  
20 negative, photograph, motion picture, videotape, or other ~~pictorial reproduction, or~~  
21 ~~audio~~ recording of a child engaged in sexually explicit conduct under all of the  
22 following circumstances is guilty of a Class E felony:

23          (b) The person knows the character and content of the sexually explicit conduct  
24 shown in the material.

25          **SECTION 52.** 948.12 (1) of the statutes is created to read:



**SECTION 52**

1           948.12 (1) In this section, "protected adult material" means a recording of an  
2 image that meets all of the following requirements:

3           (a) The image is that of an individual engaging in sexually explicit conduct.

4           (b) Each individual described in par. (a) was an adult when the image was  
5 recorded.

6           (c) The recording was not altered to make any of the individuals described in  
7 par. (a) appear to be a child.

8           **SECTION 53.** 948.12 <sup>(2m)</sup> ~~(3m)~~ of the statutes is created to read:

9           948.12 <sup>(2m)</sup> ~~(3m)~~ <sup>← ③</sup> Whoever exhibits or plays a recording of a child engaged in  
10 sexually explicit conduct, if all of the following apply, is guilty of a Class E felony:

11           (a) The person knows that he or she has exhibited or played the recording.

12           (b) Before the person exhibited or played the recording, he or she knew the  
13 character and content of the sexually explicit conduct.

14           (c) Before the person exhibited or played the recording, he or she knew or  
15 reasonably should have known that the child engaged in sexually explicit conduct  
16 had not attained the age of 18 years.

17           ~~**SECTION 54.** 948.12 (4) of the statutes is created to read:~~

18           ~~948.12 (4) Whoever intentionally possesses, copies, exhibits, or stores child  
19 pornography is guilty of a Class E felony if one of the following applies:~~

20           ~~(a) The actor knows that the person from whom he or she acquired the child  
21 pornography has advertised, promoted, presented, described, or distributed the  
22 recording as being or appearing to be that of a child engaging in sexually explicit  
23 conduct.~~

24           ~~(b) The actor knows that the child pornography is not protected adult material.~~

25           **SECTION 55.** 948.13 (1) (a) of the statutes is amended to read:

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

4 SECTION 56. 973.034 of the statutes is amended to read:

5 **973.034 Sentencing; restriction on child sex offender working with**  
6 **children.** Whenever a court imposes a sentence or places a defendant on probation  
7 regarding a conviction under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is  
8 under 18 years of age at the time of the offense, or a conviction under s. 948.02 (1),  
9 948.025 (1), 948.05 (1) ~~or (1m), or (1r)~~, 948.06 or 948.07 (1), (2), (3) or (4), the court  
10 shall inform the defendant of the requirements and penalties under s. 948.13.

11 SECTION 9359. Initial applicability; other.

12 (1) CRIMES RELATED TO COMPUTERS. The treatment of sections ~~939.615(1)(b) &~~  
13 943.70 (1) (ag) and (2) (a) (intro.) and 3., (am), (b) 1., 3., ~~5,~~ and ~~9,~~ and (c), 944.205  
14 (2) (a) and (b), (3), and (4), ~~944.205,~~ 944.21 (2) (am) and (c) (intro.), (3) (a), (4) (a) and  
15 (b), and (9), 944.25, 948.05 (1) (a) and (b), ~~(1m), and (1r)~~ and ~~11,~~ 948.07 (4), 948.11 (1) (ar)  
16 2. and (2) (c), 948.13 (1) (a), and 973.034 of the statutes, the renumbering and  
17 amendment of sections 944.205 (1), 948.11 (2) (a), (am), and (b), and 948.12 of the  
18 statutes, and the creation of sections 944.205 (1) (a) and (c), 948.11 (2) (a) 1. and 2.,  
19 (am) 1. and 2., and (b) 1. and 2., and 948.12 ~~(1m) and (1r)~~ <sup>(2m)</sup> of the statutes first apply  
to offenses committed on the effective date of this subsection.

