

2001 DRAFTING REQUEST

Senate Substitute Amendment (SSA-AB60)

Received: 09/26/2001

Received By: rryan

Wanted: 09/27/2001

Identical to LRB:

For: Kimberly Plache (608) 266-1832

By/Representing: debbie sybell

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous

Extra Copies: MGD

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

prohibition against depicting a person nude without his or her consent

Instructions:

same as s0167 except corrections of page 3, lines 1 and 18

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 09/27/2001	hhagen 09/27/2001		_____			
/1			pgreensl 09/27/2001	_____	lrb_docadmin 09/27/2001	lrb_docadmin 09/27/2001	

FE Sent For:

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1?	rryan	1, kmby 9/27	2 /21 pg	9/27 /27 pg/sell			

FE Sent For:

<END>

Ryan, Robin

From: Ryan, Robin
Sent: September 26, 2001 4:14 PM
To: Sybell, Debra
Subject: s0167/1

There is a discrepancy between AB 60 and the substitute. On page 3, line 18 of LRBs0167/1, the substitute does not specify 'the person depicted "nude" in the representation,' rather it just refers to 'the person depicted in the representation.' AB 60 added the word "nude." Would you like me to redraft s0167 to add the missing word? If you want a redraft I can have it out the same day you request it.

Also, the action phrase on page 3, line 1 is missing the "as affected by 2001 Act 16" tag-line, so I would also fix that in a redraft as well.

Debbie called 9/26 to ask
for corrections

Instructions: ~~submit~~ substitute
amendment that is same
as AB 60 as modified by
the assembly and by the
Senate Judiciary Com.

TODAY

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

D-Note

Regenerate

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.

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

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

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

5 942.09 (1) (c) “Representation” means a photograph, exposed film, motion
6 picture, videotape, other visual representation, or data that represents a visual
7 image.

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

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

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

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

21 **942.09 (title) ~~Recordings showing Representations depicting~~ nudity.**

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

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

, as affected by 2001 Wisconsin Act 16,

1

SECTION 8. 944.205 (1) (b) of the statutes is renumbered 942.09 (1) (b).

2

SECTION 9. 944.205 (1) (c) of the statutes, as created by 2001 Wisconsin Act 16,

3

is repealed.

4

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

5

(intro.).

6

SECTION 11. 944.205 (2) (a) of the statutes, as affected by 2001 Wisconsin Act

7

16, is renumbered 942.09 (2) (a) and amended to read:

8

942.09 (2) (a) ~~Records an image of~~ Captures a representation that depicts

9

nudity without the knowledge and consent of the person who is depicted nude while

10

that person is nude in a place and circumstance in which he or she has a reasonable

11

expectation of privacy, if the person ~~recording the image~~ knows or has reason to know

12

that the person who is depicted nude does not know of and consent to the ~~recording~~

13

capture of the representation.

14

SECTION 12. 944.205 (2) (b) of the statutes, as affected by 2001 Wisconsin Act

15

16, is repealed.

16

SECTION 13. 944.205 (3) and (4) of the statutes, as affected by 2001 Wisconsin

17

Act 16, are renumbered 942.09 (3) and (4) and amended to read:

18

942.09 (3) Notwithstanding sub. (2) (a) ~~and, (b), and (c)~~, if the person depicted ^{nude}

19

in a recording of ~~an image representation or reproduction~~ is a child and the ~~recording,~~

20

~~copying~~ capture, possession, exhibition, storage, or distribution of the ~~recording~~

21

representation, or making, possession, exhibition, or distribution of the

22

reproduction, does not violate s. 948.05 or 948.12, a parent, guardian, or legal

23

custodian of the child may do any of the following:

24

(a) ~~Record, copy, Capture and possess, exhibit, or store~~ the ~~recording~~

25

representation or make and possess the reproduction depicting the child.

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

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

9 **SECTION 14. Initial applicability.**

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

12 (END)

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

50177/ldn
LRB:01/07/ldn
RLR:wlj

September 24, 2001

Debra Sybell:

As we discussed briefly on the phone, 2001 Act 16 (the biennial budget bill) treated several prohibitions related to pornography, nudity, and material that is harmful to children. The biennial budget bill updated the prohibitions to cover computer and other digital forms of pictures and sounds. The prohibitions treated in the biennial budget bill are: 944.205 (recordings showing nudity); 944.21 (obscene material or performance); 948.05 (sexual exploitation of a child); 948.07 (child enticement); 948.11 (exposing a child to harmful material or harmful descriptions or narrations); and 948.12 (possession of child pornography). The language treating all of these prohibitions in the biennial budget bill is consistent in referring to prohibitions related to recordings and specifies that the term "recording" "includes the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound." The treatment of s. 944.205, stats., (renumbered s. 942.09, stats.) in the substitute amendment does not refer to "recording" so the treatment of 944.205 is not consistent with the terminology used in the other prohibitions listed above. I believe that the inconsistency is an issue of form rather than substance. Both versions have the same legal effect.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0177/1dn
RLR:wlj:pg

September 27, 2001

Debra Sybell:

As we discussed briefly on the phone, 2001 Act 16 (the biennial budget bill) treated several prohibitions related to pornography, nudity, and material that is harmful to children. The biennial budget bill updated the prohibitions to cover computer and other digital forms of pictures and sounds. The prohibitions treated in the biennial budget bill are: 944.205 (recordings showing nudity); 944.21 (obscene material or performance); 948.05 (sexual exploitation of a child); 948.07 (child enticement); 948.11 (exposing a child to harmful material or harmful descriptions or narrations); and 948.12 (possession of child pornography). The language treating all of these prohibitions in the biennial budget bill is consistent in referring to prohibitions related to recordings and specifies that the term "recording" "includes the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound." The treatment of s. 944.205, stats., (renumbered s. 942.09, stats.) in the substitute amendment does not refer to "recording" so the treatment of 944.205 is not consistent with the terminology used in the other prohibitions listed above. I believe that the inconsistency is an issue of form rather than substance. Both versions have the same legal effect.

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