

2005 ASSEMBLY BILL 942

January 24, 2006 – Introduced by Representatives JESKEWITZ, SUDER, GRONEMUS, STRACHOTA, BALLWEG, AINSWORTH, VOS, TOWNSEND, KREIBICH, SHERIDAN, MUSSER, LAMB, M. WILLIAMS, STONE, KLEEFISCH, KAUFERT, PETROWSKI, ALBERS, OWENS and KRAWCZYK, cosponsored by Senators DARLING, ROESSLER and PLALE. Referred to Committee on Criminal Justice and Homeland Security.

1 **AN ACT** *to renumber* 814.75 (1), 814.76 (1) and 948.075 (1); *to renumber and*
2 *amend* 939.623, 939.624 and 948.075 (3); *to amend* 46.07, 48.982 (4) (a),
3 48.982 (6) (a), 48.982 (7) (a), 301.32 (1), 302.13, 303.01 (8) (b), 948.05 (1) (intro.),
4 948.05 (1m), 948.05 (2), 948.12 (1m) (intro.), 948.12 (2m) (intro.), 948.13 (2) (a),
5 948.13 (2m) (a) (intro.), 948.13 (3) and 973.05 (2m); and *to create* 20.410 (1) (gj),
6 20.433 (1) (gj), 20.455 (2) (gj), 25.67 (2) (a) 3., 303.01 (8) (c) 7m., 303.065 (5) (cg),
7 814.75 (1g), 814.76 (1g), 939.617, 948.075 (1g), 948.075 (3) (a) to (k) and 973.042
8 of the statutes; **relating to:** child pornography, sexual exploitation of a child,
9 using a computer to facilitate a child sex crime, child sex offenders working with
10 children, making appropriations, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes in laws relating to sex offenses against children.

Penalties and surcharges for child pornography offenses and for sexual exploitation of a child

Current law prohibits a person from knowingly possessing any undeveloped film, photographic negative, photograph, motion picture, videotape, or other

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recording of a child engaged in sexually explicit conduct. In addition, current law prohibits a person from knowingly exhibiting or playing a recording of a child engaged in sexually explicit conduct. A person who violates either of these prohibitions relating to child pornography is guilty of a Class I felony.

Under a separate statute, current law prohibits a person from sexually exploiting a child. Specifically, it prohibits recording or displaying a child engaged in sexually explicit conduct and employing, using, persuading, inducing, enticing, or coercing any child to engage in sexually explicit conduct if done for the purpose of recording or displaying the conduct. That statute also prohibits a person from knowingly producing, performing in, profiting from, promoting, importing into the state, reproducing, advertising, selling, or distributing, or possessing with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct. A person who violates one of these prohibitions is guilty of a Class F felony.

This bill reclassifies the crimes described in the preceding two paragraphs as Class C felonies. (The maximum fine, the maximum sentence length, and the maximum term of confinement for Class C, F, and I felonies are set forth in the table below.) In addition, under the bill, if a person is convicted of one of those crimes, the court must sentence the person to prison and must impose an initial term of confinement of at least three years for a child pornography conviction and at least five years for a conviction for sexually exploiting a child. The court may not place a defendant who is convicted of one of those crimes on probation.

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum sentence length</i>	<i>Maximum term of confinement</i>
Class C felony	\$100,000	40 years	25 years
Class F felony	\$25,000	12.5 years	7.5 years
Class I felony	\$10,000	3.5 years	1.5 years

The bill also requires the court to impose a child pornography surcharge on any person convicted of a child pornography offense or of sexual exploitation of a child. The surcharge is \$500 for each image or copy of an image associated with the offense, with the number of images to be determined by the judge. Fifty percent of the surcharge goes to the Department of Corrections to pay for its operations; 30 percent of the surcharge goes to the Department of Justice to pay for investigating child pornography offenses and sexual exploitation of children; and 20 percent of it goes to the children's trust fund for various grant programs.

Proof of and penalties for using a computer to facilitate a child sex crime

Current law prohibits a person from using a computerized communication system to communicate with an individual who the actor believes is under 16 with intent to have sexual contact or sexual intercourse with the individual. In order to show the person's intent, the state must prove that he or she did an act in furtherance of his or her intent other than using the computerized communication system to communicate with the individual (the other act requirement).