(END)

20  
INSERT 17-20  
21

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0795/lins  
RLR&MGD;jld:pg

1 **Insert at page 2 after line 8:**

2 The bill also increase<sup>s</sup> the penalties for violations of crimes related to computers  
3 that are committed under specified circumstances. If the violation results in damage  
4 valued at more than \$1,000 but not more than \$2,500, the penalty is increased to a  
5 fine not to exceed \$10,000 or a bifurcated sentence, consisting of a term of  
6 confinement in prison and a term of extended supervision, not to exceed five years,  
7 or both a fine and a bifurcated sentence. If the violation results in an interruption  
8 or impairment of government operations, public communication, transportation, or  
9 a supply of water, gas, or other public service, the penalty is increased to a fine not  
10 to exceed \$10,000 or a bifurcated sentence not to exceed 15 years, or both.

11  
12 **Insert 2 at 23:**

13 (ND) For a misdemeanor<sup>which is</sup> an offense punishable by confinement in jail<sup>9</sup>, the court  
14 may increase the fine by up to \$1,000 and increase the maximum term of  
15 imprisonment by up to <sup>12</sup> twelve months. For a felony<sup>which is</sup> an offense punishable by  
16 confinement in state prison<sup>12</sup>, the court may increase the fine by up to \$2,500 and  
17 increase the term of the bifurcated sentence by up to two years.

18  
19  
20 **Insert at 17 after 20:**

21 **SECTION 9359. Initial applicability; other**

22 (1) CRIMES RELATED TO COMPUTERS AND CRIMES RELATED TO RECORDINGS OF NUDITY,  
23 HARMFUL MATERIAL, OR OBSCENITY. The treatment of sections 943.70 (1) (a) and (ag),

1 (2) (a) (intro.) and 3., (b) (intro.), 1., 3., 3g., and 3r., and (c), 944.205 (title), (2) (a) and  
2 (b), (3) ~~intro. (a) and (b)~~, and (4), 944.21 (2) (am), (c) (intro.), ~~(dm)~~, (3) (a), (4) (a) and  
3 (b), and (9), 948.01 (1d) and (3r), 948.05 (1) (a) and (b) and (1m), 948.07 (4), ~~948.11~~  
4 (1) (ar) 2., (bm), and (c) and (2) (c) of the statutes; the renumbering of sections 948.12  
5 ~~(1) and (3)~~ of the statutes; the renumbering and amendment of sections 944.205 (1),  
6 948.11 (2) (a), (am), and (b), and 948.12 ~~(intro.) and (2)~~ of the statutes; and the  
7 creation of sections 944.205 (1) (a) and (c), 948.11 (2) (a) 1. and 2., (am) 1. and 2., and  
8 (b) 1. and 2., and 948.12 (2m) of the statutes first apply to offenses committed on the  
9 effective date of this subsection.

## Ryan, Robin

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**From:** Statz, Andrew  
**Sent:** January 31, 2001 3:52 PM  
**To:** Ryan, Robin; Dsida, Michael  
**Subject:** FW: LRB Draft: 01-0795/1 Crimes related to computers, obscenity, nudity, and pornography

A couple questions/comments:

- ✓ • To bring computer crimes in line with the graduated penalties for several other property crimes, Section 10 (page 6, line 1) should be a class "C" felony.
- ✓ • Unless I am missing it, your analysis does not have a discussion of the penalty for cases of damages over \$2,500 which would be a class "C" felony as above. (I see the discussion of damages of \$1,000 to \$2,500.)
- ✓ • Your analysis (page 2, paragraph 3) should define the "location/identity concealment" enhancement for a misdemeanor offense to be a maximum total of 12 months imprisonment as stated in Section 12 of the draft (page 6, lines 14-15).
- I follow the "Stevenson fix" fairly well, but could you briefly explain how changes to s. 948.11 fix the Weidner decision?

Thanks.

-----Original Message-----

**From:** Frantzen, Jean  
**Sent:** Wednesday, January 31, 2001 1:40 PM  
**To:** Statz, Andrew  
**Cc:** Johnston, James; Currier, Dawn; Hanaman, Cathlene; Haugen, Caroline  
**Subject:** LRB Draft: 01-0795/1 Crimes related to computers, obscenity, nudity, and pornography

Following is the PDF version of draft 01-0795/1.



01-0795/1