



2011 ASSEMBLY BILL 100

1 **AN ACT** *to renumber and amend* 948.055 (2) (a) and 948.055 (2) (b); *to amend*
2 948.055 (1); and *to create* 939.32 (1) (cr) and (de), 948.055 (2) (a) 2., 948.055 (2)
3 (b) 2. and 971.23 (11) of the statutes; **relating to:** evidentiary recordings of
4 persons under the age of 18 engaging in sexually explicit conduct and certain
5 sex offenses against children and providing penalties.

Analysis by the Legislative Reference Bureau

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

6 **SECTION 1.** 939.32 (1) (cr) and (de) of the statutes are created to read:
7 939.32 **(1)** (cr) Whoever attempts to commit a crime under s. 948.055 (1) is
8 subject to the penalty for the completed act, as provided in s. 948.055 (2).
9 (de) Whoever attempts to commit a crime under s. 948.075 (1r) is subject to the
10 penalty provided in that subsection for the completed act.

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1 **SECTION 2.** 948.055 (1) of the statutes is amended to read:

2 948.055 (1) Whoever intentionally causes a child who has not attained 18 years
3 of age, or an individual who the actor believes or has reason to believe has not
4 attained 18 years of age, to view or listen to sexually explicit conduct may be
5 penalized as provided in sub. (2) if the viewing or listening is for the purpose of
6 sexually arousing or gratifying the actor or humiliating or degrading the child or
7 individual.

8 **SECTION 3.** 948.055 (2) (a) of the statutes is renumbered 948.055 (2) (a) (intro.)
9 and amended to read:

10 948.055 (2) (a) (intro.) A Class F felony if ~~the~~ any of the following applies:

11 1. The child has not attained the age of 13 years.

12 **SECTION 4.** 948.055 (2) (a) 2. of the statutes is created to read:

13 948.055 (2) (a) 2. The actor believes or has reason to believe that the child has
14 not attained the age of 13 years.

15 **SECTION 5.** 948.055 (2) (b) of the statutes is renumbered 948.055 (2) (b) (intro.)
16 and amended to read:

17 948.055 (2) (b) (intro.) A Class H felony if ~~the~~ any of the following applies:

18 1. The child has attained the age of 13 years but has not attained the age of 18
19 years.

20 **SECTION 6.** 948.055 (2) (b) 2. of the statutes is created to read:

21 948.055 (2) (b) 2. The actor believes or has reason to believe that the child has
22 attained the age of 13 years but has not attained the age of 18 years.

23 **SECTION 7.** 971.23 (11) of the statutes is created to read:

24 971.23 (11) CHILD PORNOGRAPHY RECORDINGS. (a) In this subsection:

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1 1. “Defense” means the defendant, his or her attorney, and any individual
2 retained by the defendant or his or her attorney for the purpose of providing
3 testimony if the testimony is expert testimony that relates to an item or material
4 included under par. (b).

5 2. “Reasonably available” means sufficient opportunity for inspection, viewing,
6 and examination at a law enforcement or government facility.

7 3. “Sexually explicit conduct” has the meaning given in s. 948.01 (7).

8 (b) Any undeveloped film, photographic negative, photograph, motion picture,
9 videotape, or recording, which includes any item or material that would be included
10 under s. 948.01 (3r), or any copy of the foregoing, that is of a person who has not
11 attained the age of 18 and who is engaged in sexually explicit conduct and that is in
12 the possession, custody, and control of the state shall remain in the possession,
13 custody, and control of a law enforcement agency or a court but shall be made
14 reasonably available to the defense.

15 (c) 1. Notwithstanding sub. (1) (e) and (g), a court shall deny any request by the
16 defense to provide, and a district attorney or law enforcement agency may not
17 provide to the defense, any item or material required in par. (b) to remain in the
18 possession, custody, and control of a law enforcement agency or court, except that a
19 court may order that a copy of an item or material included under par. (b) be provided
20 to the defense if that court finds that a copy of the item or material has not been made
21 reasonably available to the defense. The defense shall have the burden to establish
22 that the item or material has not been made reasonably available.

23 2. If a court orders under subd. 1. a copy of an item or material included under
24 par. (b) to be provided to the defense, the court shall enter a protective order under
25 sub. (6) that includes an order that the copy provided to the defense may not be

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1 copied, printed, or disseminated by the defense and shall be returned to the court or
2 law enforcement agency, whichever is appropriate, at the completion of the trial.

3 (d) Any item or material that is required under par. (b) to remain in possession,
4 custody, and control of a law enforcement agency or court is not subject to the right
5 of inspection or copying under s. 19.35 (1).

6 **SECTION 8. Initial applicability.**

7 (1) The treatment of section 948.055 (1) of the statutes, the renumbering and
8 amendment of section 948.055 (2) (a) and (b) of the statutes, and the creation of
9 section 948.055 (2) (a) 2. and (b) 2. of the statutes first apply to acts committed on the
10 effective date of this subsection.

11 (2) The treatment of section 971.23 (11) of the statutes first applies to any item
12 or material that has not been provided on the effective date of this subsection.

13 (END)