CHAPTER 942

CRIMES AGAINST REPUTATION, PRIVACY AND CIVIL LIBERTIES

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Cross−reference: See definitions in s. 939.22.

942.01 Defamation. (1) Whoever with intent to defame communicates any defamatory matter to a 3rd person without the consent of the person defamed is guilty of a Class A misdemeanor.

(2) Defamatory matter is anything which exposes the other to hatred, contempt, ridicule, degradation or disgrace in society or injury in the other's business or occupation.

(3) This section does not apply if the defamatory matter was true and was communicated with good motives and for justifiable ends or if the communication was otherwise privileged.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of 2 other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or no contest.

History: 1977 c. 173; 1979 c. 110 s. 60 (6); 1993 a. 486; 2005 a. 253.

The defense of conditional privilege applies to criminal defamation, but the defense is not absolute and may be forfeited if abused. State v. Gilles, 173 Wis. 2d 101, 496 N.W.2d 133 (Ct. App. 1992).

Perjury committed in a judicial proceeding is absolutely privileged under sub. (3). The sanction for perjury is under the perjury statute, s. 946.31, and not under the defamation statute. State v. Cardenas−Hernandez, 219 Wis. 2d 516, 579 N.W.2d 678 (1998), 96−3605.

942.03 Giving false information for publication. Whoever, with intent that it be published and that it injure any person, and with knowledge that it is false, communicates to a newspaper, magazine, or other publication any false statement concerning any person or any false and unauthorized advertisement is guilty of a Class A misdemeanor.

History: 1977 c. 173.

942.05 Opening letters. Whoever does either of the following is guilty of a Class A misdemeanor:

(1) Knowing that he or she does not have the consent of either the sender or the addressee, intentionally opens any sealed letter or package addressed to another; or

(2) Knowing that a sealed letter or package has been opened without the consent of either the sender or addressee, intentionally publishes any of the contents thereof.

History: 1977 c. 173; 1993 a. 486.

942.06 Use of polygraphs and similar tests. (1) Except as provided in sub. (2m), no person may require or administer a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty without the prior written and informed consent of the subject.

(2) Except as provided in sub. (2q), no person may disclose that another person has taken a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty and no person may disclose the results of such a test to any person except the person tested, without the prior written and informed consent of the subject.

(2m) Subsection (1) does not apply to any of the following:

(a) An employee or agent of the department of corrections who conducts a lie detector test of a sex offender under s. 301.132.

(b) An employee or agent of the department of health services who conducts a lie detector test of a person under s. 51.375.

(2q) Subsection (2) does not apply to any of the following:

(a) An employee or agent of the department of corrections who discloses, to any of the following, the fact that a sex offender has had a lie detector test under s. 301.132 or the results of such a lie detector test:

1. Another employee or agent of the department of corrections.

2. Another agency or person, if the information disclosed will be used for purposes related to correctional programming or care and treatment.

(b) An employee or agent of the department of health services who discloses, to any of the following, the fact that a person has had a lie detector test under s. 51.375 or the results of such a lie detector test:

1. Another employee or agent of the department of health services or another person to whom disclosure is permitted under s. 51.375 (2) (b).

2. Another agency or person, if the information disclosed will be used for purposes related to programming or care and treatment for the person.

(3) Whoever violates this section is guilty of a Class B misdemeanor.

History: 1979 c. 319; 1995 a. 440; 1997 a. 283; 1999 a. 89; 2001 a. 16; 2007 a. 20 s. 9121 (6) (a).

942.07 Use of genetic tests. (1) In this section:

(a) "Employer" has the meaning given in s. 111.32 (6).

(b) "Employment agency" has the meaning given in s. 111.32 (7).

(c) "Genetic test" means a test of a person's genes, gene products or chromosomes for abnormalities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors.

(d) "Labor organization" has the meaning given in s. 111.32 (9).

(e) "Licensing agency" has the meaning given in s. 111.32 (11).

(2) No employer, labor organization, employment agency or licensing agency may require or administer a genetic test without the prior written and informed consent of the employee, labor organization member or licensee, or of the prospective employee, labor organization member or licensee, who is the subject of the test.

(3) No person may disclose to an employer, labor organization, employment agency or licensing agency that an employee, labor organization member or licensee, or a prospective employee, labor organization member or licensee, has taken a genetic test, and no person may disclose the results of such a test to an employer, labor organization, employment agency or licensing agency without the prior written and informed consent of the subject of the test.

(4) Whoever violates this section is guilty of a Class B misdemeanor.

History: 1991 a. 117.

942.08 Invasion of privacy. (1) In this section:

(a) "Nude or partially nude person" means any human being who has less than fully and opaquely covered genitals, pubic area or buttocks, any female human being who has less than a fully opaque covering over any portion of a breast below the top of the nipple, or any male human being with covered genitals in a discernibly turgid state.

(b) "Private place" means a place where a person may reasonably expect to be safe from being observed without his or her knowledge and consent.

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

(2) Except as provided in sub. (4), whoever does any of the following is guilty of a Class A misdemeanor:

NOTE: The cross−reference to sub. (4) was changed from sub. (3) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 942.08 (3), as created by 2015 Wis. Act 320.

