



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0710/1
CMH:kj:pg

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 580**

April 24, 2006 - Offered by Senator DARLING.

1 **AN ACT** *to renumber* 814.75 (1) and 814.76 (1); *to renumber and amend*
2 939.623, 939.624 and 948.075 (1); *to amend* 46.07, 301.32 (1), 302.13, 303.01
3 (8) (b), 948.05 (1) (intro.), 948.05 (1m), 948.05 (2), 948.12 (1m) (intro.), 948.12
4 (2m) (intro.) and 973.05 (2m); and *to create* 16.964 (11), 20.410 (1) (gj), 20.455
5 (2) (gj), 20.505 (6) (gj), 303.01 (8) (c) 7m., 303.065 (5) (cg), 814.75 (1g), 814.76
6 (1g), 939.617, 948.05 (2p), 948.12 (3) and 973.042 of the statutes; **relating to:**
7 child pornography, sexual exploitation of a child, using a computer to facilitate
8 a child sex crime, grants to nonprofit organizations providing services to
9 victims of sexual assault, making appropriations, and providing penalties.

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

10 **SECTION 1.** 16.964 (11) of the statutes is created to read:
11 16.964 (11) From the appropriation under s. 20.505 (6) (gj), the office shall
12 provide grants to nonprofit organizations that provide services to victims of sexual

1 assault. The office shall develop criteria and procedures for use in selecting grantees
2 and administering the grant program. Notwithstanding s. 227.10 (1), the criteria
3 and procedures need not be promulgated as rules under ch. 227.

4 **SECTION 2.** 20.410 (1) (gj) of the statutes is created to read:

5 20.410 (1) (gj) *General operations; child pornography surcharge.* All moneys
6 received as part A of any child pornography surcharge imposed under s. 973.042 to
7 operate institutions and to provide field and administrative services.

8 **SECTION 3.** 20.455 (2) (gj) of the statutes is created to read:

9 20.455 (2) (gj) *General operations; child pornography surcharge.* All moneys
10 received as part B of any child pornography surcharge imposed under s. 973.042 for
11 investigating offenses under s. 948.05 or 948.12.

12 **SECTION 4.** 20.505 (6) (gj) of the statutes is created to read:

13 20.505 (6) (gj) *Grants for victims of sexual assault; child pornography*
14 *surcharge.* All moneys received as part C of any child pornography surcharge
15 imposed under s. 973.042 for the grant program under s. 16.964 (11).

16 **SECTION 5.** 46.07 of the statutes, as affected by 2005 Wisconsin Act 25, is
17 amended to read:

18 **46.07 Property of patients or residents.** All money including wages and
19 other property delivered to an officer or employee of any institution for the benefit
20 of a patient or resident shall immediately be delivered to the steward, who shall enter
21 the money upon the steward's books to the credit of the patient or resident. The
22 property shall be used only under the direction and with the approval of the
23 superintendent and for the crime victim and witness assistance surcharge under s.
24 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34
25 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046, the child

1 pornography surcharge under s. 973.042, the drug offender diversion surcharge
2 under s. 973.043, or the benefit of the patient or resident. If the money remains
3 uncalled for for one year after the patient's or resident's death or departure from the
4 institution, the superintendent shall deposit the money in the general fund. If any
5 patient or resident leaves property, other than money, uncalled for at an institution
6 for one year, the superintendent shall sell the property, and the proceeds shall be
7 deposited in the general fund. If any person satisfies the department, within 5 years
8 after the deposit, of his or her right to the deposit, the department shall direct the
9 department of administration to draw its warrant in favor of the claimant and it shall
10 charge the same to the appropriation made by s. 20.913 (3) (c).

