

2005 Assembly Bill 942

Date of enactment: **May 22, 2006**  
Date of publication\*: **June 5, 2006**

## 2005 WISCONSIN ACT 433

AN ACT *to renumber* 814.75 (1) and 814.76 (1); *to renumber and amend* 939.623, 939.624 and 948.075 (1); *to amend* 46.07, 301.32 (1), 302.13, 303.01 (8) (b), 948.05 (1) (intro.), 948.05 (1m), 948.05 (2), 948.12 (1m) (intro.), 948.12 (2m) (intro.) and 973.05 (2m); and *to create* 16.964 (11), 20.410 (1) (gj), 20.455 (2) (gj), 20.505 (6) (gj), 303.01 (8) (c) 7m., 303.065 (5) (cg), 814.75 (1g), 814.76 (1g), 939.617, 948.05 (2p), 948.12 (3) and 973.042 of the statutes; **relating to:** child pornography, sexual exploitation of a child, using a computer to facilitate a child sex crime, grants to nonprofit organizations providing services to victims of sexual assault, making appropriations, and providing penalties.

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

**SECTION 1.** 16.964 (11) of the statutes is created to read:

16.964 (11) From the appropriation under s. 20.505 (6) (gj), the office shall provide grants to nonprofit organizations that provide services to victims of sexual assault. The office shall develop criteria and procedures for use in selecting grantees and administering the grant program. Notwithstanding s. 227.10 (1), the criteria and procedures need not be promulgated as rules under ch. 227.

**SECTION 2.** 20.410 (1) (gj) of the statutes is created to read:

20.410 (1) (gj) *General operations; child pornography surcharge.* All moneys received as part A of any child pornography surcharge imposed under s. 973.042 to operate institutions and to provide field and administrative services.

**SECTION 3.** 20.455 (2) (gj) of the statutes is created to read:

20.455 (2) (gj) *General operations; child pornography surcharge.* All moneys received as part B of any child pornography surcharge imposed under s. 973.042 for investigating offenses under s. 948.05 or 948.12.

**SECTION 4.** 20.505 (6) (gj) of the statutes is created to read:

20.505 (6) (gj) *Grants for victims of sexual assault; child pornography surcharge.* All moneys received as part C of any child pornography surcharge imposed under s. 973.042 for the grant program under s. 16.964 (11).

**SECTION 5.** 46.07 of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

**46.07 Property of patients or residents.** All money including wages and other property delivered to an officer or employee of any institution for the benefit of a patient or resident shall immediately be delivered to the steward, who shall enter the money upon the steward's books to the credit of the patient or resident. The property shall be used only under the direction and with the approval of the superintendent and for the crime victim and witness assistance surcharge under s. 973.045 (4), the

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\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046, the child pornography surcharge under s. 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the patient or resident. If the money remains uncalled for for one year after the patient's or resident's death or departure from the institution, the superintendent shall deposit the money in the general fund. If any patient or resident leaves property, other than money, uncalled for at an institution for one year, the superintendent shall sell the property, and the proceeds shall be deposited in the general fund. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (c).

**SECTION 6.** 301.32 (1) of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

**301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT.** All money and other property delivered to an employee of any state correctional institution for the benefit of a prisoner or resident shall be delivered to the warden or superintendent, who shall enter the property upon his or her accounts to the credit of the prisoner or resident. The property may be used only under the direction and with the approval of the superintendent or warden and for the crime victim and witness assistance surcharge under s. 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046, the child pornography surcharge under s. 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the prisoner or resident. If the money remains uncalled for for one year after the prisoner's or resident's death or departure from the state correctional institution, the superintendent shall deposit it in the general fund. If any prisoner or resident leaves property, other than money, uncalled for at a state correctional institution for one year, the superintendent shall sell the property and deposit the proceeds in the general fund, donate the property to a public agency or private, nonprofit organization or destroy the property. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

**SECTION 7.** 302.13 of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

**302.13 Preservation of property an inmate brings to prison.** The department shall preserve money and effects, except clothes, in the possession of an inmate when admitted to the prison and, subject to the crime vic-

tim and witness assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046, the child pornography surcharge under s. 973.042, and the drug offender diversion surcharge under s. 973.043, shall restore the money and effects to the inmate when discharged.

