



2013 SENATE BILL 367

October 24, 2013 – Introduced by Senators VUKMIR, L. TAYLOR, LEHMAN and RISSER, cosponsored by Representatives SPIROS, JOHNSON, BALLWEG, BARCA, BERCEAU, BIES, BROOKS, CZAJA, KAHL, KLEEFISCH, MARKLEIN, NASS, OHNSTAD, A. OTT, PRIDEMORE, THIESFELDT and TITTL. Referred to Committee on Judiciary and Labor.

- 1 **AN ACT to create** 942.09 (1) (d) and 942.09 (3m) of the statutes; **relating to:**
2 distributing a sexually explicit image without consent and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, no one may photograph, videotape, or otherwise capture an image of a nude or partially nude person (depicted person) without the depicted person's knowledge and consent. A person who does so, or who possesses, reproduces, or distributes the image with the knowledge that the image was captured without the depicted person's knowledge or consent, is generally guilty of a Class I felony, and may be fined up to \$10,000, imprisoned for up to three years and six months, or both.

Under this bill, no one may reproduce, distribute, exhibit, publish, transmit, or otherwise disseminate (distribute) an image of a person who is nude or partially nude or who is engaging in sexually explicit behavior without the consent of the person, regardless of whether the depicted person consented to the capture of the image. A person who does so is guilty of a Class A misdemeanor and may be fined up to \$10,000, imprisoned for up to nine months, or both.

Under the bill, the prohibition does not apply if the person depicted consented to the distribution for commercial purposes. The bill creates exceptions for parents or legal guardians who distribute otherwise legal representations of their minor children for noncommercial purposes, for law enforcement officers acting in their official capacity, and for persons who distribute the representations for the purpose of reporting or assisting with the investigation of a crime.

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

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report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

1 **SECTION 1.** 942.09 (1) (d) of the statutes is created to read:

2 942.09 (1) (d) “Sexually explicit conduct” has the meaning given in s. 948.01
3 (7).

4 **SECTION 2.** 942.09 (3m) of the statutes is created to read:

5 942.09 (3m) (a) Whoever, without the consent of the person represented,
6 reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a
7 representation of a nude or partially nude person or of a person engaging in sexually
8 explicit conduct is guilty of a Class A misdemeanor. The consent of the person
9 represented to the capture of the representation or to the possession of the
10 representation by the actor is not a defense to a violation of this subsection.

11 (b) This subsection does not apply to any of the following:

12 1. The parent, guardian, or legal custodian of the person represented if the
13 representation does not violate s. 948.05 or 948.12 and the reproduction,
14 distribution, exhibition, publication, transmission, or other dissemination is not for
15 commercial purposes.

16 2. A law enforcement officer or agent acting in his or her official capacity in
17 connection with the investigation or prosecution of a crime.

18 3. A person who is not the actor and who reproduces, distributes, exhibits,
19 publishes, transmits, or otherwise disseminates the representation to a law
20 enforcement officer or agency for the purpose of reporting a crime or for the purpose

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1 of assisting a law enforcement officer or agent in an investigation or prosecution of
2 a crime.

3 (c) This subsection does not apply if the person represented consented to the
4 reproduction, distribution, exhibition, publication, transmission, or other
5 dissemination of the representation for commercial purposes.

6 (END)