(a) Knowingly installs a surveillance device in any private place, or uses a surveillance device to observe in a private place, with the intent to observe any nude or partially nude person without the consent of the person observed.

(b) For the purpose of sexual arousal or gratification and without the consent of each person who is present in the private place, looks into a private place that is, or is part of, a public accommodation, as defined in s. 134.48 (1) (b), and in which a person may reasonably be expected to be nude or partially nude.

(c) For the purpose of sexual arousal or gratification, looks into a private place that is, or is part of, a public accommodation, as defined in s. 134.48 (1) (b), and in which a person may reasonably be expected to be nude or partially nude but in which no person is present.

(d) Enters another person's private property without that person's consent or enters an enclosed or unenclosed common area of a multiunit dwelling or condominium and looks into any individual's dwelling unit if all of the following apply:

1. The actor looks into the dwelling unit for the purpose of sexual arousal or gratification and with the intent to intrude upon or interfere with an individual's privacy.

2. The actor looks into a part of the dwelling unit in which an individual is present.

3. The individual has a reasonable expectation of privacy in that part of the dwelling unit.

4. The individual does not consent to the actor looking into that part of the dwelling.

(3) Whoever knowingly installs or uses any device, instrument, mechanism, or contrivance to intentionally view, broadcast, or record under the outer clothing of an individual that individual's genitals, pubic area, breast, or buttocks, including genitals, pubic area, breasts, or buttocks that are covered by undergarments, or to intentionally view, broadcast, or record a body part of an individual that is not otherwise visible, without that individual's consent, is guilty of a Class I felony.

(4) A person who commits a violation specified under sub. (2) is guilty of a Class I felony if a victim of the violation had not, at the time of the violation, attained the age of 18 years.

NOTE: Sub. (4) was created as sub. (3) by 2015 Wis. Act 320 and renumbered to sub. (4) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

History: 1997 a. 271; 2003 a. 50; 2007 a. 198; 2015 a. 80, 292, 320; 13.92 (1) (bm) 2.

942.09 Representations depicting nudity. (1) In this section:

(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.

(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.

(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).

(am) "Nude or partially nude person" has the meaning given in s. 942.08 (1) (a).

(b) "Nudity" has the meaning given in s. 948.11 (1) (d).

(bg) "Post or publish" includes posting or publishing on a Web site on the Internet, if the Web site may be viewed by the general public.

(bn) "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.

(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.

(d) "Sexually explicit conduct" has the meaning given in s. 948.01 (7).

(2) (am) Except as provided in par. (dr), whoever does any of the following is guilty of a Class I felony:

NOTE: The cross−reference to par. (dr) was changed from par. (dm) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 942.09 (2) (dm), as created by 2015 Wis. Act 320.

1. Captures 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.

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

3. Possesses, distributes, or exhibits 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 in the intimate representation or reproduction did not consent to the possession, distribution, or exhibition.

(bm) 1m. Notwithstanding par. (am), if the person depicted in an intimate representation or reproduction is a child, a parent, guardian, or legal custodian of the child may do any of the following:

NOTE: Subd. 1m. (intro.) is shown as affected by 2015 Wis. Acts 292 and 370 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

a. Capture and possess the representation or make and possess the reproduction depicting the child.

b. Distribute or exhibit a representation captured or possessed under subd. 1m. a., or distribute or exhibit a reproduction made or possessed under subd. 1m. a.

2m. Subdivision 1m. does not apply to a parent, guardian, or legal custodian of a child who captures, possesses, makes, distributes, or exhibits a representation depicting the child in violation of s. 948.05 or 948.12 or for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.

(cm) Paragraph (am) does not apply to a person who receives a representation or reproduction depicting a child from a parent, guardian, or legal custodian of the child under par. (bm) 1m. b., if the possession, exhibition, or distribution is not for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.

(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.

(dr) Except as provided in par. (bm), a person who commits a violation specified under par. (am) is guilty of a Class H felony if the person depicted in violation of par. (am) had not, at the time of the violation, attained the age of 18 years.

NOTE: Par. (dr) was created as par. (dm) by 2015 Wis. Act 320 and renumbered to par. (dr) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(3m) (a) Except as provided in par. (am), whoever does any of the following is guilty of a Class A misdemeanor:

1. Posts, publishes, or causes to be posted or published, a private representation if the actor knows that the person depicted does not consent to the posting or publication of the private representation.

2. Posts, publishes, or causes to be posted or published, a depiction of a person that he or she knows is a private representation, without the consent of the person depicted.

(am) A person who commits a violation specified under par. (a) is guilty of a Class I felony if the person depicted or represented in the violation of par. (a) had not, at the time of the violation, attained the age of 18 years.

(b) This subsection does not apply to any of the following:

1. The parent, guardian, or legal custodian of the person depicted if the private representation does not violate s. 948.05 or 948.12 and the posting or publication is not for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.

2. A law enforcement officer or agent acting in his or her official capacity in connection with the investigation or prosecution of a crime.

