



State of Wisconsin
2023 - 2024 LEGISLATURE

LRBs0210/1
CMH:amn

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 315**

December 18, 2023 – Offered by Representative CALLAHAN.

1 **AN ACT** *to amend* 20.455 (5) (gj), 48.345 (3) (a) 2., 48.345 (3) (b) 2., 48.685 (1) (c)
2 2., 48.685 (4m) (b) 2., 48.685 (4m) (b) 2m., 50.065 (1) (e) 2., 51.20 (13) (ct) 2m.,
3 103.34 (1) (b) 2., 165.505 (1) (bg) 1., 301.45 (1d) (b), 343.12 (7) (c) 23., 440.312
4 (2), 440.982 (2), 786.36 (1m) (c) 24., 938.34 (3) (a) 2., 938.34 (3) (b) 2., 938.34
5 (15m) (bm), 939.615 (1) (b) 1., 939.617 (1), 946.82 (4), 971.17 (1m) (b) 2m.,
6 973.042 (2) and 973.048 (2m); and **to create** 948.125 of the statutes; **relating**
7 **to:** possession of child pornography and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person is guilty of the crime of possessing child pornography if he or she knowingly possesses, or accesses with the intent to view, film, photographic negatives, photographs, motion pictures, videotapes, or other recordings of a child engaged in actual or simulated sexually explicit conduct. To be convicted the person has to know or reasonably should know that the depicted child is under the age of 18. Possession of child pornography is a Class D felony and has a three-year mandatory minimum period of confinement in prison if the person is at least 18 and at least 48 months older than the child who is depicted. If the person

is under 18, the crime is a Class I felony. A person who is convicted of possession of child pornography is subject to other consequences stemming from the conviction including the requirement to register as a sex offender and to pay a pornography surcharge of \$500 per image.

Under this bill, a person is guilty of the crime of possessing virtual child pornography if he or she knowingly receives, distributes, produces, or possesses, or accesses with the intent to view, obscene photographs, film, motion pictures, or digital or computer-generated images or pictures that contain a visual representation that appears to depict an actual child engaged in sexually explicit conduct although the representation may or may not depict an actual child. Material is “obscene” if 1) the average person, applying contemporary community standards, would find that it appeals to the prurient interest if taken as a whole; 2) it describes or shows sexually explicit conduct in a patently offensive way under contemporary community standards; and 3) it lacks serious literary, artistic, political, educational, or scientific value, if taken as a whole. The crime created under this bill is a Class D felony and carries a three-year mandatory minimum period of confinement in prison if the person is at least 18. If the person is under 18, the crime is a Class I felony. The other consequences stemming from a conviction for child pornography apply to the crime created in the bill, including the requirement to register as a sex offender and to pay the pornography surcharge of \$500 per image.

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.** 20.455 (5) (gj) of the statutes is amended to read:

2 20.455 (5) (gj) *General operations; child pornography surcharge.* All moneys
3 received from any child pornography surcharge imposed under s. 973.042 for
4 investigating offenses under s. 948.05 ~~or~~, 948.12, or 948.125 and for making grants
5 under s. 165.93 (2) (a).

6 **SECTION 2.** 48.345 (3) (a) 2. of the statutes is amended to read:

7 48.345 (3) (a) 2. The home of a relative other than the parent of a child if the
8 judge finds that the relative has been convicted of, has pleaded no contest to, or has
9 had a charge dismissed or amended as a result of a plea agreement for a crime under
10 s. 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051,

1 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12,
2 948.125, 948.13, 948.21, 948.215, 948.30, or 948.53, or a similar law of another state.

3 **SECTION 3.** 48.345 (3) (b) 2. of the statutes is amended to read:

4 48.345 (3) (b) 2. The home of a person who is not required to be licensed if the
5 judge finds that the person has been convicted of, has pleaded no contest to, or has
6 had a charge dismissed or amended as a result of a plea agreement for a crime under
7 s. 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051,
8 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12,
9 948.125, 948.13, 948.21, 948.215, 948.30, or 948.53, or a similar law of another state.

10 **SECTION 4.** 48.685 (1) (c) 2. of the statutes is amended to read:

11 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
12 (2), (4), (5), or (6), 940.198 (2), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2),
13 940.29, 940.295, 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3.,
14 or 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2)
15 (a) or (am), 948.12, 948.125, 948.13, 948.21, 948.215, 948.30, or 948.53.

16 **SECTION 5.** 48.685 (4m) (b) 2. of the statutes is amended to read:

17 48.685 (4m) (b) 2. That the person was charged for a violation of s. 948.02 (1)
18 or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.06,
19 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.125, 948.13,
20 948.21, 948.215, 948.30, or 948.53, or a similar law of another state, and the charge
21 was dismissed or amended as part of a plea agreement.

