

2007 DRAFTING REQUEST

Senate Substitute Amendment (SSA-AB8)

Received: **01/17/2008**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Glenn Grothman (608) 266-7513**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Grothman@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Nudity in locker rooms

Instructions:

Original AB 8 without amendments PLUS a provision authorizing a locker room owner to examine a cell phone to determine if a locker room took naughty photos. If yes, authorize locker room owner to call (notes say DA, but I think law enforcement)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 01/17/2008	kfollett 01/17/2008		_____			
	phurley 01/17/2008	kfollett 01/17/2008		_____			
/1	chanaman 01/30/2008	chanaman 01/30/2008	jfrantze 01/17/2008	_____	lparisi 01/17/2008	lparisi 01/17/2008	

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/2			rschluet 01/30/2008	_____	cduerst 01/30/2008	cduerst 01/30/2008	

FE Sent For:

<END>

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	01/17/2008	01/17/2008					
/1		12/5/08 1/30	jfrantze		lparisi	lparisi	
			01/17/2008		01/17/2008	01/17/2008	

Handwritten signature and date 1/30/08

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/?	phurley	1/15 f 1/17	to 1/17	to 1/17			

FE Sent For:

<END>

2. Glenn Grothman

Sub Amd to AB 8
which will be the original
AB w/o amendments plus
a provision authorizing a
locker room owner or operator
be able to examine
the cell phone of a locker
room user to determine
if they have taken pictures
in the locker room. If pictures
of nude or partial nude, operator may notify AA



50223/1

2007 ASSEMBLY BILL 8

1-16-08

January 12, 2007 - Introduced by Representative SCHNEIDER. Referred to
Committee on Criminal Justice.

- 1 **AN ACT to renumber and amend** 942.09 (2), 942.09 (3) and 942.09 (4); and **to**
2 **create** 175.22, 942.09 (1) (am) and 942.09 (5) of the statutes; **relating to:**
3 capturing an image of a nude or partially nude person in a locker room, written
4 policies on privacy in locker rooms, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits taking a photograph or making a motion picture, videotape, or other visual depiction of a nude person, or recording or storing data representing a depiction of a nude person, if: 1) when the depiction is created, its subject is nude under circumstances in which he or she has a reasonable expectation of privacy; 2) the subject has not consented to the creation of the depiction; and 3) the person who creates the depiction knows or has reason to know that the subject of the depiction has not provided that consent. Current law also prohibits a person from reproducing, distributing, or possessing such a depiction, or data representing such a depiction, without the consent of the subject of the depiction if the person knows or has reason to know that the depiction was unlawfully created. A person who violates one of these prohibitions may be fined up to \$10,000 or sentenced to a term of imprisonment of up to five years (which, if the sentence is for more than one year, includes a term of confinement and a term of extended supervision) or both. These prohibitions do not apply to parents, guardians, and legal custodians when they produce or possess depictions of their children nude or when they distribute such depictions for other than commercial purposes.

ASSEMBLY BILL 8

substitute amendment

This bill prohibits someone who is in a locker room from intentionally depicting a nude or partially nude person, through a photograph, motion picture, or other means described above, while the person is nude or partially nude in the locker room. A person who violates this prohibition may be fined up to \$1,000 or sentenced to a term of imprisonment of up to 90 days or both. This prohibition does not apply if the person depicted nude or partially nude consents to the depiction and: 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; or 2) the person's parent, guardian, or legal custodian consents to the depiction. The bill also prohibits someone from intentionally: 1) depicting a nude or partially nude person while the actor is present in, and the person is nude or partially nude in, a locker room and exhibiting or distributing the depiction to another person; or 2) transmitting or broadcasting from a locker room an image of a nude or partially nude person while the person is nude or partially nude in the locker room. A person who violates this prohibition may be fined up to \$1,000 or sentenced to a term of imprisonment of up to 90 days or both. This prohibition does not apply if the person depicted nude or partially nude consents to the exhibition or distribution of the representation or the transmission or broadcasting of the image and: 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; or 2) the person's parent, guardian, or legal custodian consents to the exhibition, distribution, transmission, or broadcast.

substitute amendment

This bill also requires any person, including the state, that owns or operates a locker room in this state to adopt a written policy on who may enter and remain in the locker room to interview or seek information from any individual and what cameras or other devices that record or transfer images may be used in the locker room. The policy must reflect the privacy interests of the individuals who use the locker room.

substitute amendment

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.

