

**SENATE SUBSTITUTE AMENDMENT 2,
TO 2007 ASSEMBLY BILL 8**

January 31, 2008 – Offered by Senator GROTHMAN.

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.

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, on what cameras or other devices that record or transfer images may be used in the locker room, 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. The policy must reflect the privacy interests of the individuals who use the locker room.

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

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

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

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

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

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

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.

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 (c) 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.