Under this bill, if a person is convicted of this offense, the court must sentence the person to prison and must impose an initial term of confinement of at least five

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years. The court may not place the defendant on probation. The bill also specifies some of the acts that may be used to satisfy the other act requirement. They include: 1) traveling or making arrangements for travel or a hotel with the intent to meet the individual; 2) transmitting an image of any lewd act to the individual; 3) speaking with the individual; 4) obtaining an image of the individual; 5) sending any item to or receiving other items from the individual; and 6) acquiring sex toys, intimate apparel, or similar items.

Child sex offender working with children

Current law prohibits a person who has committed a serious child sex offense from engaging in an occupation or participating in a volunteer position that requires him or her to work or interact primarily and directly with children who are less than 16 years old. A person who violates this prohibition is guilty of a Class F felony. This bill eliminates the reference to “primarily” in this prohibition, making the prohibition applicable to any occupation or volunteer position that requires a person to work directly with children.

Other information

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 20.410 (1) (gj) *General operations; child pornography surcharge.* All moneys
3 received as part A of any child pornography surcharge imposed under s. 973.042 to
4 operate institutions and to provide field and administrative services.

5 **SECTION 2.** 20.433 (1) (gj) of the statutes is created to read:

6 20.433 (1) (gj) *Grants to organizations; child pornography surcharge.* All
7 moneys received as part C of any child pornography surcharge imposed under s.
8 973.042 for grants to organizations under s. 48.982 (4), (6), and (7).

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

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1 20.455 (2) (gj) *General operations; child pornography surcharge.* All moneys
2 received as part B of any child pornography surcharge imposed under s. 973.042 for
3 investigating offenses under s. 948.05 or 948.12.

4 **SECTION 4.** 25.67 (2) (a) 3. of the statutes is created to read:

5 25.67 (2) (a) 3. Moneys received as part C of any child pornography surcharge
6 under s. 973.042.

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

9 **46.07 Property of patients or residents.** All money including wages and
10 other property delivered to an officer or employee of any institution for the benefit
11 of a patient or resident shall immediately be delivered to the steward, who shall enter
12 the money upon the steward's books to the credit of the patient or resident. The
13 property shall be used only under the direction and with the approval of the
14 superintendent and for the crime victim and witness assistance surcharge under s.
15 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34
16 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046, the child
17 pornography surcharge under s. 973.042, the drug offender diversion surcharge
18 under s. 973.043, or the benefit of the patient or resident. If the money remains
19 uncalled for for one year after the patient's or resident's death or departure from the
20 institution, the superintendent shall deposit the money in the general fund. If any
21 patient or resident leaves property, other than money, uncalled for at an institution
22 for one year, the superintendent shall sell the property, and the proceeds shall be
23 deposited in the general fund. If any person satisfies the department, within 5 years
24 after the deposit, of his or her right to the deposit, the department shall direct the

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1 department of administration to draw its warrant in favor of the claimant and it shall
2 charge the same to the appropriation made by s. 20.913 (3) (c).

3 **SECTION 6.** 48.982 (4) (a) of the statutes, as affected by 2005 Wisconsin Act 25,
4 is amended to read:

5 48.982 **(4)** (a) From the appropriations under s. 20.433 (1) (b), ~~(g)~~ (h), (i), (k),
6 (m), and (q), the board shall award grants to organizations in accordance with the
7 plan developed under sub. (2) (a). In each of the first 2 fiscal years in which grants
8 are awarded, no organization may receive a grant or grants totaling more than
9 \$30,000.

10 **SECTION 7.** 48.982 (6) (a) of the statutes, as affected by 2005 Wisconsin Act 25,
11 is amended to read:

12 48.982 **(6)** (a) From the appropriations under s. 20.433 (1) (b), ~~(g)~~ (h), (i), (k),
13 (ma), and (q), the board shall award grants to organizations in accordance with the
14 request-for-proposal procedures developed under sub. (2) (a). No organization may
15 receive a grant or grants under this subsection totaling more than \$150,000 in any
16 year.

17 **SECTION 8.** 48.982 (7) (a) of the statutes, as affected by 2005 Wisconsin Act 25,
18 is amended to read:

19 48.982 **(7)** (a) From the appropriations under s. 20.433 (1) (b), ~~(g)~~ (h), (i), (k),
20 and (q), the board shall award grants to organizations in accordance with the plan
21 developed under sub. (2) (a).

