

State of Wisconsin



2023 Senate Bill 314

Date of enactment: **March 27, 2024**

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2023 WISCONSIN ACT 224

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

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

SECTION 1. 20.455 (5) (gj) of the statutes is amended to read:

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

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

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

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

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

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

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

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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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

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

48.685 (4m) (b) 2m. That the person has pleaded no contest to a violation of s. 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.125, 948.13, 948.21, 948.215, 948.30, or 948.53, or a similar law of another state.

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

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

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

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

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

103.34 (1) (b) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.198 (2), 940.21, 940.225 (1), (2), or (3), 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03, 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.34, 946.10,

948.02 (1) or (2), 948.025, 948.03 (2), (3), or (5) (a) 1., 2., 3., or 4., 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.125, 948.13, 948.21 (2), 948.215, or 948.30 or of a substantially similar federal law or law of another state.

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

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

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

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

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

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

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

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

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

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

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

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

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

938.34 (3) (a) 2. The home of a relative other than the parent of the juvenile if the court finds that the relative has been convicted of, has pleaded no contest to, or has had a charge dismissed or amended as a result of a plea agreement for a crime under s. 948.02 (1) or (2), 948.025,

948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am), 948.12, 948.125, 948.13, 948.21, 948.215, 948.30, or 948.53, or a similar law of another state.

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

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

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

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

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

939.615 (1) (b) 1. A violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025 (1), 948.05 (1) or (1m), 948.051, 948.055 (1), 948.06, 948.07, 948.075, 948.08, 948.085, 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. applies.

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

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

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

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

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

948.125 Possession of virtual child pornography.

(1) DEFINITIONS. In this section:

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

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

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

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

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

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

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

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

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

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

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

973.042 (2) If a court imposes a sentence or places a person on probation for a crime under s. 948.05 or,

948.12, or 948.125 and the person was at least 18 years of age when the crime was committed, the court shall impose a child pornography surcharge of \$500 for each image or each copy of an image associated with the crime. The court shall determine the number of images or copies of images associated with the crime by a preponderance of the evidence and without a jury.

SECTION 25. 973.048 (2m) of the statutes is amended to read:

973.048 (2m) If a court imposes a sentence or places a person on probation for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.125, 948.13, or 948.30, 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 was a minor and the person was not the victim's parent, the court shall require the person to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the person, that the person is not required to comply under s. 301.45 (1m).