11 **SECTION 6.** 301.32 (1) of the statutes, as affected by 2005 Wisconsin Act 25, is
12 amended to read:

13 **301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT.**
14 All money and other property delivered to an employee of any state correctional
15 institution for the benefit of a prisoner or resident shall be delivered to the warden
16 or superintendent, who shall enter the property upon his or her accounts to the credit
17 of the prisoner or resident. The property may be used only under the direction and
18 with the approval of the superintendent or warden and for the crime victim and
19 witness assistance surcharge under s. 973.045 (4), the delinquency victim and
20 witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid
21 analysis surcharge under s. 973.046, the child pornography surcharge under s.
22 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the
23 prisoner or resident. If the money remains uncalled for for one year after the
24 prisoner's or resident's death or departure from the state correctional institution, the
25 superintendent shall deposit it in the general fund. If any prisoner or resident leaves

1 property, other than money, uncalled for at a state correctional institution for one
2 year, the superintendent shall sell the property and deposit the proceeds in the
3 general fund, donate the property to a public agency or private, nonprofit
4 organization or destroy the property. If any person satisfies the department, within
5 5 years after the deposit, of his or her right to the deposit, the department shall direct
6 the department of administration to draw its warrant in favor of the claimant and
7 it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

8 **SECTION 7.** 302.13 of the statutes, as affected by 2005 Wisconsin Act 25, is
9 amended to read:

10 **302.13 Preservation of property an inmate brings to prison.** The
11 department shall preserve money and effects, except clothes, in the possession of an
12 inmate when admitted to the prison and, subject to the crime victim and witness
13 assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis
14 surcharge under s. 973.046, the child pornography surcharge under s. 973.042, and
15 the drug offender diversion surcharge under s. 973.043, shall restore the money and
16 effects to the inmate when discharged.

17 **SECTION 8.** 303.01 (8) (b) of the statutes, as affected by 2005 Wisconsin Act 25,
18 is amended to read:

19 303.01 (8) (b) The department shall distribute earnings of an inmate or
20 resident, other than an inmate or resident employed under sub. (2) (em), for the crime
21 victim and witness assistance surcharge under s. 973.045 (4), for the delinquency
22 victim and witness assistance surcharge under s. 938.34 (8d) (c), for the
23 deoxyribonucleic acid analysis surcharge under s. 973.046 (4) and for compliance
24 with s. 303.06 (2) and may distribute earnings for the support of the inmate's or
25 resident's dependents and for other obligations either acknowledged by the inmate

1 or resident in writing or which have been reduced to judgment that may be satisfied
2 according to law. The department may also distribute earnings for the child
3 pornography surcharge under s. 973.042 or the drug offender diversion surcharge
4 under s. 973.043, but only if the inmate or resident has first provided for the
5 reasonable support of his or her dependents.

6 **SECTION 9.** 303.01 (8) (c) 7m. of the statutes is created to read:

7 303.01 (8) (c) 7m. Payment of the child pornography surcharge under s.
8 973.042.

9 **SECTION 10.** 303.065 (5) (cg) of the statutes is created to read:

10 303.065 (5) (cg) Payment of the child pornography surcharge under s. 973.042.

11 **SECTION 11.** 814.75 (1) of the statutes is renumbered 814.75 (1r).

12 **SECTION 12.** 814.75 (1g) of the statutes is created to read:

13 814.75 (1g) The child pornography surcharge under s. 973.042.

14 **SECTION 13.** 814.76 (1) of the statutes is renumbered 814.76 (1r).

15 **SECTION 14.** 814.76 (1g) of the statutes is created to read:

16 814.76 (1g) The child pornography surcharge under s. 973.042.

17 **SECTION 15.** 939.617 of the statutes is created to read:

18 **939.617 Minimum sentence for certain child sex offenses. (1)** Except as
19 provided in subs. (2) and (3), if a person is convicted of a violation of s. 948.05,
20 948.075, or 948.12, the court shall impose a bifurcated sentence under s. 973.01. The
21 term of confinement in prison portion of the bifurcated sentence shall be at least 5
22 years for violations of s. 948.05 or 948.075 and 3 years for violations of s. 948.12.
23 Otherwise the penalties for the crime apply, subject to any applicable penalty
24 enhancement.

