

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0595/1dn
PJD:kmg:hmh

March 1, 1999

This joint resolution creates an independent right of privacy. I did not amend Article I, section 1 or 11, of the Wisconsin Constitution, which is the approach taken by some other states, because the right of privacy might then be limited just to criminal matters or just to governmental action or just to the protection granted under the 14th Amendment to the U.S. Constitution or just to the protection granted under all amendments to the U.S. Constitution.

By creating the right of privacy in the constitution it becomes a fundamental right. However, no fundamental right is absolute. The various rights must be balanced against competing interests. Often, when engaged in the balancing, the courts will use a standard of review that requires a statute that impacts a fundamental right to have a compelling state interest and be the least restrictive alternative. Of the ten states that have an explicit constitutional right of privacy, only Montana places the standard of review in the constitution. Because other provisions of our constitution do not set forth the standard of review, because only one state constitution sets it forth, and because I believe the Wisconsin Supreme Court will use this standard of review as they did in *State v. Miller*, 202 Wis2nd 56 (1996), I did not include the standard of review in this draft of the amendment.

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266-7098