Inset Analysis

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

- 1 **SECTION 1.** 175.22 of the statutes is created to read:
- 2 **175.22 Policy on privacy in locker rooms.** (1) In this section:
- 3 (a) "Person" includes the state.

ASSEMBLY BILL 8

1 (b) "Recording device" means a camera, a video recorder, or any other device
2 that may be used to record or transfer images.

3 (2) Any person that owns or operates a locker room in this state shall adopt a
4 written policy that does all of the following:

5 (a) Specifies who may enter and remain in the locker room to interview or seek
6 information from any individual in the locker room.

7 (b) Specifies the recording devices that may be used in the locker room and the
8 circumstances under which they may be used.

9 (c) Reflects the privacy interests of individuals who use the locker room.

Insert A

10 **SECTION 2.** 942.09 (1) (am) of the statutes is created to read:

11 942.09 (1) (am) "Nude or partially nude person" has the meaning given in s.
12 942.08 (1) (a).

13 **SECTION 3.** 942.09 (2) of the statutes is renumbered 942.09 (2) (am), and 942.09
14 (2) (am) 2. and 3., as renumbered, are amended to read:

15 942.09 (2) (am) 2. Makes a reproduction of a representation that the person
16 knows or has reason to know was captured in violation of ~~par. (a) subd. 1.~~ and that
17 depicts the nudity depicted in the representation captured in violation of ~~par. (a)~~
18 subd. 1., if the person depicted nude in the reproduction did not consent to the
19 making of the reproduction.

20 3. Possesses, distributes, or exhibits a representation that was captured in
21 violation of ~~par. (a) subd. 1.~~ or a reproduction made in violation of ~~par. (b) subd. 2.,~~
22 if the person knows or has reason to know that the representation was captured in
23 violation of ~~par. (a) subd. 1.~~ or the reproduction was made in violation of ~~par. (b) subd.~~
24 2., and if the person who is depicted nude in the representation or reproduction did
25 not consent to the possession, distribution, or exhibition.

ASSEMBLY BILL 8**SECTION 4**

1 **SECTION 4.** 942.09 (3) of the statutes is renumbered 942.09 (2) (bm), and 942.09
2 (2) (bm) (intro.) and 2., as renumbered, are amended to read:

3 942.09 (2) (bm) (intro.) Notwithstanding ~~sub. (2) (a), (b), and (e) par. (am)~~, if the
4 person depicted nude in a representation or reproduction is a child and the capture,
5 possession, exhibition, or distribution of the representation, or making, possession,
6 exhibition, or distribution of the reproduction, does not violate s. 948.05 or 948.12,
7 a parent, guardian, or legal custodian of the child may do any of the following:

8 2. Distribute or exhibit a representation captured or possessed under ~~par. (a)~~
9 subd. 1., or distribute or exhibit a reproduction made or possessed under ~~par. (a)~~
10 subd. 1., if the distribution or exhibition is not for commercial purposes.

11 **SECTION 5.** 942.09 (4) of the statutes is renumbered 942.09 (2) (cm) and
12 amended to read:

13 942.09 (2) (cm) This section subsection does not apply to a person who receives
14 a representation or reproduction depicting a child from a parent, guardian, or legal
15 custodian of the child under ~~sub. (3) (b) par. (bm) 2.~~, if the possession, exhibition, or
16 distribution is not for commercial purposes.