1 (2) If a person is convicted of a violation of s. 948.05, 948.075, or 948.12, the
2 court may impose a sentence that is less than the sentence required under sub. (1),
3 or may place the person on probation, only if the court finds that the best interests
4 of the community will be served and the public will not be harmed and if the court
5 places its reasons on the record.

6 (3) This section does not apply if the offender was under 18 years of age when
7 the violation occurred.

8 **SECTION 16.** 939.623 of the statutes is renumbered 939.618, and 939.618 (title),
9 as renumbered, is amended to read:

10 **939.618** (title) ~~Increased penalty;~~ Mandatory minimum sentence for
11 repeat serious sex crimes.

12 **SECTION 17.** 939.624 of the statutes is renumbered 939.619, and 939.619 (title),
13 as renumbered, is amended to read:

14 **939.619** (title) ~~Increased penalty;~~ Mandatory minimum sentence for
15 repeat serious violent crimes.

16 **SECTION 18.** 948.05 (1) (intro.) of the statutes is amended to read:

17 948.05 (1) (intro.) Whoever does any of the following with knowledge of the
18 character and content of the sexually explicit conduct involving the child is ~~guilty of~~
19 ~~a Class F felony~~ may be penalized under sub. (2p):

20 **SECTION 19.** 948.05 (1m) of the statutes is amended to read:

21 948.05 (1m) Whoever produces, performs in, profits from, promotes, imports
22 into the state, reproduces, advertises, sells, distributes, or possesses with intent to
23 sell or distribute, any recording of a child engaging in sexually explicit conduct is
24 ~~guilty of a Class F felony~~ may be penalized under sub. (2p) if the person knows the
25 character and content of the sexually explicit conduct involving the child and if the

1 person knows or reasonably should know that the child engaging in the sexually
2 explicit conduct has not attained the age of 18 years.

3 **SECTION 20.** 948.05 (2) of the statutes is amended to read:

4 948.05 (2) A person responsible for a child's welfare who knowingly permits,
5 allows or encourages the child to engage in sexually explicit conduct for a purpose
6 proscribed in sub. (1) (a) or (b) or (1m) ~~is guilty of a Class F felony~~ may be penalized
7 under sub. (2p).

8 **SECTION 21.** 948.05 (2p) of the statutes is created to read:

9 948.05 (2p) (a) Except as provided in par. (b), a person who violates sub. (1),
10 (1m), or (2) is guilty of a Class C felony.

11 (b) A person who violates sub. (1), (1m), or (2) is guilty of a Class F felony if the
12 person is under 18 years of age when the offense occurs.

13 **SECTION 22.** 948.075 (1) of the statutes is renumbered 948.075 (1r) and
14 amended to read:

15 948.075 (1r) Whoever uses a computerized communication system to
16 communicate with an individual who the actor believes or has reason to believe has
17 not attained the age of 16 years with intent to have sexual contact or sexual
18 intercourse with the individual in violation of s. 948.02 (1) or (2) is guilty of a Class
19 D C felony.

20 **SECTION 23.** 948.12 (1m) (intro.) of the statutes is amended to read:

21 948.12 (1m) (intro.) Whoever possesses any undeveloped film, photographic
22 negative, photograph, motion picture, videotape, or other recording of a child
23 engaged in sexually explicit conduct under all of the following circumstances ~~is guilty~~
24 of a Class I felony may be penalized under sub. (3):

25 **SECTION 24.** 948.12 (2m) (intro.) of the statutes is amended to read:

1 948.12 **(2m)** (intro.) Whoever exhibits or plays a recording of a child engaged
2 in sexually explicit conduct, if all of the following apply, ~~is guilty of a Class I felony~~
3 may be penalized under sub. (3):

4 **SECTION 25.** 948.12 (3) of the statutes is created to read:

5 948.12 **(3)** (a) Except as provided in par. (b), a person who violates sub. (1m)
6 or (2m) is guilty of a Class D felony.

