



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 370
[2015 Assembly Bill 630]

**Exceptions to the
Crime of Representations
Depicting Nudity**

BACKGROUND

Wisconsin law criminalizes various conduct related to representations depicting nudity. Some violations are punishable by a felony and others are punishable by a misdemeanor. For example, it is generally and with limited exceptions, a Class I felony¹ for a person to either: (1) capture, possess, exhibit, or distribute a “representation”² that depicts nudity without the consent of the person nude while that person was nude in circumstances in which he or she had a reasonable expectation of privacy; or (2) make, exhibit, or distribute a reproduction of such representation.

Prior law provided an exception to this general prohibition for a parent, guardian, or legal custodian of a child that was depicted nude. Under prior law, if the capture, possession, exhibition, or distribution of the representation, or the making, possession, exhibition, or distribution of the reproduction, did not violate the crime of sexual exploitation of a child or the crime of child pornography, then a parent, guardian, or legal custodian of the child depicted nude could do any of the following:

- Capture and possess the representation or make and possess the reproduction depicting the child.
- Distribute or exhibit the representation captured or possessed if the distribution or exhibition is not for commercial purposes.

¹ The penalty for a “Class I felony” is a fine up to \$10,000, imprisonment up to three years and six months, or both. [s. 939.50 (3) (i), Stats.]

² A “representation” means a photograph, exposed film, motion picture, videotape, other visual representation, or data that represents a visual representation. [s. 942.09 (1) (c), Stats.]

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

Also, in general and with limited exceptions, it is a Class A misdemeanor³ to post, publish, or cause to be posted or published, a “private representation”⁴ if the actor knew that the person depicted did not consent to the posting or publication of the private representation. **Under prior law**, one of the exemptions to this prohibition was for a parent, guardian, or legal custodian of the person depicted if both of the following applied: (1) the private representation did not violate the crime of sexual exploitation of a child or the crime of child pornography; and (2) the posting or publication was not for commercial purposes.

2015 WISCONSIN ACT 370

2015 Wisconsin Act 370 (the Act) limits the exceptions discussed above to prohibit conduct that is done “for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.” Specifically, the Act provides the following:

- The exception to a Class I felony violation of the crime depicting nudity does not apply to a parent, guardian, or legal custodian of a child who captures, possesses, makes, distributes, or exhibits a representation of the child “for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.”
- The exception to a Class A misdemeanor violation of the crime of representations depicting nudity does not apply to a parent, guardian, or legal custodian of a person depicted in a private representation who posts or publishes the private representation “for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.”

In making this change, **the Act** replaces the term “commercial purposes” used **under prior law**, with the term “commercial gain.” The Act also retains **prior law**, which made the exceptions inapplicable to a parent, guardian, or legal custodian of a child who either captured, possessed, made, distributed, or exhibited a representation, or posted or published a private representation, in violation of the crime of sexual exploitation of a child or the crime of child pornography.

Effective date: This Act took effect on April 21, 2016.

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³ The penalty for a “Class A misdemeanor” is a fine up to \$10,000, imprisonment up to six months, or both. [s. 939.51 (3) (a), Stats.]

⁴ A “private representation” means a representation depicting a nude or partially nude person or depicting a person engaging in sexually explicit conduct that is intended by the person depicted in the representation to be captured, viewed, or possessed only by the person who, with the consent of the person depicted, captured the representation or to whom the person depicted directly and intentionally gave possession of the representation. [s. 942.09 (1) (bn), Stats.]