

**2011 DRAFTING REQUEST**

**Bill**

Received: **01/17/2011**

Received By: **chanaman**

Wanted: **As time permits**

Companion to LRB:

For: **Anthony Staskunas (608) 266-0620**

By/Representing: **Adrienne**

May Contact:

Drafter: **chanaman**

Subject: **Criminal Law - crimes agnst kids**  
**Criminal Law - sex offenses**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Staskunas@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

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**Topic:**

Internet crimes against children combination

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**Instructions:**

See attached

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**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>
/?	chanaman 01/17/2011	kfollett 01/28/2011		_____			S&L Crime
/1	chanaman 03/21/2011	kfollett 03/29/2011	rschlue 01/28/2011	_____	sbasford 01/28/2011		S&L Crime
/2			rschlue 03/29/2011	_____	sbasford 03/29/2011	ggodwin 03/30/2011	

FE Sent For:

*at  
intro  
4-22-11*

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/?	chanaman 01/17/2011	kfollett 01/28/2011		_____			S&L Crime
/1		12 kjl 3/29	rschluet 01/28/2011	_____	sbasford 01/28/2011		

FE Sent For:

22911

<END>

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/?	chanaman	1/16/11 1/28	 1/27/11	_____			

FE Sent For:

<END>

## Hanaman, Cathlene

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**From:** Ramirez, Adrienne  
**Sent:** Wednesday, January 12, 2011 4:20 PM  
**To:** Hanaman, Cathlene  
**Subject:** drafting request

Cathlene –

Last session you drafted LRB-4393/1 for the Attorney General. We introduced the bill in the Assembly as AB 769. Rep. Staskunas would like to reintroduce this proposal again this session. Could you please redraft it for our office? Thank you for your help.

Adrienne  
Office of Rep. Tony Staskunas  
6-0620



State of Wisconsin  
2009 - 2010 LEGISLATURE

-1070/1  
LRB-4393/1  
CMH:bjk/rs  
kgf

2009 ASSEMBLY BILL 769

February 23, 2010 - Introduced by Representatives STASKUNAS, BERCEAU, BROOKS and SUDER, cosponsored by Senators LASSA and SULLIVAN. Referred to Committee on Criminal Justice.

*Reynold*

1 AN ACT *to create* 939.32 (1) (cr) and (de) and 971.23 (11) of the statutes; **relating**  
2 **to:** evidentiary recordings of persons under the age of 18 engaging in sexually  
3 explicit conduct and attempt of certain sex crimes against children and  
4 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

**ASSEMBLY BILL 769**

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.

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

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

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

6           SECTION 2. 971.23 (11) of the statutes is created to read:

7           971.23 (11) CHILD PORNOGRAPHY RECORDINGS. (a) In this subsection:

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

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

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

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

## ASSEMBLY BILL 769

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

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

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

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

**SECTION 3. Initial applicability.**

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

23 (END)



## Hanaman, Cathlene

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**From:** Ramirez, Adrienne  
**Sent:** Monday, March 14, 2011 1:57 PM  
**To:** Hanaman, Cathlene  
**Subject:** RE:

Cathlene –

Would it be possible for you to redraft LRB -1070 & 1069 (the companion proposal) to include the second provision you mentioned in LRB-0622?

Rep. Staskunas believes it would add clarity to our proposal.

Let me know if you have any questions.

Thanks,

Adrienne

Office of Rep. Tony Staskunas

266-0620

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**From:** Hanaman, Cathlene  
**Sent:** Thursday, March 03, 2011 3:23 PM  
**To:** Ramirez, Adrienne  
**Subject:**

948.055 Causing a child to view or listen to sexual activity seems to be the only point where the bills touch.

-1070 --

increases the penalty for the attempt to commit a violation of (beyond the penalty under s. 939.32 (1g), which is half the maximum penalty for the committed act).

I think that the attempt would have to involve an actual child (although a judge may find differently).

-1070 does not add any additional elements for the DA to prove.

-0622 --

The attempt penalty remains current law (be subject to half the maximum penalty per 939.32(1g)).

The commission would not have to involve an actual child as long as the actor thought the victim was a child.

Adds an additional element for the DA to prove. The DA would, if the victim were not a child, have to prove that the actor believed, or had reason to believe, that the victim was a child.



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1070/1  
CMH:kjf:\*

TODAY

2011 BILL

Agencat

1 AN ACT *to create* 939.32 (1) (cr) and (de) and 971.23 (11) of the statutes; **relating**  
 2 **to:** evidentiary recordings of persons under the age of 18 engaging in sexually  
 3 explicit conduct and attempt of certain sex ~~crimes~~ *offenses* against children and  
 4 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.

