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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2013 Senate Bill 367</b>	<b>Senate Substitute Amendment 1</b>
<i>Memo published: March 17, 2014</i> <i>Contact: Anne Sappenfield, Principal Attorney (267-9485)</i>	

2013 Senate Bill 367 relates to distribution of sexually explicit images without consent.

### **2013 Senate Bill 367**

2013 Senate Bill 367 makes it a Class A misdemeanor<sup>1</sup> for a person to reproduce, distribute, exhibit, publish, transmit, or otherwise disseminate (hereinafter, “distribute”) a representation<sup>2</sup> without the consent of the person represented, if the representation is either of the following: (1) a representation of a nude or partially nude person;<sup>3</sup> or (2) a representation of a person engaging in sexually explicit conduct.

The bill provides that the crime does not apply to the following:

- The parent, guardian, or legal custodian of the person represented if the representation does not violate the crime of sexual exploitation of a child or possession of child pornography, and the distribution is not for commercial purposes.
- A law enforcement officer or agent acting in his or her official capacity in connection with the investigation or prosecution of a crime.

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<sup>1</sup> The penalty for a Class A misdemeanor is a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both. [s. 939.51 (3) (a), Stats.]

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

<sup>3</sup> “Nude or partially nude person” means “any human being who has less than fully and opaquely covered genitals, pubic area or buttocks, any female human being who has less than a fully opaque covering over any portion of a breast below the top of the nipple, or any male human being with covered genitals in a discernibly turgid state.” [ss. 942.08 (1) (a) and 942.09 (1) (am), Stats.]

- A person who is not the actor and who distributes the representation to a law enforcement officer or agency for the purpose of either: (1) reporting a crime; or (2) assisting a law enforcement officer or agent in an investigation or prosecution of a crime.
- Instances where the person who is represented consented to the distribution for commercial purposes.
- The distribution of a representation that is newsworthy or of public importance.

### **Senate Substitute Amendment 1**

Senate Substitute Amendment 1 provides that whoever does either of the following is guilty of a Class A misdemeanor:

- Posts, publishes, or causes to be posted or published, a private representation if the actor knows that the person depicted does not consent to the posting or publication of the private representation.
- Posts, publishes, or causes to be posted or published, a depiction of a person that he or she knows is a private representation, without the consent of the person depicted.

The substitute amendment defines “post or publish” to include posting or publishing on a website on the Internet, if the website may be viewed by the general public. The substitute amendment defines “private representation” as a representation depicting a nude or partially nude person or depicting a person engaged in sexually explicit conduct that is intended by the person depicted 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.

The substitute amendment provides that the crime does not apply to the following:

- The parent, guardian, or legal custodian of the person depicted if the private representation does not violate the crime of sexual exploitation of a child or possession of child pornography, and the posting or publication is not for commercial purposes.
- A law enforcement officer or agent, acting in his or her official capacity in connection with the investigation or prosecution of a crime.
- A person who posts or publishes a private representation that is newsworthy or of public importance.
- A provider of electronic communication services that provides Internet access service to customers.

### **Bill History**

Senators Vukmir and Grothman offered Senate Substitute Amendment 1. On March 14, 2014, the Senate Committee on Judiciary and Labor unanimously adopted the substitute amendment and unanimously recommended passage of the bill, as amended.

AS:ksm