**SECTION 8.** 303.01 (8) (b) of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

**303.01 (8) (b)** The department shall distribute earnings of an inmate or resident, other than an inmate or resident employed under sub. (2) (em), for the crime victim and witness assistance surcharge under s. 973.045 (4), for the delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), for the deoxyribonucleic acid analysis surcharge under s. 973.046 (4) and for compliance with s. 303.06 (2) and may distribute earnings for the support of the inmate's or resident's dependents and for other obligations either acknowledged by the inmate or resident in writing or which have been reduced to judgment that may be satisfied according to law. The department may also distribute earnings for the child pornography surcharge under s. 973.042 or the drug offender diversion surcharge under s. 973.043, but only if the inmate or resident has first provided for the reasonable support of his or her dependents.

**SECTION 9.** 303.01 (8) (c) 7m. of the statutes is created to read:

**303.01 (8) (c) 7m.** Payment of the child pornography surcharge under s. 973.042.

**SECTION 10.** 303.065 (5) (cg) of the statutes is created to read:

**303.065 (5) (cg)** Payment of the child pornography surcharge under s. 973.042.

**SECTION 11.** 814.75 (1) of the statutes is renumbered 814.75 (1r).

**SECTION 12.** 814.75 (1g) of the statutes is created to read:

**814.75 (1g)** The child pornography surcharge under s. 973.042.

**SECTION 13.** 814.76 (1) of the statutes is renumbered 814.76 (1r).

**SECTION 14.** 814.76 (1g) of the statutes is created to read:

**814.76 (1g)** The child pornography surcharge under s. 973.042.

**SECTION 15.** 939.617 of the statutes is created to read:

**939.617 Minimum sentence for certain child sex offenses.** (1) Except as provided in subs. (2) and (3), if a person is convicted of a violation of s. 948.05, 948.075, or 948.12, the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of the bifurcated sentence shall be at least 5 years for violations of s. 948.05 or 948.075 and 3 years for violations of s. 948.12. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

(2) If a person is convicted of a violation of s. 948.05, 948.075, or 948.12, the court may impose a sentence that is less than the sentence required under sub. (1), or may place the person on probation, only if the court finds that the best interests of the community will be served and the public will not be harmed and if the court places its reasons on the record.

(3) This section does not apply if the offender was under 18 years of age when the violation occurred.

**SECTION 16.** 939.623 of the statutes is renumbered 939.618, and 939.618 (title), as renumbered, is amended to read:

**939.618** (title) ~~Increased penalty;~~ **Mandatory minimum sentence for repeat serious sex crimes.**

**SECTION 17.** 939.624 of the statutes is renumbered 939.619, and 939.619 (title), as renumbered, is amended to read:

**939.619** (title) ~~Increased penalty;~~ **Mandatory minimum sentence for repeat serious violent crimes.**

**SECTION 18.** 948.05 (1) (intro.) of the statutes is amended to read:

948.05 (1) (intro.) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is ~~guilty of a Class F felony~~ may be penalized under sub. (2p):

**SECTION 19.** 948.05 (1m) of the statutes is amended to read:

948.05 (1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct is ~~guilty of a Class F felony~~ may be penalized under sub. (2p) if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.

**SECTION 20.** 948.05 (2) of the statutes is amended to read:

948.05 (2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose prescribed in sub. (1) (a) or (b) or (1m) is ~~guilty of a Class F felony~~ may be penalized under sub. (2p).

**SECTION 21.** 948.05 (2p) of the statutes is created to read:

948.05 (2p) (a) Except as provided in par. (b), a person who violates sub. (1), (1m), or (2) is guilty of a Class C felony.

(b) A person who violates sub. (1), (1m), or (2) is guilty of a Class F felony if the person is under 18 years of age when the offense occurs.