22 **SECTION 9.** 301.32 (1) of the statutes, as affected by 2005 Wisconsin Act 25, is
23 amended to read:

24 301.32 **(1)** PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT.
25 All money and other property delivered to an employee of any state correctional

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1 institution for the benefit of a prisoner or resident shall be delivered to the warden
2 or superintendent, who shall enter the property upon his or her accounts to the credit
3 of the prisoner or resident. The property may be used only under the direction and
4 with the approval of the superintendent or warden and for the crime victim and
5 witness assistance surcharge under s. 973.045 (4), the delinquency victim and
6 witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid
7 analysis surcharge under s. 973.046, the child pornography surcharge under s.
8 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the
9 prisoner or resident. If the money remains uncalled for for one year after the
10 prisoner's or resident's death or departure from the state correctional institution, the
11 superintendent shall deposit it in the general fund. If any prisoner or resident leaves
12 property, other than money, uncalled for at a state correctional institution for one
13 year, the superintendent shall sell the property and deposit the proceeds in the
14 general fund, donate the property to a public agency or private, nonprofit
15 organization or destroy the property. If any person satisfies the department, within
16 5 years after the deposit, of his or her right to the deposit, the department shall direct
17 the department of administration to draw its warrant in favor of the claimant and
18 it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

19 **SECTION 10.** 302.13 of the statutes, as affected by 2005 Wisconsin Act 25, is
20 amended to read:

21 **302.13 Preservation of property an inmate brings to prison.** The
22 department shall preserve money and effects, except clothes, in the possession of an
23 inmate when admitted to the prison and, subject to the crime victim and witness
24 assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis
25 surcharge under s. 973.046, the child pornography surcharge under s. 973.042, and

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1 the drug offender diversion surcharge under s. 973.043, shall restore the money and
2 effects to the inmate when discharged.

3 **SECTION 11.** 303.01 (8) (b) of the statutes, as affected by 2005 Wisconsin Act 25,
4 is amended to read:

5 303.01 **(8)** (b) The department shall distribute earnings of an inmate or
6 resident, other than an inmate or resident employed under sub. (2) (em), for the crime
7 victim and witness assistance surcharge under s. 973.045 (4), for the delinquency
8 victim and witness assistance surcharge under s. 938.34 (8d) (c), for the
9 deoxyribonucleic acid analysis surcharge under s. 973.046 (4) and for compliance
10 with s. 303.06 (2) and may distribute earnings for the support of the inmate's or
11 resident's dependents and for other obligations either acknowledged by the inmate
12 or resident in writing or which have been reduced to judgment that may be satisfied
13 according to law. The department may also distribute earnings for the child
14 pornography surcharge under s. 973.042 or the drug offender diversion surcharge
15 under s. 973.043, but only if the inmate or resident has first provided for the
16 reasonable support of his or her dependents.

17 **SECTION 12.** 303.01 (8) (c) 7m. of the statutes is created to read:

18 303.01 **(8)** (c) 7m. Payment of the child pornography surcharge under s.
19 973.042.

20 **SECTION 13.** 303.065 (5) (cg) of the statutes is created to read:

21 303.065 **(5)** (cg) Payment of the child pornography surcharge under s. 973.042.

22 **SECTION 14.** 814.75 (1) of the statutes is renumbered 814.75 (1r).

23 **SECTION 15.** 814.75 (1g) of the statutes is created to read:

24 814.75 **(1g)** The child pornography surcharge under s. 973.042.

25 **SECTION 16.** 814.76 (1) of the statutes is renumbered 814.76 (1r).

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1 **SECTION 17.** 814.76 (1g) of the statutes is created to read:

2 814.76 **(1g)** The child pornography surcharge under s. 973.042.

3 **SECTION 18.** 939.617 of the statutes is created to read:

4 **939.617 Mandatory minimum sentence for certain child sex offenses.**

5 If a person is convicted of a violation of s. 948.05, 948.075, or 948.12, the court shall
6 impose a bifurcated sentence under s. 973.01. The term of confinement in prison
7 portion of the bifurcated sentence shall be at least 5 years for violations of s. 948.05
8 or 948.075 and 3 years for violations of s. 948.12. Otherwise the penalties for the
9 crime apply, subject to any applicable penalty enhancement. The court may not place
10 the defendant on probation.