22 **SECTION 6.** 48.685 (4m) (b) 2m. of the statutes is amended to read:

23 48.685 (4m) (b) 2m. That the person has pleaded no contest to a violation of s.
24 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055,

1 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.125,
2 948.13, 948.21, 948.215, 948.30, or 948.53, or a similar law of another state.

3 **SECTION 7.** 50.065 (1) (e) 2. of the statutes is amended to read:

4 50.065 (1) (e) 2. For the purposes of an entity that serves persons under the age
5 of 18, “serious crime” includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c) or (5)
6 (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.11 (2) (a) or
7 (am), 948.12, 948.125, 948.13, 948.21 (2), 948.215, 948.30, or 948.53 or a violation of
8 the law of any other state or United States jurisdiction that would be a violation of
9 s. 948.02 (2), 948.03 (2) (b) or (c) or (5) (a) 4., 948.05, 948.051, 948.055, 948.06, 948.07,
10 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (2), 948.30, or 948.53
11 if committed in this state.

12 **SECTION 8.** 51.20 (13) (ct) 2m. of the statutes is amended to read:

13 51.20 (13) (ct) 2m. If the subject individual is before the court on a petition filed
14 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a
15 violation, or to have solicited, conspired, or attempted to commit a violation, of s.
16 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051,
17 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am),
18 948.12, 948.125, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies,
19 or of s. 940.30 or 940.31 if the victim was a minor and the subject individual was not
20 the victim’s parent, the court shall require the individual to comply with the
21 reporting requirements under s. 301.45 unless the court determines, after a hearing
22 on a motion made by the individual, that the individual is not required to comply
23 under s. 301.45 (1m).

24 **SECTION 9.** 103.34 (1) (b) 2. of the statutes is amended to read:

1 103.34 (1) (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,
2 940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.198 (2), 940.21, 940.225 (1), (2),
3 or (3), 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02,
4 943.03, 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.34, 946.10, 948.02 (1) or
5 (2), 948.025, 948.03 (2), (3), or (5) (a) 1., 2., 3., or 4., 948.04, 948.05, 948.051, 948.055,
6 948.06, 948.07, 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.125,
7 948.13, 948.21 (2), 948.215, or 948.30 or of a substantially similar federal law or law
8 of another state.

9 **SECTION 10.** 165.505 (1) (bg) 1. of the statutes is amended to read:

10 165.505 (1) (bg) 1. A violation of s. 948.05, 948.075, 948.11, ~~or 948.12,~~ or
11 948.125.

12 **SECTION 11.** 301.45 (1d) (b) of the statutes is amended to read:

13 301.45 (1d) (b) “Sex offense” means a violation, or the solicitation, conspiracy,
14 or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 944.18,
15 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.075,
16 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.125, 948.13, or 948.30,
17 of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim
18 was a minor and the person who committed the violation was not the victim’s parent.

19 **SECTION 12.** 343.12 (7) (c) 23. of the statutes is amended to read:

20 343.12 (7) (c) 23. Possession of child pornography under s. 948.12 or 948.125.

21 **SECTION 13.** 440.312 (2) of the statutes is amended to read:

22 440.312 (2) The department may not grant a license under this subchapter to
23 any person who has been convicted of an offense under s. 940.22, 940.225, 940.302
24 (2) (a) 1. b., 944.06, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34,

1 948.02, 948.025, 948.051, 948.06, 948.07, 948.075, 948.08, 948.081, 948.09, 948.095,
2 948.10, 948.11, ~~or 948.12, or 948.125.~~

3 **SECTION 14.** 440.982 (2) of the statutes is amended to read:

4 440.982 (2) The department may not grant a license under this subchapter to
5 any person who has been convicted of an offense under s. 940.22, 940.225, 944.06,
6 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025,
7 948.051, 948.06, 948.07, 948.075, 948.08, 948.081, 948.09, 948.095, 948.10, 948.11,
8 ~~or 948.12, or 948.125~~ or under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

9 **SECTION 15.** 786.36 (1m) (c) 24. of the statutes is amended to read:

10 786.36 (1m) (c) 24. Possession of child pornography under s. 948.12 or 948.125.

11 **SECTION 16.** 938.34 (3) (a) 2. of the statutes is amended to read:

12 938.34 (3) (a) 2. The home of a relative other than the parent of the juvenile
13 if the court finds that the relative has been convicted of, has pleaded no contest to,
14 or has had a charge dismissed or amended as a result of a plea agreement for a crime
15 under s. 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051,
16 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12,
17 948.125, 948.13, 948.21, 948.215, 948.30, or 948.53, or a similar law of another state.

18 **SECTION 17.** 938.34 (3) (b) 2. of the statutes is amended to read:

19 938.34 (3) (b) 2. The home of a person who is not required to be licensed if the
20 court finds that the person has been convicted of, has pleaded no contest to, or has
21 had a charge dismissed or amended as a result of a plea agreement for a crime under
22 s. 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051,
23 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12,
24 948.125, 948.13, 948.21, 948.215, 948.30, or 948.53, or a similar law of another state.

