

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1325/1dn
RLR:jld:pg

December 20, 2000

Representative Gundrum:

1. I applied the same penalty for attempt as for the committed crime only to the prohibition against capturing an original image, not the prohibitions against making reproductions, or possessing or distributing images. Please let me know if attempt to make a reproduction, or attempt to possess or distribute an image should also be punished as a Class E felony.
2. I believe that the language regarding "capturing a representation" covers the behavior of a person who sets a video recorder to tape the subject even if the person who set up the recorder is not present while the taping occurs. I could add the words "either in person or by means of a remote device" after "means" and before "takes a photograph..." in the definition of "captures a representation." However, I think the addition is unnecessary and just invites additional interpretation regarding what a remote device includes.
3. As we discussed I retained the specific requirement in s. 942.09 (2) (am) that a reproduction must depict nudity in order to exempt from liability a newspaper that publishes a copy of a newsworthy photo with portions of the photo that depict nudity blacked out. I added further language that requires not only that the production depict nudity, but that it include the same depiction of nudity that is contained in the original representation. I am concerned that without the additional requirement the bill will prohibit someone from taking a photo that is made in violation of 942.09 (2) (a) and replacing the portions of the original that depict nudity with portions of a nude image in *Playboy*. The person who makes the reproduction can certainly be convicted of possessing the original unlawfully made photo, but shouldn't be convicted for making a reproduction.

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