11 **SECTION 19.** 939.623 of the statutes is renumbered 939.618, and 939.618 (title),
12 as renumbered, is amended to read:

13 **939.618** (title) ~~Increased penalty;~~ **Mandatory minimum sentence for**
14 **repeat serious sex crimes.**

15 **SECTION 20.** 939.624 of the statutes is renumbered 939.619, and 939.619 (title),
16 as renumbered, is amended to read:

17 **939.619** (title) ~~Increased penalty;~~ **Mandatory minimum sentence for**
18 **repeat serious violent crimes.**

19 **SECTION 21.** 948.05 (1) (intro.) of the statutes is amended to read:

20 948.05 **(1)** (intro.) Whoever does any of the following with knowledge of the
21 character and content of the sexually explicit conduct involving the child is guilty of
22 a Class F C felony:

23 **SECTION 22.** 948.05 (1m) of the statutes is amended to read:

24 948.05 **(1m)** Whoever produces, performs in, profits from, promotes, imports
25 into the state, reproduces, advertises, sells, distributes, or possesses with intent to

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1 sell or distribute, any recording of a child engaging in sexually explicit conduct is
2 guilty of a Class F C felony if the person knows the character and content of the
3 sexually explicit conduct involving the child and if the person knows or reasonably
4 should know that the child engaging in the sexually explicit conduct has not attained
5 the age of 18 years.

6 **SECTION 23.** 948.05 (2) of the statutes is amended to read:

7 948.05 (2) A person responsible for a child's welfare who knowingly permits,
8 allows or encourages the child to engage in sexually explicit conduct for a purpose
9 proscribed in sub. (1) (a) or (b) or (1m) is guilty of a Class F C felony.

10 **SECTION 24.** 948.075 (1) of the statutes is renumbered 948.075 (1r).

11 **SECTION 25.** 948.075 (1g) of the statutes is created to read:

12 948.075 (1g) In this section, "representation" has the meaning given in s.
13 942.09 (1) (c).

14 **SECTION 26.** 948.075 (3) of the statutes is renumbered 948.075 (3) (intro.) and
15 amended to read:

16 948.075 (3) (intro.) Proof that the actor did an act, other than use a
17 computerized communication system to communicate with the individual, to effect
18 the actor's intent under sub. (1) (1r) shall be necessary to prove that intent. The
19 following are examples of acts that may be used to meet this requirement:

20 **SECTION 27.** 948.075 (3) (a) to (k) of the statutes are created to read:

21 948.075 (3) (a) Traveling any distance with the intent to meet the individual.

22 (b) Reserving accommodations at any hotel, as defined in s. 254.61 (3), with the
23 intent to meet the individual.

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1 (c) With the intent to meet the individual, making other arrangements related
2 to travel, including making a reservation for a rental car, renting a car, or making
3 a reservation or purchasing a ticket for bus, train, or airplane travel.

4 (d) Transmitting a representation of any lewd act to the individual through a
5 computerized communication system.

6 (e) Orally communicating with the individual, including through a telephone
7 or a voice over Internet service.

8 (f) Obtaining any representation of the individual or a person whom the actor
9 believes is the individual through the Internet.

10 (g) Sending any item by any means, including mail, delivery service, or
11 personal delivery, with the intent that it be delivered to the individual.

12 (h) Soliciting and receiving any item by any means, including mail, delivery
13 service, or personal delivery, from the individual.

14 (i) Engaging in surveillance of or a course of conduct, as defined in s. 940.32 (1)
15 (a), directed at the individual or a person whom the actor believes is the individual.

16 (j) Causing another person to engage in conduct described in par. (i) for the
17 purpose of enabling the actor to avoid detection by a law enforcement officer.

18 (k) Acquiring sex toys, intimate apparel, or other items that are used primarily
19 in the course of sexual activity.

20 **SECTION 28.** 948.12 (1m) (intro.) of the statutes is amended to read:

21 948.12 (1m) (intro.) Whoever possesses any undeveloped film, photographic
22 negative, photograph, motion picture, videotape, or other recording of a child
23 engaged in sexually explicit conduct under all of the following circumstances is guilty
24 of a Class I C felony:

25 **SECTION 29.** 948.12 (2m) (intro.) of the statutes is amended to read:

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1 948.12 **(2m)** (intro.) Whoever exhibits or plays a recording of a child engaged
2 in sexually explicit conduct, if all of the following apply, is guilty of a Class I C felony:

3 **SECTION 30.** 948.13 (2) (a) of the statutes is amended to read:

4 948.13 **(2)** (a) Except as provided in pars. (b) and (c), whoever has been
5 convicted of a serious child sex offense and subsequently engages in an occupation
6 or participates in a volunteer position that requires him or her to work or interact
7 ~~primarily and~~ directly with children under 16 years of age is guilty of a Class F felony.