3. A person who posts or publishes a private representation that is newsworthy or of public importance.

4. 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 private representation is provided to the interactive computer service, information service, or telecommunications service by a 3rd party.

(5) (a) Except as provided in par. (am), whoever, while present in a locker room, intentionally captures a representation of a nude or partially nude person while the person is nude or partially nude in the locker room is guilty of a Class A misdemeanor. This paragraph does not apply if the person consents to the capture of the representation and one of the following applies:

1. The person is, or the actor reasonably believes that the person is, 18 years of age or over when the person gives his or her consent.

2. The person's parent, guardian, or legal custodian consents to the capture of the representation.

(am) A person who commits a violation specified under par. (a) is guilty of a Class I felony if the person represented in violation of par. (a) had not, at the time of the violation, attained the age of 18 years.

(b) 1. Except as provided in par. (bn), whoever intentionally does any of the following is guilty of a Class I felony:

a. Captures a representation of a nude or partially nude person while the actor is present in, and the person is nude or partially nude in, the locker room and exhibits or distributes the representation to another.

b. Transmits or broadcasts an image of a nude or partially nude person from a locker room while the person is nude or partially nude in the locker room.

2. This paragraph does not apply if the person consents to the exhibition or distribution of the representation or the transmission or broadcast of the image and one of the following applies:

a. The person is, or the actor reasonably believes that the person is, 18 years of age or over when the person gives his or her consent.

b. The person's parent, guardian, or legal custodian consents to the exhibition, distribution, transmission, or broadcast.

(bn) A person who commits a violation specified under par. (b) is guilty of a Class H felony if the person represented in violation of par. (a) had not, at the time of the violation, attained the age of 18 years.

History: 1995 a. 249; 2001 a. 16; 2001 a. 33 ss. 2 to 13; Stats. 2001 s. 942.09; 2001 a. 109; 2007 a. 118; 2013 a. 243; 2015 a. 292, 320, 370; s. 13.92 (1) (bm) 2., (2) (i).

Sub. (2) (a) [now sub. (2m) (a) 1.] requires that the person who is depicted nude is in a circumstance in which he or she has an assumption that he or she is secluded from the presence or view of others, and that assumption is a reasonable one under all the circumstances, according to an objective standard. State v. Nelson, 2006 WI App 124, 294 Wis. 2d 578, 718 N.W.2d 168, 05−2300.

A "legitimate expectation of privacy" for purposes of a search or seizure under the 4th amendment is not consistent with the context and purpose of this section. The 4th amendment embodies a balance between society's interest in law enforcement and the privacy interest asserted by the individual that is not relevant to this section. Construing "reasonable expectation of privacy" according to its common meaning does not render the statute unconstitutionally vague and provides sufficient notice of the conduct prohibited under sub. (2) (a) [now sub. (2m) (a) 1.]. State v. Nelson, 2006 WI App 124, 294 Wis. 2d 578, 718 N.W.2d 168, 05−2300.

Nelson did not purport to provide a definition of reasonable expectation of privacy covering all circumstances. The question for purposes of the privacy element is not whether the nude person had a reasonable expectation that the defendant would view him or her nude at the time of the recording, but whether the nude person had a reasonable expectation, under the circumstances, that he or she would not be recorded in the nude. State v. Jahnke, 2009 WI App 4, 316 Wis. 2d 324, 762 N.W.2d 696, 07−2130.

Permission to be viewed in the nude does not mean permission to be recorded in the nude, and permission to engage in sexual acts with someone does not mean permission to record that person in the nude. That the defendant and the woman who was recorded were engaged in the crime of prostitution does not mean that the woman relinquished her reasonable expectation of privacy under sub. (2) (am) 1. State v. Adams, 2015 WI App 34, 361 Wis. 2d 766, 863 N.W.2d 640, 14−1158.

Nelson did not add a "legitimate reason" exception to the reasonable expectation of privacy prong of the statute. Recording someone nude in violation of sub. (2) (am) 1. in order to protect against possible adverse scenarios is not a legitimate reason or defense. State v. Adams, 2015 WI App 34, 361 Wis. 2d 766, 863 N.W.2d 640, 14−1158.

Putting existing images into a sexual context is not the same as making the images. The defendant created something new by cutting images of girls out of larger photographs, isolating each cropped image on a page in a notebook, and adding sexual comments. But the defendant did not, under any common definition of the term, "make" new visual representation of the girls under sub. (1) (a). State v. Chagnon, 2015 WI App 66, 364 Wis. 2d 719, 870 N.W.2d 27, 14−2770.

The phrase "stores in any medium data that represents a visual image" in sub. (1) (a) refers to the creation of images by digital means. The term does not include the mere possession of visual images. State v. Chagnon, 2015 WI App 66, 364 Wis. 2d 719, 870 N.W.2d 27, 14−2770.

942.10 Use of a drone. Whoever uses a drone, as defined in s. 175.55 (1) (a), with the intent to photograph, record, or otherwise observe another individual in a place or location where the individual has a reasonable expectation of privacy is guilty of Class A misdemeanor. This section does not apply to a law enforcement officer authorized to use a drone pursuant to s. 175.55 (2).

History: 2013 a. 213.