State of Wisconsin
2011 – 2012 LEGISLATURE

LRB–1070/2
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2011 ASSEMBLY BILL 100

April 22, 2011 – Introduced by Representatives STASKUNAS, BERNARD SCHABER, ZIEGELBAUER, BROOKS, JORGENSEN, SPANBAUER and BERCEAU, cosponsored by Senators LASSA and DARLING. Referred to Committee on Criminal Justice and Corrections.

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

Analysis by the Legislative Reference Bureau

Under current law, a district attorney must disclose to the defense, and permit the defense to inspect, copy, or photograph, any physical evidence that the district attorney intends to use as evidence against that defendant in a trial. Under this bill, if the evidence is a recording of a child engaging in sexually explicit conduct, the defense may inspect the recording only in a location maintained by the court or a law enforcement agency, one of which must, under this bill, retain possession, custody, and control of the recording and must provide the defense opportunity to examine, inspect, and view the recording. The defense may receive a copy for limited purposes only if a court finds that the defense has not had opportunity to examine, inspect, or view the recording.

Under current law, a person who causes a person under the age of 18 to view or listen to sexually explicit conduct is guilty of a felony if the viewing or listening is for sexual arousal or gratification of the actor or for humiliating or degrading the person under the age of 18. Also under current law, a person who communicates via a computer with an individual whom the person believes is under 16 years old with

the intent to have sexual intercourse or sexual contact with an individual under 16 years old is guilty of a felony. This bill makes the attempt to do either of these crimes a felony punishable as the completed crime would currently be punishable.

Under current law, the crime of causing a child to view or to listen to sexual activity, requires that the victim be under the age of 18. Under this bill, the victim may either be under 18 or be an individual who the person perpetrating the crime believes or has reason to believe is under 18.

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:

SECTION 1. 939.32 (1) (cr) and (de) of the statutes are created to read:

939.32 **(1)** (cr) Whoever attempts to commit a crime under s. 948.055 (1) is subject to the penalty for the completed act, as provided in s. 948.055 (2).

(de) Whoever attempts to commit a crime under s. 948.075 (1r) is subject to the penalty provided in that subsection for the completed act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Any undeveloped film, photographic negative, photograph, motion picture, videotape, or recording, which includes any item or material that would be included under s. 948.01 (3r), or any copy of the foregoing, that is of a person who has not attained the age of 18 and who is engaged in sexually explicit conduct and that is in

the possession, custody, and control of the state shall remain in the possession, custody, and control of a law enforcement agency or a court but shall be made reasonably available to the defense.

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

2. If a court orders under subd. 1. a copy of an item or material included under par. (b) to be provided to the defense, the court shall enter a protective order under sub. (6) that includes an order that the copy provided to the defense may not be copied, printed, or disseminated by the defense and shall be returned to the court or law enforcement agency, whichever is appropriate, at the completion of the trial.

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

SECTION 8. Initial applicability.

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

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

(END)