17 **SECTION 6.** 942.09 (5) of the statutes is created to read:

18 942.09 (5) (a) Whoever, while present in a locker room, intentionally captures
19 a representation of a nude or partially nude person while the person is nude or
20 partially nude in the locker room is guilty of a Class B misdemeanor. This paragraph
21 does not apply if the person consents to the capture of the representation and one of
22 the following applies:

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

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0223/?ins
PJH:.....

INSERT ANALYSIS:

not The substitute amendment allows a person that owns or operates a locker room to inspect a cell phone used by a person who uses the locker room in order to determine whether the person used the cell phone to capture, record, or transfer a representation of a nude or partially nude person in the locker room. If the owner or operator of the locker room determines that the person has used the cell phone to capture, record, or transfer a representation of a nude or partially nude person in the locker room, the substitute amendment authorizes him or her to contact a law enforcement officer.

INSERT A:

X **(2m)** ^{AD} Any person that owns or operates a locker room in this state may inspect a cell phone used by a person who uses the locker room in order to determine whether the person used the cell phone to capture, record, or *g* transfer a representation of a nude or partially nude person in the locker room. If the owner or operator of the locker room determines that the person has used the cell phone to capture, record, or transfer a representation of a nude or partially nude person in the locker room, he or she may contact a law enforcement officer.



State of Wisconsin
2007 - 2008 LEGISLATURE

2
LRBs0223/1

PJH:kjf:ff

Now

SENATE SUBSTITUTE AMENDMENT ,
TO 2007 ASSEMBLY BILL 8

Refer cat

1 AN ACT *to renumber and amend* 942.09 (2), 942.09 (3) and 942.09 (4); and *to*
2 *create* 175.22, 942.09 (1) (am) and 942.09 (5) of the statutes; **relating to:**
3 capturing an image of a nude or partially nude person in a locker room, written
4 policies on privacy in locker rooms, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits taking a photograph or making a motion picture, videotape, or other visual depiction of a nude person, or recording or storing data representing a depiction of a nude person, if: 1) when the depiction is created, its subject is nude under circumstances in which he or she has a reasonable expectation of privacy; 2) the subject has not consented to the creation of the depiction; and 3) the person who creates the depiction knows or has reason to know that the subject of the depiction has not provided that consent. Current law also prohibits a person from reproducing, distributing, or possessing such a depiction, or data representing such a depiction, without the consent of the subject of the depiction if the person knows or has reason to know that the depiction was unlawfully created. A person who violates one of these prohibitions may be fined up to \$10,000 or sentenced to a term of imprisonment of up to five years (which, if the sentence is for more than one year, includes a term of confinement and a term of extended supervision) or both. These prohibitions do not apply to parents, guardians, and legal custodians when they

and that specifies the prohibition against using a cell phone to capture, record, or transfer a representation of a nude or partially nude person in the locker room

produce or possess depictions of their children nude or when they distribute such depictions for other than commercial purposes.

This substitute amendment prohibits someone who is in a locker room from intentionally depicting a nude or partially nude person, through a photograph, motion picture, or other means described above, while the person is nude or partially nude in the locker room. A person who violates this prohibition may be fined up to \$1,000 or sentenced to a term of imprisonment of up to 90 days or both. This prohibition does not apply if the person depicted nude or partially nude consents to the depiction and: 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; or 2) the person's parent, guardian, or legal custodian consents to the depiction. The substitute amendment also prohibits someone from intentionally: 1) depicting a nude or partially nude person while the actor is present in, and the person is nude or partially nude in, a locker room and exhibiting or distributing the depiction to another person; or 2) transmitting or broadcasting from a locker room an image of a nude or partially nude person while the person is nude or partially nude in the locker room. A person who violates this prohibition may be fined up to \$1,000 or sentenced to a term of imprisonment of up to 90 days or both. This prohibition does not apply if the person depicted nude or partially nude consents to the exhibition or distribution of the representation or the transmission or broadcasting of the image and: 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; or 2) the person's parent, guardian, or legal custodian consents to the exhibition, distribution, transmission, or broadcast.

This substitute amendment requires any person, including the state, that owns or operates a locker room in this state to adopt a written policy on who may enter and remain in the locker room to interview or seek information from any individual, and what cameras or other devices that record or transfer images may be used in the locker room. The policy must reflect the privacy interests of the individuals who use the locker room. The substitute amendment allows a person that owns or operates a locker room to inspect a cell phone used by a person who uses the locker room in order to determine whether the person used the cell phone to capture, record, or transfer a representation of a nude or partially nude person in the locker room. If the owner or operator of the locker room determines that the person has used the cell phone to capture, record, or transfer a representation of a nude or partially nude person in the locker room, the substitute amendment authorizes him or her to contact a law enforcement officer.

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

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SECTION 1. 175.22 of the statutes is created to read:

175.22 Policy on privacy in locker rooms. (1) In this section:

(a) "Person" includes the state.

(d) Specifies that no person may use a cell phone to capture, record, or transfer a representation of a nude or partially nude person in the locker room.

1 (b) "Recording device" means a camera, a video recorder, or any other device
2 that may be used to record or transfer images.

3 (2) Any person that owns or operates a locker room in this state shall adopt a
4 written policy that does all of the following:

5 (a) Specifies who may enter and remain in the locker room to interview or seek
6 information from any individual in the locker room.

7 (b) Specifies the recording devices that may be used in the locker room and the
8 circumstances under which they may be used.

9 (c) Reflects the privacy interests of individuals who use the locker room.

10 (2m) Any person that owns or operates a locker room in this state may inspect
11 a cell phone used by a person who uses the locker room in order to determine whether
12 the person used the cell phone to capture, record, or transfer a representation of a
13 nude or partially nude person in the locker room. If the owner or operator of the
14 locker room determines that the person has used the cell phone to capture, record,
15 or transfer a representation of a nude or partially nude person in the locker room,
16 he or she may contact a law enforcement officer.

17 SECTION 2. 942.09 (1) (am) of the statutes is created to read:

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24 depicts the nudity depicted in the representation captured in violation of ~~par. (a)~~

1 subd. 1., if the person depicted nude in the reproduction did not consent to the
2 making of the reproduction.

3 3. Possesses, distributes, or exhibits a representation that was captured in
4 violation of ~~par. (a)~~ subd. 1. or a reproduction made in violation of ~~par. (b)~~ subd. 2.,
5 if the person knows or has reason to know that the representation was captured in
6 violation of ~~par. (a)~~ subd. 1. or the reproduction was made in violation of ~~par. (b)~~ subd.
7 2., and if the person who is depicted nude in the representation or reproduction did
8 not consent to the possession, distribution, or exhibition.

9 **SECTION 4.** 942.09 (3) of the statutes is renumbered 942.09 (2) (bm), and 942.09
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14 exhibition, or distribution of the reproduction, does not violate s. 948.05 or 948.12,
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23 custodian of the child under ~~sub. (3) (b)~~ par. (bm) 2., if the possession, exhibition, or
24 distribution is not for commercial purposes.

25 **SECTION 6.** 942.09 (5) of the statutes is created to read:

1 942.09 (5) (a) Whoever, while present in a locker room, intentionally captures
2 a representation of a nude or partially nude person while the person is nude or
3 partially nude in the locker room is guilty of a Class B misdemeanor. This paragraph
4 does not apply if the person consents to the capture of the representation and one of
5 the following applies:

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

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

10 (b) 1. Whoever intentionally does any of the following is guilty of a Class A
11 misdemeanor:

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

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

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

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

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

24 **SECTION 7. Effective dates.** This act takes effect on the day after publication,
25 except as follows:

