



2019 ASSEMBLY BILL 71

March 7, 2019 - Introduced by Representatives TUSLER, CROWLEY, BRANDTJEN, HORLACHER, KULP, MURSAU, RAMTHUN, SANFELIPPO, SCHRAA, SKOWRONSKI, SORTWELL, STEFFEN, THIESFELDT, TITTL and WICHGERS, cosponsored by Senators JACQUE, L. TAYLOR and MARKLEIN. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to amend* 948.12 (1m) (intro.), 948.12 (1m) (b), 948.12 (1m) (c), 948.12
2 (2m) (intro.), 948.12 (2m) (b), 948.12 (2m) (c) and 971.23 (11) (b); and *to create*
3 948.12 (1) of the statutes; **relating to:** possession of child pornography and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, in order for an image or video to be child pornography, the child must be engaged in sexually explicit conduct. Under this bill, an image or video is child pornography if it depicts the child in a sexually suggestive manner, which means that it depicts: 1) a child's less than completely and opaquely covered genitals, pubic area, or intimate parts in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; 2) any form of contact with a child's genitals, pubic area, or intimate parts in a manner that, by means of the posing, composition, format, or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the child; or 3) a child in any other way that is for the purpose of sexual stimulation or gratification of any person who may view the depiction where the depiction does not have serious literary, artistic, political, or scientific value.

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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.

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

1 **SECTION 1.** 948.12 (1) of the statutes is created to read:

2 948.12 (1) In this section, “sexually suggestive manner” means any of the
3 following:

4 (a) Depicting a child’s less than completely and opaquely covered genitals,
5 pubic area, or intimate parts in a manner that, by means of the posing, composition,
6 format, or animated sensual details, emits sensuality with sufficient impact to
7 concentrate prurient interest on the child.

8 (b) Depicting any form of contact with a child’s genitals, pubic area, or intimate
9 parts in a manner that, by means of the posing, composition, format, or animated
10 sensual details, emits sensuality with sufficient impact to concentrate prurient
11 interest on the child.

12 (c) Depicting a child for the purpose of sexual stimulation or gratification of any
13 person who may view the depiction where the depiction does not have serious
14 literary, artistic, political, or scientific value.

15 **SECTION 2.** 948.12 (1m) (intro.) of the statutes is amended to read:

16 948.12 (1m) (intro.) Whoever possesses, or accesses in any way with the intent
17 to view, any undeveloped film, photographic negative, photograph, motion picture,
18 videotape, or other recording of a child engaged in sexually explicit conduct or
19 portrayed in a sexually suggestive manner under all of the following circumstances
20 may be penalized under sub. (3):

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1 **SECTION 3.** 948.12 (1m) (b) of the statutes is amended to read:

2 948.12 **(1m)** (b) The person knows, or reasonably should know, that the
3 material that is possessed or accessed contains depictions of sexually explicit conduct
4 or sexually suggestive imagery.

5 **SECTION 4.** 948.12 (1m) (c) of the statutes is amended to read:

6 948.12 **(1m)** (c) The person knows or reasonably should know that the child
7 depicted in the material who is engaged in sexually explicit conduct or portrayed in
8 a sexually suggestive manner has not attained the age of 18 years.

9 **SECTION 5.** 948.12 (2m) (intro.) of the statutes is amended to read:

10 948.12 **(2m)** (intro.) Whoever exhibits or plays a recording of a child engaged
11 in sexually explicit conduct or portrayed in a sexually suggestive manner, if all of the
12 following apply, may be penalized under sub. (3):

13 **SECTION 6.** 948.12 (2m) (b) of the statutes is amended to read:

14 948.12 **(2m)** (b) Before the person exhibited or played the recording, he or she
15 knew the character and content of the sexually explicit conduct or sexually
16 suggestive imagery.

17 **SECTION 7.** 948.12 (2m) (c) of the statutes is amended to read:

18 948.12 **(2m)** (c) Before the person exhibited or played the recording, he or she
19 knew or reasonably should have known that the child engaged in sexually explicit
20 conduct or portrayed in a sexually suggestive manner had not attained the age of 18
21 years.

22 **SECTION 8.** 971.23 (11) (b) of the statutes is amended to read:

23 971.23 **(11)** (b) Any undeveloped film, photographic negative, photograph,
24 motion picture, videotape, or recording, which includes any item or material that
25 would be included under s. 948.01 (3r), or any copy of the foregoing, that is of a person

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SECTION 8

1 who has not attained the age of 18 and who is engaged in sexually explicit conduct
2 or portrayed in a sexually suggestive manner and that is in the possession, custody,
3 and control of the state shall remain in the possession, custody, and control of a law
4 enforcement agency or a court but shall be made reasonably available to the defense.

5

(END)