25 **SECTION 18.** 938.34 (15m) (bm) of the statutes is amended to read:

1 938.34 **(15m)** (bm) If the juvenile is adjudicated delinquent on the basis of a
2 violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22
3 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055,
4 948.06, 948.07, 948.075, 948.08, or 948.085 (2), 948.095, 948.11 (2) (a) or (am),
5 948.12, 948.125, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies,
6 or of s. 940.30 or 940.31 if the victim was a minor and the juvenile was not the victim's
7 parent, the court shall require the juvenile to comply with the reporting
8 requirements under s. 301.45 unless the court determines, after a hearing on a
9 motion made by the juvenile, that the juvenile is not required to comply under s.
10 301.45 (1m).

11 **SECTION 19.** 939.615 (1) (b) 1. of the statutes is amended to read:

12 939.615 **(1)** (b) 1. A violation, or the solicitation, conspiracy, or attempt to
13 commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025
14 (1), 948.05 (1) or (1m), 948.051, 948.055 (1), 948.06, 948.07, 948.075, 948.08, 948.085,
15 948.11 (2) (a), 948.12, 948.125, or 948.13 or of s. 940.302 (2) if s. 940.302 (2) (a) 1. b.
16 applies.

17 **SECTION 20.** 939.617 (1) of the statutes is amended to read:

18 939.617 **(1)** Except as provided in subs. (2) and (3), if a person is convicted of
19 a violation of s. 948.05, 948.075, ~~or~~ 948.12, or 948.125, the court shall impose a
20 bifurcated sentence under s. 973.01. The term of confinement in prison portion of the
21 bifurcated sentence shall be at least 5 years for violations of s. 948.05 or 948.075 and
22 3 years for violations of s. 948.12 or 948.125. Otherwise the penalties for the crime
23 apply, subject to any applicable penalty enhancement.

24 **SECTION 21.** 946.82 (4) of the statutes, as affected by 2023 Wisconsin Act 10,
25 is amended to read:

1 946.82 (4) “Racketeering activity” means any activity specified in 18 USC 1961
2 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
3 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,
4 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,
5 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6),
6 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31, 941.20 (2) and
7 (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011,
8 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e),
9 943.201, 943.203, 943.23 (2) and (3), 943.231 (1), 943.24 (2), 943.27, 943.28, 943.30,
10 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c),
11 943.50 (4) (bf), (bm), and (c) and (4m), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83,
12 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32,
13 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12, 946.13,
14 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 946.79,
15 947.015, 948.05, 948.051, 948.08, 948.12, 948.125, and 948.30.

16 **SECTION 22.** 948.125 of the statutes is created to read:

17 **948.125 Possession of virtual child pornography. (1) DEFINITIONS.** In this
18 section:

19 (a) “Depiction of a purported child” means a visual representation that appears
20 to depict an actual child but may or may not depict an actual child.

21 (b) “Obscene material” means a photograph, film, motion picture, or digital or
22 computer-generated image or picture, whether made or produced by electronic,
23 mechanical, or other means, that satisfies all of the following:

24 1. The average person, applying contemporary community standards, would
25 find appeals to the prurient interest if taken as a whole.

1 2. Under contemporary community standards, describes or shows sexually
2 explicit conduct in a patently offensive way.

3 3. Lacks serious literary, artistic, political, educational, or scientific value, if
4 taken as a whole.

5 **(2) POSSESSION AND PENALTY.** Whoever receives, distributes, produces, or
6 possesses, or accesses in any way with the intent to view, obscene material that
7 contains a depiction of a purported child engaging in sexually explicit conduct is
8 guilty of the following if the person knows that he or she received, distributed,
9 produced, possessed, or accessed the material or if the person knows, or reasonably
10 should know, that the material contains a depiction of a purported child engaging in
11 sexually explicit conduct:

12 (a) Except as provided in par. (b), a Class D felony.

13 (b) If the actor is under 18 years of age when the offense occurs, a Class I felony.

14 **SECTION 23.** 971.17 (1m) (b) 2m. of the statutes is amended to read:

15 971.17 **(1m)** (b) 2m. If the defendant under sub. (1) is found not guilty by reason
16 of mental disease or defect for a violation, or for the solicitation, conspiracy, or
17 attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02
18 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08,
19 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, ~~948.125~~, 948.13, or 948.30, of s.
20 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was
21 a minor and the defendant was not the victim's parent, the court shall require the
22 defendant to comply with the reporting requirements under s. 301.45 unless the
23 court determines, after a hearing on a motion made by the defendant, that the
24 defendant is not required to comply under s. 301.45 (1m).

25 **SECTION 24.** 973.042 (2) of the statutes is amended to read:

