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Good Morning committee members and thank you for hearing my testimony on Assembly Bill 8.

I'm glad to have this bill as one of the first the legislature is considering this session because it's urgent we act on this matter. Until a relatively short time ago phones needed to be attached to a cord and receiver, and cameras were too large to be concealed in one's pockets.

Today, virtually anyone has the ability to take photos or video with cell phones or other devices that can be easily concealed. As in past advances in technology, such as the development of the internet, some individuals have decided to use the new technology to pursue illegal activity. When this happens it is our responsibility as legislators to make sure that the letter of the law keeps up with the advances in technology.

This bill deals with the use of cell phones or other devices to obtain photos or video under a person's clothing or of other areas of the body that would not normally be visible to the public. While this so called activity of "up skirting" is not specifically prohibited in our statutes, I believe the spirit of our law, on the basis of invasion of privacy and common decency, already prohibits it.

However, some individuals have decided to pursue this reprehensible conduct and then try to evade prosecution by claiming some sort of loophole exists in current law. This bill makes it very clear that using cell phones or any other photographic contrivances to obtain photos or video under a person's clothing or of other private areas of their body without their consent is specifically prohibited.

Due to the emotional pain and ongoing stress experienced by victims of this activity, those convicted would be guilty of a class I felony (939.50(3)(i) For a Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both).

I appreciate the help of Representative Melissa Sargent in bringing this bill forward, and also for the counsel of Ozaukee County District Attorney Adam Gerol and attorneys of the State Department of Justice.

Representative
Melissa Sargent

48th Assembly
District

AB - 8 : An act relating to invading an individual's privacy by viewing under or through clothing and providing a penalty.

January 8, 2015

Members of the Judiciary Committee:

“Upskirting”—using a camera or video recording device to take photos or videos up a person’s skirt or underneath their clothes—is a technological advancement that has taken the country by storm. States across the country have scrambled to pass legislation addressing the issue in their respective states after discovering that statutory vagueness has inadvertently allowed upskirting and caused it to be unpunishable.

Wisconsin is among such states with this legislative loophole. Our current laws have no specific provision expressly prohibiting the use of a cell phone or other photographic devices to take a photo underneath a person’s clothing, which is a fact that has been exploited several times by upskirting predators.

Instances of upskirting have occurred throughout the state in public areas including grocery stores, malls, and transit systems. In my district specifically, an individual was arrested at Woodman’s Food Market for his fourth alleged attempt at taking upskirting photographs. Due to the lack of a punishable offense for upskirting, the individual was charged merely with disorderly conduct, a class B misdemeanor punishable with a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both.

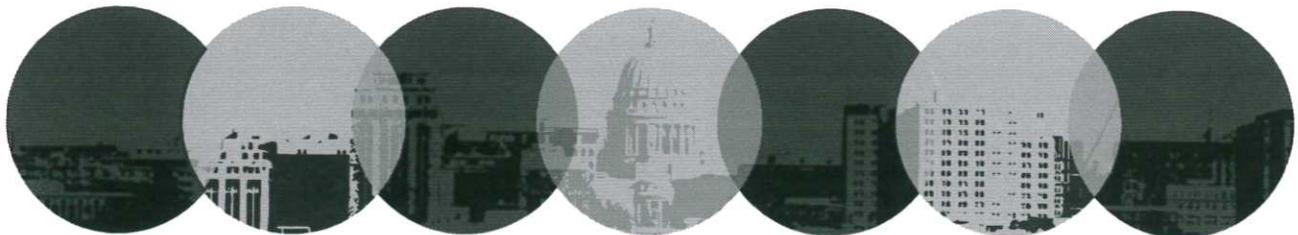
This bill creates an offense for persons who knowingly installs or uses any device to intentionally view, broadcast, or record under another person’s garments without their consent, which is punishable with a Class I felony of a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both. It also allows for the expunging of a juvenile’s adjudication (if they were under the age of 18 when the offense was committed) if they comply and complete the conditions of their court order.

This bill is of a timely and urgent matter, and I would greatly appreciate your support. Attached you will find a copy of my testimony for the Committee.

