

**SENATE SUBSTITUTE AMENDMENT 2,
TO 2001 ASSEMBLY BILL 60**

October 2, 2001 – Offered by Senator PLACHE.

1 **AN ACT** *to repeal* 944.205 (1) (a), 944.205 (1) (c) and 944.205 (2) (b); *to renumber*
2 944.205 (1) (intro.), 944.205 (1) (b) and 944.205 (2) (intro.); *to renumber and*
3 *amend* 944.205 (title), 944.205 (2) (a) and 944.205 (3) and (4); and *to create*
4 895.50 (2) (d), 942.09 (1) (a), 942.09 (1) (c) and 942.09 (2) (b) and (c) of the
5 statutes; **relating to:** the prohibition against making, possessing, distributing,
6 or exhibiting a representation that depicts nudity; the civil cause of action for
7 unreasonable invasion of privacy; and providing a penalty.

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

8 **SECTION 1.** 895.50 (2) (d) of the statutes is created to read:
9 895.50 (2) (d) Conduct that is prohibited under s. 942.09, regardless of whether
10 there has been a criminal action related to the conduct, and regardless of the outcome
11 of the criminal action, if there has been a criminal action related to the conduct.

1 **SECTION 2.** 942.09 (1) (a) of the statutes is 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 **SECTION 3.** 942.09 (1) (c) of the statutes is created to read:

6 942.09 (1) (c) “Representation” means a photograph, exposed film, motion
7 picture, videotape, other visual representation, or data that represents a visual
8 image.

9 **SECTION 4.** 942.09 (2) (b) and (c) of the statutes are created to read:

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

14 (c) Possesses, distributes, or exhibits a representation that was captured in
15 violation of par. (a) or a reproduction made in violation of par. (b), if the person knows
16 or has reason to know that the representation was captured in violation of par. (a)
17 or the reproduction was made in violation of par. (b), and if the person who is depicted
18 nude in the representation or reproduction did not consent to the possession,
19 distribution, or exhibition.

20 **SECTION 5.** 944.205 (title) of the statutes, as affected by 2001 Wisconsin Act 16,
21 is renumbered 942.09 (title) and amended to read:

22 **942.09 (title) Recordings showing Representations depicting nudity.**

23 **SECTION 6.** 944.205 (1) (intro.) of the statutes, as affected by 2001 Wisconsin
24 Act 16, is renumbered 942.09 (1) (intro.).

1 **SECTION 7.** 944.205 (1) (a) of the statutes, as created by 2001 Wisconsin Act 16,
2 is repealed.

3 **SECTION 8.** 944.205 (1) (b) of the statutes, as affected by 2001 Wisconsin Act 16,
4 is renumbered 942.09 (1) (b).

5 **SECTION 9.** 944.205 (1) (c) of the statutes, as created by 2001 Wisconsin Act 16,
6 is repealed.

7 **SECTION 10.** 944.205 (2) (intro.) of the statutes is renumbered 942.09 (2)
8 (intro.).

9 **SECTION 11.** 944.205 (2) (a) of the statutes, as affected by 2001 Wisconsin Act
10 16, is renumbered 942.09 (2) (a) and amended to read:

11 942.09 (2) (a) ~~Records an image of~~ Captures a representation that depicts
12 nudity without the knowledge and consent of the person who is depicted nude while
13 that person is nude in a place and circumstance in which he or she has a reasonable
14 expectation of privacy, if the person recording the image knows or has reason to know
15 that the person who is depicted nude does not know of and consent to the recording
16 capture of the representation.

17 **SECTION 12.** 944.205 (2) (b) of the statutes, as affected by 2001 Wisconsin Act
18 16, is repealed.

19 **SECTION 13.** 944.205 (3) and (4) of the statutes, as affected by 2001 Wisconsin
20 Act 16, are renumbered 942.09 (3) and (4) and amended to read:

21 942.09 (3) Notwithstanding sub. (2) (a) ~~and (b), and (c),~~ if the person depicted
22 nude in a recording of an image representation or reproduction is a child and the
23 recording, ~~copying~~ capture, possession, exhibition, ~~storage,~~ or distribution of the
24 recording representation, or making, possession, exhibition, or distribution of the

1 reproduction, does not violate s. 948.05 or 948.12, a parent, guardian, or legal
2 custodian of the child may do any of the following:

3 (a) ~~Record, copy, Capture and~~ possess, ~~exhibit, or store~~ the recording
4 representation or make and possess the reproduction depicting the child.

5 (b) Distribute ~~a recording that was recorded, copied, possessed, exhibited, or~~
6 ~~stored or exhibit a representation captured or possessed under par. (a), or distribute~~
7 or exhibit a reproduction made or possessed under par. (a), if the distribution or
8 exhibition is not for commercial purposes.

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

13 **SECTION 14. Initial applicability.**

14 (1) The treatment of section 895.50 (2) (d) of the statutes first applies to acts
15 or omissions occurring on the effective date of this subsection.

16 (END)