

# State of Wisconsin



2015 Assembly Bill 521

Date of enactment:  
Date of publication\*:

## 2015 WISCONSIN ACT

AN ACT *to amend* 942.08 (1) (c), 942.08 (2) (a), 942.09 (1) (a), 942.09 (1) (c), 942.09 (2) (am) 1., 2. and 3., 942.09 (2) (bm) (intro.), 942.09 (3m) (b) 4., 972.11 (2) (b) (intro.) and 972.11 (2) (d) 1. (intro.); and *to create* 942.09 (1) (ae), 942.09 (1) (ag) and 942.09 (2) (dm) of the statutes; **relating to:** invasions of privacy and providing a criminal penalty.

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

**SECTION 1.** 942.08 (1) (c) of the statutes is amended to read:

942.08 (1) (c) "Surveillance device" means any device, instrument, apparatus, implement, mechanism or contrivance used, designed to be used ~~or primarily intended to be used~~ to observe, or capable of observing, the activities of a person. "Surveillance device" includes a peephole.

**SECTION 2.** 942.08 (2) (a) of the statutes is amended to read:

942.08 (2) (a) Knowingly installs a surveillance device in any private place, or uses a surveillance device ~~that has been installed to observe~~ in a private place, with the intent to observe any nude or partially nude person without the consent of the person observed.

**SECTION 3.** 942.09 (1) (a) of the statutes is amended to read:

942.09 (1) (a) "Captures a representation" means takes a photograph, makes a motion picture, videotape, recording, or other visual or audio representation, or records or stores in any medium data that represents a visual image.

**SECTION 4.** 942.09 (1) (ae) of the statutes is created to read:

942.09 (1) (ae) "Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to the act. A person who has not attained the age of 18 is incapable of consent. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

1. A person suffering from a mental illness or defect that impairs capacity to appraise personal conduct.
2. A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

**SECTION 5.** 942.09 (1) (ag) of the statutes is created to read:

942.09 (1) (ag) "Intimate representation" means any of the following:

1. A representation of a nude or partially nude person.
2. A representation of clothed, covered, or partially clothed or covered genitalia or buttock that is not otherwise visible to the public.
3. A representation of a person urinating, defecating, or using a feminine hygiene product.
4. A representation of person engaged in sexual intercourse or sexual contact, as defined in s. 940.225 (5) (b) or (c).

**SECTION 6.** 942.09 (1) (c) 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."

942.09 (1) (c) "Representation" means a photograph, exposed film, motion picture, videotape, recording, other visual or audio representation, or data that represents a visual image or audio recording.

**SECTION 7.** 942.09 (2) (am) 1., 2. and 3. of the statutes are amended to read:

942.09 (2) (am) 1. Captures ~~a~~ an intimate representation that depicts nudity without the knowledge and consent of the person who is depicted ~~nude while that person is nude in a circumstance~~ under circumstances in which he or she has a reasonable expectation of privacy, if the person knows or has reason to know that the person who is depicted ~~nude~~ does not know of and consent to the capture of the intimate representation.

2. Makes a reproduction of ~~a~~ an intimate representation that the person knows or has reason to know was captured in violation of subd. 1. and that depicts the ~~nudity depicted in the~~ an intimate representation captured in violation of subd. 1., if the person depicted ~~nude~~ in the reproduction did not consent to the making of the reproduction.

3. Possesses, distributes, or exhibits ~~a~~ an intimate representation that was captured in violation of subd. 1. or a reproduction made in violation of subd. 2., if the person knows or has reason to know that the intimate representation was captured in violation of subd. 1. or the reproduction was made in violation of subd. 2., and if the person who is depicted ~~nude~~ in the intimate representation or reproduction did not consent to the possession, distribution, or exhibition.

**SECTION 8.** 942.09 (2) (bm) (intro.) of the statutes is amended to read:

942.09 (2) (bm) (intro.) Notwithstanding par. (am), if the person depicted ~~nude~~ in ~~a~~ an intimate representation or reproduction is a child and the capture, possession, exhibition, or distribution of the representation, or making, possession, exhibition, or distribution of the reproduction, does not violate s. 948.05 or 948.12, a parent, guardian, or legal custodian of the child may do any of the following:

**SECTION 8g.** 942.09 (2) (dm) of the statutes is created to read:

942.09 (2) (dm) This subsection does not apply to a provider of an interactive computer service, as defined in 47 USC 230 (f) (2), or to an information service or telecommunications service, as defined in 47 USC 153, if the intimate representation or reproduction is provided to the interactive computer service, information service, or telecommunications service by a 3rd party, or to a person who posts or publishes a private representation that is newsworthy or of public importance.

**SECTION 8p.** 942.09 (3m) (b) 4. of the statutes is amended to read:

942.09 (3m) (b) 4. A provider of ~~electronic communication services that provides Internet access service to customers~~ an interactive computer service, as defined in 47 USC 230 (f) (2), or to an information service or telecommunications service, as defined in 47 USC 153, if the ~~private representation is provided to the interactive computer service, information service, or telecommunications service by a 3rd party.~~

**SECTION 9.** 972.11 (2) (b) (intro.) of the statutes is amended to read:

972.11 (2) (b) (intro.) If the defendant is accused of a crime under s. 940.225, 942.09, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, 948.09, or 948.095, or under s. 940.302 (2), if the court finds that the crime was sexually motivated, as defined in s. 980.01 (5), any evidence concerning the complaining witness's prior sexual conduct or opinions of the witness's prior sexual conduct and reputation as to prior sexual conduct shall not be admitted into evidence during the course of the hearing or trial, nor shall any reference to such conduct be made in the presence of the jury, except the following, subject to s. 971.31 (11):

**SECTION 10.** 972.11 (2) (d) 1. (intro.) of the statutes is amended to read:

972.11 (2) (d) 1. (intro.) If the defendant is accused of a crime under s. 940.225, 942.09, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095, evidence of the manner of dress of the complaining witness at the time when the crime occurred is admissible only if it is relevant to a contested issue at trial and its probative value substantially outweighs all of the following: