

## 2003 SENATE BILL 14

January 28, 2003 – Introduced by Senators ROESSLER, DARLING, KANAVAS, A. LASEE and HANSEN, cosponsored by Representatives WEBER, UNDERHEIM, TOWNSEND, VRAKAS, PLALE, JESKEWITZ, FREESE, BIES, AINSWORTH, KRAWCZYK, PETROWSKI, STONE, SERATTI, OLSEN, MCCORMICK, LASSA, GUNDERSON, ALBERS, HINES, GRONEMUS and LEMAHIEU. Referred to Committee on Judiciary, Corrections and Privacy.

1     **AN ACT** *to renumber and amend* 938.355 (4m), 942.08 (2) and 973.015 (1); *to*  
2             *amend* 51.20 (13) (ct) 1m., 301.45 (1m) (title), 938.34 (15m) (am), 938.345 (3)  
3             (a) (intro.), 942.08 (1) (b), 971.17 (1m) (b) 1m., 973.015 (2) and 973.048 (1m); and  
4             *to create* 301.45 (1p), 301.45 (7) (e), 938.355 (4m) (b), 942.08 (2) (b), 942.08 (2)  
5             (c), 942.08 (2) (d), 942.08 (2) (e) and 973.015 (1) (b) of the statutes; **relating to:**  
6             invasion of privacy and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, no person may knowingly install a surveillance device in any private place or use a surveillance device that has been installed in a private place with the intent to observe any nude or partially nude person without the consent of the person observed. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

This bill prohibits a person from doing any of the following: 1) looking into a private place that is, or is part of, a facility that is open to the public and in which a person may reasonably be expected to be nude or partially nude, if the person looking does so for the purpose of sexual arousal or gratification and without the consent of each person who is present in the private place; or 2) looking into the dwelling of another from private property for the purpose of sexual arousal or gratification, with the intent to intrude upon or interfere with the privacy of another, and without the consent of each person who is present in the dwelling. Comparable

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prohibitions (minus the consent provisions) apply to cases in which no one is present in the private place or dwelling. A person who violates one of these “peeping tom” prohibitions may be fined not more than \$10,000 or imprisoned for not more than nine months or both. In addition, under the bill, if a court finds that a person has violated one of the peeping tom prohibitions or the existing prohibition regarding installing or using a surveillance device, the court may order the person to register with the Department of Corrections (DOC) as a sex offender if the court determines that the person’s conduct was sexually motivated and that requiring the person to register would be in the public interest.

This bill also contains provisions relating to expunging a delinquency adjudication or a conviction based on a violation of one of the peeping tom prohibitions. Under current law, a juvenile who has been adjudged delinquent for any offense may, after attaining 17 years of age, petition the court to expunge the record of the adjudication. The court may expunge the record if it determines that the juvenile has satisfactorily complied with the conditions of the dispositional order and that the juvenile will benefit and society will not be harmed by the expungement. Current law also provides that, if a person was under the age of 21 at the time of committing an offense for which he or she has been found guilty and the maximum penalty for the offense is imprisonment for one year or less in the county jail, the court may, if it determines that the person will benefit and society will not be harmed by this disposition, order at the time of sentencing that the record be expunged upon successful completion of the sentence. This bill requires the court to expunge a juvenile’s delinquency adjudication if the peeping tom violation was the juvenile’s first offense and if he or she complied with the dispositional order. Similarly, the bill requires the court to order that the record of a person’s peeping tom conviction be expunged upon successful completion of the sentence if the person was under 18 years old at the time of the offense and he or she had no prior peeping tom convictions. Finally, if a court required the person to register as a sex offender for violating one of the peeping tom prohibitions, the court’s expungement order ends that requirement and DOC must expunge the record of the person’s delinquency adjudication or conviction from the sex offender registry.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 51.20 (13) (ct) 1m. of the statutes is amended to read:

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1           51.20 **(13)** (ct) 1m. Except as provided in subd. 2m., if the subject individual is  
2 before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and  
3 is found to have committed any violation, or to have solicited, conspired, or attempted  
4 to commit any violation, of ch. 940, 944, or 948 or ss. 942.08 or 943.01 to 943.15, the  
5 court may require the subject individual to comply with the reporting requirements  
6 under s. 301.45 if the court determines that the underlying conduct was sexually  
7 motivated, as defined in s. 980.01 (5), and that it would be in the interest of public  
8 protection to have the subject individual report under s. 301.45.

9           **SECTION 2.** 301.45 (1m) (title) of the statutes is amended to read:

10           301.45 **(1m)** (title) EXCEPTION TO REGISTRATION REQUIREMENT; UNDERAGE SEXUAL  
11 ACTIVITY.

12           **SECTION 3.** 301.45 (1p) of the statutes is created to read:

13           301.45 **(1p)** EXCEPTION TO REGISTRATION REQUIREMENT; EXPUNGEMENT OF INVASION  
14 OF PRIVACY ADJUDICATION OR CONVICTION. If a person is covered under sub. (1g) based  
15 solely on an order that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in  
16 connection with a delinquency adjudication or a conviction for a violation of s. 942.08  
17 (2) (b), (c), (d), or (e), the person is not required to comply with the reporting  
18 requirements under this section if the delinquency adjudication is expunged under  
19 s. 938.355 (4m) (b) or if the conviction is expunged under s. 973.015 (2).

20           **SECTION 4.** 301.45 (7) (e) of the statutes is created to read:

21           301.45 **(7)** (e) The department shall purge all of the information maintained  
22 in the registry under sub. (2) concerning a person to whom sub. (1p) applies if any  
23 of the following occurs:

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1           1. The department receives notice under s. 938.355 (4m) (b) that a court has  
2 expunged the record of the person's delinquency adjudication for the violation  
3 described in sub. (1p).

4           2. The department issues a certificate of discharge under s. 973.015 (2).

5           3. The department receives a certificate of discharge issued under s. 973.015  
6 (2) by the detaining authority.

7           **SECTION 5.** 938.34 (15m) (am) of the statutes is amended to read:

8           938.34 **(15m)** (am) Except as provided in par. (bm), if the juvenile is adjudicated  
9 delinquent on the basis of any violation, or the solicitation, conspiracy, or attempt to  
10 commit any violation, under ch. 940, 944, or 948 or ss. 942.08 or 943.01 to 943.15, the  
11 court may require the juvenile to comply with the reporting requirements under s.  
12 301.45 if the court determines that the underlying conduct was sexually motivated,  
13 as defined in s. 980.01 (5), and that it would be in the interest of public protection to  
14 have the juvenile report under s. 301.45.

15           **SECTION 6.** 938.345 (3) (a) (intro.) of the statutes is amended to read:

16           938.345 **(3)** (a) (intro.) If the court finds that a juvenile is in need of protection  
17 or services on the basis of a violation, or the solicitation, conspiracy, or attempt to  
18 commit a violation, under ch. 940, 944, or 948 or ss. 942.08 or 943.01 to 943.15, the  
19 court may require the juvenile to comply with the reporting requirements under s.  
20 301.45 if the court determines that the underlying conduct was sexually motivated,  
21 as defined in s. 980.01 (5), and that it would be in the interest of public protection to  
22 have the juvenile report under s. 301.45. In determining whether it would be in the  
23 interest of public protection to have the juvenile report under s. 301.45, the court may  
24 consider any of the following:

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1           **SECTION 7.** 938.355 (4m) of the statutes is renumbered 938.355 (4m) (a) and  
2 amended to read:

3           938.355 **(4m)** (a) A juvenile who has been adjudged delinquent may, on  
4 attaining 17 years of age, petition the court to expunge the court's record of the  
5 juvenile's adjudication. The Subject to par. (b), the court may expunge the court's  
6 record of the juvenile's adjudication if the court determines that the juvenile has  
7 satisfactorily complied with the conditions of his or her dispositional order and that  
8 the juvenile will benefit and society will not be harmed by the expungement.

9           **SECTION 8.** 938.355 (4m) (b) of the statutes is created to read:

10           938.355 **(4m)** (b) The court shall expunge the court's record of a juvenile's  
11 adjudication if it was the juvenile's first adjudication based on a violation of s. 942.08  
12 (2) (b), (c), (d), or (e), and if the court determines that the juvenile has satisfactorily  
13 complied with the conditions of his or her dispositional order. Notwithstanding s.  
14 938.396 (2) (a), the court shall notify the department promptly of any expungement  
15 under this paragraph.

16           **SECTION 9.** 942.08 (1) (b) of the statutes is amended to read:

17           942.08 **(1)** (b) "Private place" means a place where a person may reasonably  
18 expect to be safe from surveillance being observed without his or her knowledge and  
19 consent.

20           **SECTION 10.** 942.08 (2) of the statutes is renumbered 942.08 (2) (intro.) and  
21 amended to read:

22           942.08 **(2)** (intro.) Whoever knowingly does any of the following is guilty of a  
23 Class A misdemeanor:

24           (a) Knowingly installs a surveillance device in any private place, or uses a  
25 surveillance device that has been installed in a private place, with the intent to

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1 observe any nude or partially nude person without the consent of the person observed  
2 is ~~guilty of a Class A misdemeanor.~~

3 **SECTION 11.** 942.08 (2) (b) of the statutes is created to read:

4 942.08 (2) (b) For the purpose of sexual arousal or gratification and without the  
5 consent of each person who is present in the private place, looks into a private place  
6 that is, or is part of, a public accommodation, as defined in s. 134.48 (1) (b), and in  
7 which a person may reasonably be expected to be nude or partially nude.

8 **SECTION 12.** 942.08 (2) (c) of the statutes is created to read:

9 942.08 (2) (c) For the purpose of sexual arousal or gratification, looks into a  
10 private place that is, or is part of, a public accommodation, as defined in s. 134.48 (1)  
11 (b), and in which a person may reasonably be expected to be nude or partially nude  
12 but in which no person is present.

13 **SECTION 13.** 942.08 (2) (d) of the statutes is created to read:

14 942.08 (2) (d) Enters private property and, for the purpose of sexual arousal  
15 or gratification, with the intent to intrude upon or interfere with the privacy of  
16 another, and without the consent of each person who is present in the dwelling, looks  
17 into the dwelling of another.

18 **SECTION 14.** 942.08 (2) (e) of the statutes is created to read:

19 942.08 (2) (e) Enters private property and, for the purpose of sexual arousal or  
20 gratification and with the intent to intrude upon or interfere with the privacy of  
21 another, looks into the dwelling of another in which no person is present.

22 **SECTION 15.** 971.17 (1m) (b) 1m. of the statutes is amended to read:

23 971.17 (1m) (b) 1m. Except as provided in subd. 2m., if the defendant under  
24 sub. (1) is found not guilty by reason of mental disease or defect for any violation, or  
25 for the solicitation, conspiracy, or attempt to commit any violation, of ch. 940, 944,

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1 or 948 or ss. 942.08 or 943.01 to 943.15, the court may require the defendant to  
2 comply with the reporting requirements under s. 301.45 if the court determines that  
3 the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that  
4 it would be in the interest of public protection to have the defendant report under s.  
5 301.45.

6 **SECTION 16.** 973.015 (1) of the statutes is renumbered 973.015 (1) (a) and  
7 amended to read:

8 973.015 (1) (a) ~~When~~ Subject to par. (b), when a person is under the age of 21  
9 at the time of the commission of an offense for which the person has been found guilty  
10 in a court for violation of a law for which the maximum penalty is imprisonment for  
11 one year or less in the county jail, the court may order at the time of sentencing that  
12 the record be expunged upon successful completion of the sentence if the court  
13 determines the person will benefit and society will not be harmed by this disposition.

14 **SECTION 17.** 973.015 (1) (b) of the statutes is created to read:

15 973.015 (1) (b) The court shall order at the time of sentencing that the record  
16 be expunged upon successful completion of the sentence if the offense was a violation  
17 of s. 942.08 (2) (b), (c), (d), or (e), and the person was under the age of 18 when he or  
18 she committed it.

19 **SECTION 18.** 973.015 (2) of the statutes is amended to read:

20 973.015 (2) A person has successfully completed the sentence if the person has  
21 not been convicted of a subsequent offense and, if on probation, the probation has not  
22 been revoked and the probationer has satisfied the conditions of probation. Upon  
23 successful completion of the sentence the detaining or probationary authority shall  
24 issue a certificate of discharge which shall be forwarded to the court of record and  
25 which shall have the effect of expunging the record. If the person has been



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1 imprisoned, the detaining authority shall also forward a copy of the certificate of  
2 discharge to the department.

3 **SECTION 19.** 973.048 (1m) of the statutes is amended to read:

4 973.048 **(1m)** Except as provided in sub. (2m), if a court imposes a sentence or  
5 places a person on probation for any violation, or for the solicitation, conspiracy, or  
6 attempt to commit any violation, under ch. 940, 944, or 948 or ss. 942.08 or 943.01  
7 to 943.15, the court may require the person to comply with the reporting  
8 requirements under s. 301.45 if the court determines that the underlying conduct  
9 was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest  
10 of public protection to have the person report under s. 301.45.

11 **SECTION 20. Initial applicability.**

12 (1) This act first applies to offenses committed on the effective date of this  
13 subsection.

14 (END)