



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 292
[2015 Assembly Bill 521]

**Invasion of Privacy and
Representations Depicting Nudity**

BACKGROUND

State law criminalizes various conduct related to invasions of privacy and representations depicting nudity. **Under prior law**, the crime of invasion of privacy prohibited a person from “installing a surveillance device in a private place, or using a surveillance device that has been installed in a private place, to observe a nude or partially nude person without that person’s consent.” “Surveillance device” was defined to mean “any device, instrument, apparatus, implement or contrivance used, designed to be used or primarily intended to be used to observe the activities of a person.”

Related to representations depicting nudity, some violations of the crime are punishable by a misdemeanor and others are punishable by a felony. For example, it is a Class A misdemeanor¹ to post, publish, or cause to be posted or published, a “private representation”² if the actor knew that the person depicted did not consent to the posting or publication of the private representation. **Under prior law** and with limited exceptions, it was generally a Class I felony³ for a person to either: (1) capture a “representation” that depicts nudity without the consent of the person depicted nude while that person was nude in a circumstance in which he

¹ The penalty for a “Class A misdemeanor” is a fine not to exceed \$10,000, imprisonment not to exceed six months, or both. [s. 939.51 (3) (a), Stats.]

² A “private representation” means a “representation depicting a nude or partially nude person or depicting a person engaging in sexually explicit conduct that is intended by the person depicted in the representation 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.” [s. 942.09 (1) (bn), Stats.]

³ The penalty for a “Class I felony” is a fine not to exceed \$10,000, imprisonment not to exceed three years and six months, or both. [s. 939.50 (3) (i), Stats.]

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

or she had a reasonable expectation of privacy; or (2) make, exhibit, or distribute a reproduction of such a representation. For purposes of the crime of representations depicting nudity, **prior law** did not define what it meant for a person to “consent.”

Also, the following are exceptions to a Class A misdemeanor violation of representations depicting nudity, which **under prior law**, did not apply to a Class I felony violation:

- A provider of electronic communication services that provides Internet access service to customers.
- A person who posts or publishes a private representation that is newsworthy or of public importance.

2015 WISCONSIN ACT 292

2015 Wisconsin Act 292 (the Act) makes the following changes to the criminal invasion of privacy statute:

- Modifies the definition of “surveillance device” to clarify that a surveillance device need only be capable of observing the activities of a person and need not be primarily intended to be used for that purpose.
- Provides that in addition to installing or using an installed surveillance device, no person may use a surveillance device – whether installed or not – to observe in a private place a nude or partially nude person without the consent of the person observed.

The Act also makes the following changes to the crime of representations depicting nudity:

- With respect to Class I felony violations, replaces the term “representation” with the term “intimate representation”. Under the Act, it is now a Class I felony to capture, reproduce, exhibit, or distribute an “intimate representation” without the consent of the person depicted 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 does not consent to the capture of the intimate representation. The Act defines the term “intimate representation” to mean any of the following:
 - A representation of a nude or partially nude person.
 - A representation of clothed, covered, or partially clothed or covered genitalia or buttock that is not otherwise visible to the public.
 - A representation of a person urinating, defecating, or using a feminine hygiene product.
 - A representation of a person engaged in sexual intercourse or sexual contact.
- Creates a definition of “consent”, which specifies that a person under the age of 18 is incapable of giving consent, and specifies that the following persons are presumed to be incapable of consent: (1) a person suffering from a mental illness or defect that

impairs capacity to appraise personal conduct; or (2) a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act. The Act provides that this presumption may be rebutted.

- With respect to the exception to a Class A misdemeanor violation for a person who posts or publishes a private representation that is newsworthy or of public importance, provides that this exception also applies to felony violations of representations depicting nudity (i.e., capturing, reproducing, exhibiting, or distributing an intimate representation).
- Amends the exception to a Class A misdemeanor related to a “provider of electronic communication services that provides internet access service to customers” to instead exempt “an interactive computer service, as defined or to an information service or telecommunications service, as defined,” if the representation is provided to the interactive computer service, information service, or telecommunications service by a third party. The Act also provides that this exception also applies to a felony violation of representations depicting nudity (i.e., capturing, reproducing, exhibiting, or distributing an intimate representation).

Effective date: This Act took effect on April 1, 2016.

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