**SECTION 22.** 948.075 (1) of the statutes is renumbered 948.075 (1r) and amended to read:

948.075 (1r) Whoever uses a computerized communication system to communicate with an individual who

the actor believes or has reason to believe has not attained the age of 16 years with intent to have sexual contact or sexual intercourse with the individual in violation of s. 948.02 (1) or (2) is guilty of a Class D C felony.

**SECTION 23.** 948.12 (1m) (intro.) of the statutes is amended to read:

948.12 (1m) (intro.) Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances is ~~guilty of a Class I felony~~ may be penalized under sub. (3):

**SECTION 24.** 948.12 (2m) (intro.) of the statutes is amended to read:

948.12 (2m) (intro.) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply, is ~~guilty of a Class I felony~~ may be penalized under sub. (3):

**SECTION 25.** 948.12 (3) of the statutes is created to read:

948.12 (3) (a) Except as provided in par. (b), a person who violates sub. (1m) or (2m) is guilty of a Class D felony.

(b) A person who violates sub. (1m) or (2m) is guilty of a Class I felony if the person is under 18 years of age when the offense occurs.

**SECTION 26.** 973.042 of the statutes is created to read:  
**973.042 Child pornography surcharge. (1)** In this section, "image" includes a video recording, a visual representation, a positive or negative image on exposed film, and data representing a visual image.

(2) If a court imposes a sentence or places a person on probation for a crime under s. 948.05 or 948.12 and the person was at least 18 years of age when the crime was committed, the court shall impose a child pornography surcharge of \$500 for each image or each copy of an image associated with the crime. The court shall determine the number of images or copies of images associated with the crime by a preponderance of the evidence and without a jury.

(3) The clerk shall record any surcharge imposed under this section in 3 parts as follows:

(a) Part A is 50 percent of any amount collected.

(b) Part B is 30 percent of any amount collected.

(c) Part C is 20 percent of any amount collected.

(4) After determining the amount due, the clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

(5) The secretary of administration shall credit part A of the surcharge to the appropriation account under s. 20.410 (1) (gj). The secretary of administration shall credit part B of the surcharge to the appropriation account under s. 20.455 (2) (gj). The secretary of administration

shall credit part C of the surcharge to the appropriation account under s. 20.505 (6) (gj).

(6) If an inmate in a state prison or a person sentenced to a state prison has not paid the child pornography surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected under this subsection shall be transmitted to the secretary of administration.

**SECTION 27.** 973.05 (2m) of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

973.05 (2m) Payments under this section shall be applied first to payment of the penalty surcharge until paid in full, shall then be applied to the payment of the jail surcharge until paid in full, shall then be applied to the payment of part A of the crime victim and witness assistance surcharge until paid in full, shall then be applied to part B of the crime victim and witness assistance surcharge until paid in full, shall then be applied to the crime laboratories and drug law enforcement surcharge until paid in full, shall then be applied to the deoxyribonucleic acid analysis surcharge until paid in full, shall then be applied to the child pornography surcharge until paid in full, shall then be applied to the drug abuse program improvement surcharge until paid in full, shall then be applied to the drug offender diversion surcharge until

paid in full, shall then be applied to payment of the driver improvement surcharge until paid in full, shall then be applied to the truck driver education surcharge if applicable until paid in full, shall then be applied to payment of the domestic abuse surcharge until paid in full, shall then be applied to payment of the consumer protection surcharge until paid in full, shall then be applied to payment of the natural resources surcharge if applicable until paid in full, shall then be applied to payment of the natural resources restitution surcharge until paid in full, shall then be applied to the payment of the environmental surcharge if applicable until paid in full, shall then be applied to the payment of the wild animal protection surcharge if applicable until paid in full, shall then be applied to payment of the weapons surcharge until paid in full, shall then be applied to payment of the uninsured employer surcharge until paid in full, shall then be applied to payment of the enforcement surcharge under s. 253.06 (4) (c), if applicable, until paid in full, and shall then be applied to payment of the fine and the costs and fees imposed under ch. 814.

**SECTION 28. Initial applicability.**

(1) The treatment of section 973.042 of the statutes first applies to violations of section 948.05 or 948.12 of the statutes that are committed on the effective date of this subsection.