7 (b) A person who violates sub. (1m) or (2m) is guilty of a Class I felony if the
8 person is under 18 years of age when the offense occurs.

9 **SECTION 26.** 973.042 of the statutes is created to read:

10 **973.042 Child pornography surcharge.** **(1)** In this section, “image”
11 includes a video recording, a visual representation, a positive or negative image on
12 exposed film, and data representing a visual image.

13 **(2)** If a court imposes a sentence or places a person on probation for a crime
14 under s. 948.05 or 948.12 and the person was at least 18 years of age when the crime
15 was committed, the court shall impose a child pornography surcharge of \$500 for
16 each image or each copy of an image associated with the crime. The court shall
17 determine the number of images or copies of images associated with the crime by a
18 preponderance of the evidence and without a jury.

19 **(3)** The clerk shall record any surcharge imposed under this section in 3 parts
20 as follows:

21 (a) Part A is 50 percent of any amount collected.

22 (b) Part B is 30 percent of any amount collected.

23 (c) Part C is 20 percent of any amount collected.

24 **(4)** After determining the amount due, the clerk of court shall collect and
25 transmit the amount to the county treasurer under s. 59.40 (2) (m). The county

1 treasurer shall then make payment to the secretary of administration under s. 59.25
2 (3) (f) 2.

3 (5) The secretary of administration shall credit part A of the surcharge to the
4 appropriation account under s. 20.410 (1) (gj). The secretary of administration shall
5 credit part B of the surcharge to the appropriation account under s. 20.455 (2) (gj).
6 The secretary of administration shall credit part C of the surcharge to the
7 appropriation account under s. 20.505 (6) (gj).

8 (6) If an inmate in a state prison or a person sentenced to a state prison has
9 not paid the child pornography surcharge under this section, the department shall
10 assess and collect the amount owed from the inmate's wages or other moneys. Any
11 amount collected under this subsection shall be transmitted to the secretary of
12 administration.

13 **SECTION 27.** 973.05 (2m) of the statutes, as affected by 2005 Wisconsin Act 25,
14 is amended to read:

15 973.05 (2m) Payments under this section shall be applied first to payment of
16 the penalty surcharge until paid in full, shall then be applied to the payment of the
17 jail surcharge until paid in full, shall then be applied to the payment of part A of the
18 crime victim and witness assistance surcharge until paid in full, shall then be
19 applied to part B of the crime victim and witness assistance surcharge until paid in
20 full, shall then be applied to the crime laboratories and drug law enforcement
21 surcharge until paid in full, shall then be applied to the deoxyribonucleic acid
22 analysis surcharge until paid in full, shall then be applied to the child pornography
23 surcharge until paid in full, shall then be applied to the drug abuse program
24 improvement surcharge until paid in full, shall then be applied to the drug offender
25 diversion surcharge until paid in full, shall then be applied to payment of the driver

1 improvement surcharge until paid in full, shall then be applied to the truck driver
2 education surcharge if applicable until paid in full, shall then be applied to payment
3 of the domestic abuse surcharge until paid in full, shall then be applied to payment
4 of the consumer protection surcharge until paid in full, shall then be applied to
5 payment of the natural resources surcharge if applicable until paid in full, shall then
6 be applied to payment of the natural resources restitution surcharge until paid in
7 full, shall then be applied to the payment of the environmental surcharge if
8 applicable until paid in full, shall then be applied to the payment of the wild animal
9 protection surcharge if applicable until paid in full, shall then be applied to payment
10 of the weapons surcharge until paid in full, shall then be applied to payment of the
11 uninsured employer surcharge until paid in full, shall then be applied to payment
12 of the enforcement surcharge under s. 253.06 (4) (c), if applicable, until paid in full,
13 and shall then be applied to payment of the fine and the costs and fees imposed under
14 ch. 814.

15 **SECTION 28. Initial applicability.**

16 (1) The treatment of section 973.042 of the statutes first applies to violations
17 of section 948.05 or 948.12 of the statutes that are committed on the effective date
18 of this subsection.

19 (END)