Respectfully,



Representative Melissa Sargent





January 8, 2015

Representative Melissa Sargent Testimony – AB 8

Thank you, Mr. Chairman and Judiciary Committee members, for allowing me to testify before you today on behalf of AB - 8.

I want to thank Representative Ott for his collaboration on this bill. When I reached out to his office, he responded with a sense of urgency and pragmatism.

Technology is always evolving, and we as legislators must work to make sure our state statutes reflect and adapt to its ever-changing world. This bill ensures our laws both emulate recent technological advancements as well as protect our citizens' rights and privacy.

Upskirting—as the word implies—is the act of using a camera or video recording device to take photos or videos up a person's skirt. More broadly, it is the use of any device to record under the outer clothing of a person without their consent.

The act of upskirting has recently taken legislatures across the country by storm: many states such as Nebraska, Texas, Kansas, and Florida, among others, have already passed or have introduced similar legislation to curb these invasive offenses.

Although it is seemingly inconceivable that such an egregious assault on individual rights and privacy is not only unpunishable but *permissible* in Wisconsin, upskirting is a prevalent problem in our communities and there are few repercussions for its offenders.

Vagueness in our laws—specifically our statutory definition of nudity and the opaqueness or presence of an undergarment—has left a legislative loophole allowing upskirting offenders to go unpunished for these atrocious violations of personal space and privacy.

Right here in Madison a man has been caught taking upskirting photos of women on *five* separate occasions at *five* different places throughout my district. In fact, this perpetrator was caught only due to the viewing of store security footage after the fact. I'm sure many of his victims will *never even know* that photos of them were taken.

For taking pictures of dozens of women underneath their skirts and violating their personal rights and privacy, he faced charges of disorderly conduct with no increase in severity even with multiple offences.

Colleagues, that's the same punishment we might charge an unruly fan after a Badger football game.

Predatory actions of this magnitude deserve an equitable, proportionate punishment.

People in our communities should not feel afraid in public spaces; they should not feel unsafe doing everyday tasks like grocery shopping or riding the bus.

We have a duty to ensure our local law enforcement and prosecutors can keep our public safe by holding upskirting offenders accountable.

The upskirting phenomenon is already affecting citizens around the state, and we must work proactively and swiftly to address the upskirting issue before it becomes an even more prevalent problem.

I am confident that AB - 8 will continue to have strong, bipartisan support to ensure the protection and respect of our citizens' right to privacy and public safety.

Thank you for your time, Mr. Chairman and Members. I would be happy to address any questions or concerns you might have at this time.



TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON JUDICIARY
Assembly Bill 8
Senator Alberta Darling
January 8, 2015

Thank you Committee Chairman Ott and members for giving me the opportunity to testify in favor of Assembly Bill 8, which would create an additional provision to the crime of invasion of privacy for an individual who knowingly installs or uses a device to intentionally view under outer clothing another individual's genitals, pubic area, breast, or buttocks, including genitals, pubic area, breasts, or buttocks that are covered by undergarments, or to view another body part of an individual that is not otherwise visible, without that individual's consent.

Unfortunately, we sit here today because of a terrible situation that was brought to my attention by a constituent of mine in the 8th Senate District. It is my hope that her story is the last of its kind. Right now we are not the only state dealing with the inappropriate usage of technology to invade individual privacy. Massachusetts recently passed similar legislation because of a parallel situation. This bill would clear up any discrepancies there might be so we do not have a situation of this relative nature happen again.

Technology is advancing at a rapid pace. We as a state legislature need to keep up with these advances in order to protect our citizens. I ask that the committee support Assembly Bill 8, which creates an additional crime of invasion of privacy for an individual who knowingly installs or uses a device to intentionally view under outer clothing another individual's genitals, pubic area, breast, or buttocks, including genitals, pubic area, breasts, or buttocks that are covered by undergarments, or to view another body part of an individual that is not otherwise visible, without that individual's consent. Thank you again for allowing me to testify in favor of this important piece of legislation.

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