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**BILL**

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

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

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

6           **SECTION 2.** 971.23 (11) of the statutes is created to read:

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2-6

7           971.23 (11) CHILD PORNOGRAPHY RECORDINGS. (a) In this subsection:

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

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

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

15           (b) Any undeveloped film, photographic negative, photograph, motion picture,  
16 videotape, or recording, which includes any item or material that would be included  
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18 attained the age of 18 and who is engaged in sexually explicit conduct and that is in

**BILL**

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

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

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16 law enforcement agency, whichever is appropriate, at the completion of the trial.

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

**SECTION 3. Initial applicability.**

20  
21 (1) The treatment of section 971.23 (11) of the statutes first applies to any item  
22 or material that has not been provided on the effective date of this subsection.

23 (END)

*(\*) 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.*



## 2011 BILL

1 AN ACT *to renumber and amend* 948.055 (2) (a), 948.055 (2) (b) and 948.08; *to*  
 2 *amend* 948.05 (1) and (1m), 948.051 (1), 948.055 (1), 948.07, 948.10 (1) (intro.),  
 3 948.11 (2) (am) and 948.11 (2) (b); and *to create* 948.055 (2) (a) 2. and 948.055  
 4 (2) (b) 2. of the statutes; **relating to:** certain sex offenses against children and  
 5 providing penalties.

### *Analysis by the Legislative Reference Bureau*

Under current law, the crimes of sexual exploitation of a child, trafficking of a  
 (child) causing a child to view or to listen to sexual activity, child enticement, soliciting  
 a child for prostitution, exposure of genitals or public area to a child, and exposing a  
 child to harmful material or harmful descriptions or narrations require that the  
 victim be under a certain age, as specified in the pertinent statute. Under this bill,  
 the victim may either be under that specified age or be an individual who the person  
 perpetrating the crime believes or has reason to believe is under that specified age.

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the age 18 of

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

6 SECTION 1. 948.05 (1) and (1m) of the statutes are amended to read:

**BILL****SECTION 1**

1           948.05 (1) Whoever does any of the following with knowledge of the character  
2 and content of the sexually explicit conduct involving the ~~child~~ individual may be  
3 penalized under sub. (2p):

4           (a) Employs, uses, persuades, induces, entices, or coerces any child, or any  
5 individual who the actor believes or has reason to believe is a child, to engage in  
6 sexually explicit conduct for the purpose of recording or displaying in any way the  
7 conduct.

8           (b) Records or displays in any way a child, or an individual who the actor  
9 believes or has reason to believe is a child, engaged in sexually explicit conduct.

10          **(1m)** Whoever produces, performs in, profits from, promotes, imports into the  
11 state, reproduces, advertises, sells, distributes, or possesses with intent to sell or  
12 distribute, any recording of ~~a child~~ an individual engaging in sexually explicit  
13 conduct may be penalized under sub. (2p) if the person knows the character and  
14 content of the sexually explicit conduct involving the ~~child~~ individual and if the  
15 person knows ~~or, reasonably should know,~~ or has reason to believe that the ~~child~~  
16 individual engaging in the sexually explicit conduct has not attained the age of 18  
17 years.

18          **SECTION 2.** 948.051 (1) of the statutes is amended to read:

19          948.051 (1) Whoever knowingly recruits, entices, provides, obtains, or harbors,  
20 or knowingly attempts to recruit, entice, provide, obtain, or harbor, any child, or any  
21 individual the actor believes or has reason to believe is a child, for the purpose of  
22 commercial sex acts, as defined in s. 940.302 (1) (a), or sexually explicit performance  
23 is guilty of a Class C felony.

24          **SECTION 3.** 948.055 (1) of the statutes is amended to read:

**BILL**

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

7            **SECTION 4.** 948.055 (2) (a) of the statutes is renumbered 948.055 (2) (a) (intro.)  
8 and amended to read:

9            948.055 (2) (a) (intro.) A Class F felony if the any of the following applies:

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

11            **SECTION 5.** 948.055 (2) (a) 2. of the statutes is created to read:

12            948.055 (2) (a) 2. The actor believes or has reason to believe that the child has  
13 not attained the age of 13 years.

14            **SECTION 6.** 948.055 (2) (b) of the statutes is renumbered 948.055 (2) (b) (intro.)  
15 and amended to read:

16            948.055 (2) (b) (intro.) A Class H felony if the any of the following applies:

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

19            **SECTION 7.** 948.055 (2) (b) 2. of the statutes is created to read:

20            948.055 (2) (b) 2. The actor believes or has reason to believe that the child has  
21 attained the age of 13 years but has not attained the age of 18 years.

22            **SECTION 8.** 948.07 of the statutes is amended to read:

23            **948.07 Child enticement.** Whoever, with intent to commit any of the  
24 following acts, causes or attempts to cause any child who has not attained the age  
25 of 18 years, or any individual who the actor believes or has reason to believe has not

*missing  
pages  
not needed*

**Barman, Mike**

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**From:** Ramirez, Adrienne  
**Sent:** Wednesday, March 30, 2011 8:26 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-1070/2 Topic: Internet crimes against children combination

Please Jacket LRB 11-1070/2 for the ASSEMBLY.