8 **SECTION 31.** 948.13 (2m) (a) (intro.) of the statutes is amended to read:

9 948.13 **(2m)** (a) (intro.) A person who has been convicted of a crime under s.
10 948.02 (2) or 948.025 (1) may petition the court in which he or she was convicted to
11 order that the person be exempt from sub. (2) (a) and permitted to engage in an
12 occupation or participate in a volunteer position that requires the person to work or
13 interact ~~primarily and~~ directly with children under 16 years of age. The court may
14 grant a petition filed under this paragraph if the court finds that all of the following
15 apply:

16 **SECTION 32.** 948.13 (3) of the statutes is amended to read:

17 948.13 **(3)** Evidence that a person engages in an occupation or participates in
18 a volunteer position relating to any of the following is prima facie evidence that the
19 occupation or position requires him or her to work or interact ~~primarily and~~ directly
20 with children under 16 years of age: teaching children, child care, youth counseling,
21 youth organization, coaching children, parks or playground recreation or school bus
22 driving.

23 **SECTION 33.** 973.042 of the statutes is created to read:

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1 **973.042 Child pornography surcharge. (1)** In this section, “image”
2 includes a video recording, a visual representation, a positive or negative image on
3 exposed film, and data representing a visual image.

4 **(2)** If a court imposes a sentence or places a person on probation for a crime
5 under s. 948.05 or 948.12, the court shall impose a child pornography surcharge of
6 \$500 for each image or each copy of an image associated with the crime. The court
7 shall determine the number or images or copies of images associated with the crime
8 by a preponderance of the evidence and without a jury.

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

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

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

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

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

18 **(5)** The secretary of administration shall credit part A of the surcharge to the
19 appropriation account under s. 20.410 (1) (gj). The secretary of administration shall
20 credit part B of the surcharge to the appropriation account under s. 20.455 (2) (gj).
21 The secretary of administration shall deposit part C of the surcharge in the children’s
22 trust fund and credit it to the appropriation account under s. 20.433 (1) (gj).

23 **(6)** If an inmate in a state prison or a person sentenced to a state prison has
24 not paid the child pornography surcharge under this section, the department shall
25 assess and collect the amount owed from the inmate’s wages or other moneys. Any

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1 amount collected under this subsection shall be transmitted to the secretary of
2 administration.

3 **SECTION 34.** 973.05 (2m) of the statutes, as affected by 2005 Wisconsin Act 25,
4 is amended to read:

5 973.05 **(2m)** Payments under this section shall be applied first to payment of
6 the penalty surcharge until paid in full, shall then be applied to the payment of the
7 jail surcharge until paid in full, shall then be applied to the payment of part A of the
8 crime victim and witness assistance surcharge until paid in full, shall then be
9 applied to part B of the crime victim and witness assistance surcharge until paid in
10 full, shall then be applied to the crime laboratories and drug law enforcement
11 surcharge until paid in full, shall then be applied to the deoxyribonucleic acid
12 analysis surcharge until paid in full, shall then be applied to the child pornography
13 surcharge until paid in full. shall then be applied to the drug abuse program
14 improvement surcharge until paid in full, shall then be applied to the drug offender
15 diversion surcharge until paid in full, shall then be applied to payment of the driver
16 improvement surcharge until paid in full, shall then be applied to the truck driver
17 education surcharge if applicable until paid in full, shall then be applied to payment
18 of the domestic abuse surcharge until paid in full, shall then be applied to payment
19 of the consumer protection surcharge until paid in full, shall then be applied to
20 payment of the natural resources surcharge if applicable until paid in full, shall then
21 be applied to payment of the natural resources restitution surcharge until paid in
22 full, shall then be applied to the payment of the environmental surcharge if
23 applicable until paid in full, shall then be applied to the payment of the wild animal
24 protection surcharge if applicable until paid in full, shall then be applied to payment
25 of the weapons surcharge until paid in full, shall then be applied to payment of the

