

## 2001 ASSEMBLY BILL 60

February 1, 2001 – Introduced by Representatives GUNDRUM, BOCK, RHOADES, GRONEMUS, AINSWORTH, COGGS, STONE, LASSA, LADWIG, HUNDERTMARK, TURNER, KESTELL, MORRIS-TATUM, WADE, GROTHMAN, MUSSER, M. LEHMAN, WILLIAMS, OLSEN, VRAKAS, JESKEWITZ, ALBERS, NASS, HUEBSCH, POWERS, KEDZIE, SERATTI, MONTGOMERY, SUDER, KRAWCZYK, LIPPERT, GUNDERSON, URBAN, PLOUFF, SYKORA and OTT, cosponsored by Senators PLACHE, HARS DORF, ROESSLER, BAUMGART, LAZICH, HUELSMAN, SCHULTZ, FARROW, DARLING and ROSENZWEIG. Referred to Committee on Judiciary.

1     **AN ACT to renumber and amend** 944.205 (title), 944.205 (1), 944.205 (2) and  
2     944.205 (3) and (4); and **to create** 942.09 (1) (a) to (c) and 942.09 (2) (am) of the  
3     statutes; **relating to:** the prohibition against making, possessing, or  
4     distributing a representation that depicts nudity, and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law prohibits production, possession, and distribution of a photograph, motion picture, videotape, or other visual representation or reproduction that depicts nudity if the person depicted nude did not consent to the representation or reproduction and if the person who makes, possesses, or distributes the representation or reproduction knows or should know that the person depicted nude did not consent to the nude depiction. Current law exempts from criminal liability parents, guardians, and legal custodians who make or possess visual representations depicting their children nude, or who distribute the representations for other than commercial purposes. The penalty for violating the prohibition against production, possession, and distribution of representations depicting nudity is a fine of up to \$10,000, or imprisonment not to exceed five years, or both.

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

This bill narrows the scope of the prohibition against making an original representation that depicts nudity by requiring that, at the time the representation

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is made, the subject of the depiction be in circumstances 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.

The bill expands the categories of representations that a person may not create, reproduce, possess, or distribute by prohibiting creation, reproduction, possession, or distribution of data representations of visual images including computer programs and the stored memory of an image captured with a digital camera.

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

1           **SECTION 1.** 942.09 (1) (a) to (c) of the statutes are created to read:

2           942.09 (1) (a) “Captures a representation” means takes a photograph, makes  
3 a motion picture, videotape, or other visual representation, or records or stores in any  
4 medium data that represents a visual image.

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

6           (c) “Representation” means a photograph, exposed film, motion picture,  
7 videotape, other visual representation, or data that represents a visual image.

8           **SECTION 2.** 942.09 (2) (am) of the statutes is created to read:

9           942.09 (2) (am) Makes a reproduction of a representation that the person  
10 knows or has reason to know was captured in violation of par. (a) and that depicts  
11 the nudity depicted in the representation captured in violation of par. (a), if the  
12 person depicted nude in the reproduction did not consent to the making of the  
13 reproduction.

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1           **SECTION 3.** 944.205 (title) of the statutes is renumbered 942.09 (title) and  
2 amended to read:

3           **942.09** (title) ~~Photographs, motion pictures, videotapes or other visual~~  
4 ~~representations showing~~ Representations depicting nudity.

5           **SECTION 4.** 944.205 (1) of the statutes is renumbered 942.09 (1) (intro.) and  
6 amended to read:

7           942.09 **(1)** (intro.) In this section, “nudity” has the meaning given in s. 948.11  
8 ~~(1) (d).~~;

9           **SECTION 5.** 944.205 (2) of the statutes is renumbered 942.09 (2), and 942.09 (2)  
10 (a) and (b), as renumbered, are amended to read:

11           942.09 **(2)** (a) ~~Takes a photograph or makes a motion picture, videotape or other~~  
12 ~~visual representation or reproduction~~ Captures a representation that depicts nudity  
13 without the knowledge and consent of the person who is depicted nude while that  
14 person is nude in circumstances in which he or she has a reasonable expectation of  
15 privacy, if the person knows or has reason to know that the person who is depicted  
16 nude does not know of and consent to the ~~taking or making of the photograph, motion~~  
17 ~~picture, videotape or other visual representation or reproduction~~ capture of the  
18 representation.

19           (b) Possesses or distributes a ~~photograph, motion picture, videotape or other~~  
20 ~~visual representation~~ representation that was captured in violation of par. (a) or a  
21 ~~reproduction that depicts nudity and that was taken or made without the knowledge~~  
22 ~~and consent of the person who is depicted nude~~ in violation of par. (am), if the person  
23 knows or has reason to know that the ~~photograph, motion picture, videotape or other~~  
24 ~~visual representation~~ was captured in violation of par. (a) or the reproduction was  
25 ~~taken or made without the knowledge and consent of~~ in violation of par. (am), and

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1 if the person who is depicted nude in the representation or reproduction did not  
2 consent to the possession or distribution.

3 **SECTION 6.** 944.205 (3) and (4) of the statutes are renumbered 942.09 (3) and  
4 (4) and amended to read:

5 942.09 (3) Notwithstanding sub. (2) (a), ~~(am)~~, and (b), if the person depicted  
6 nude in a ~~photograph, motion picture, videotape or other visual~~ representation or  
7 reproduction is a child and the ~~making capture, possession, or distribution of the~~  
8 ~~photograph, motion picture, videotape or other visual~~ representation, or the making,  
9 possession, or distribution of the reproduction, does not violate s. 948.05 or 948.12,  
10 a parent, guardian, or legal custodian of the child may do any of the following:

11 (a) Make Capture and possess the ~~photograph, motion picture, videotape or~~  
12 ~~other visual~~ representation or make and possess the reproduction of depicting the  
13 child.

14 (b) Distribute a ~~photograph, motion picture, videotape or other visual~~  
15 representation captured or possessed under par. (a), or distribute a reproduction  
16 made or possessed under par. (a), if the distribution is not for commercial purposes.

17 (4) This section does not apply to a person who receives a ~~photograph, motion~~  
18 ~~picture, videotape or other visual~~ representation or reproduction of depicting a child  
19 from a parent, guardian or legal custodian of the child under sub. (3) (b), if the  
20 possession and distribution are not for commercial purposes.

21 (END)