

2015 DRAFTING REQUEST

Senate Amendment (SA-SB410)

Received: **12/3/2015** Received By: **phurley**
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Submit via email: **YES**
Requester's email: **Sen.Vukmir@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Does not apply to certain internet or communications providers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 12/3/2015	anienaja 12/4/2015	_____	sbasford 12/4/2015	sbasford 12/4/2015	

FE Sent For:

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State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3717/1
PJH:amn

2015 SENATE BILL 410

December 3, 2015 – Introduced by Senators VUKMIR and WANGGAARD, cosponsored by Representatives SPIROS, MURSAU, HORLACHER, E. BROOKS, T. LARSON, SUBECK, KAHL, ALLEN, KULP, ZAMARRIPA, KREMER, DUCHOW and CRAIG. Referred to Committee on Judiciary and Public Safety.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to amend** 942.08 (1) (c), 942.08 (2) (a), 942.09 (1) (a), 942.09 (1) (c), 942.09
2 (2) (am) 1., 2. and 3., 942.09 (2) (bm) (intro.), 972.11 (2) (b) (intro.) and 972.11
3 (2) (d) 1. (intro.); and **to create** 942.09 (1) (ae) and 942.09 (1) (ag) of the statutes;
4 **relating to:** invasions of privacy and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits certain acts that violate a person's right to privacy. Current law prohibits installing or using a surveillance device that has been installed in a private place to observe a nude or partially nude person without that person's consent. The bill clarifies that a surveillance device need only be capable of observing the activities of a person and need not be primarily designed for that purpose. Under the bill, a person may not install or use in a private place a surveillance device to view a nude or partially nude person in a private place without that person's consent.

Under current law, a person who captures a representation of a nude or partially nude person without the person's consent and while that person has a reasonable expectation of privacy, or a person who makes, exhibits, or distributes a reproduction of such a representation of the nude or partially nude person, is guilty of a Class I felony.

Under the bill, a person is guilty of a Class I felony if he or she makes, reproduces, exhibit, or distributes a video or audio representation of a person who is nude or partially nude; of a person's clothed, covered, or partially clothed or covered genitalia or buttock that is not otherwise visible to the public; of a person urinating, defecating, or using a feminine hygiene product; or of a person engaged in sexual

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intercourse or sexual contact, and if the same conditions of lack of consent and expectation of privacy exist.

The bill defines consent as “words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to the act,” and establishes that a person under the age of 18 is incapable of consent. Under the bill, a person suffering from a mental illness or defect that impairs his or her capacity to appraise personal conduct and a person who is unconscious or otherwise physically unable to communicate unwillingness to an act are presumed incapable of giving consent.

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

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

1 **SECTION 1.** 942.08 (1) (c) of the statutes is amended to read:

2 942.08 (1) (c) “Surveillance device” means any device, instrument, apparatus,
3 implement, mechanism or contrivance used, designed to be used or ~~primarily~~
4 ~~intended to be used~~ to observe, or capable of observing, the activities of a person.
5 “Surveillance device” includes a peephole.

6 **SECTION 2.** 942.08 (2) (a) of the statutes is amended to read:

7 942.08 (2) (a) Knowingly installs a surveillance device in any private place, or
8 uses a surveillance device ~~that has been installed~~ to observe in a private place, with
9 the intent to observe any nude or partially nude person without the consent of the
10 person observed.

11 **SECTION 3.** 942.09 (1) (a) of the statutes is amended to read:

12 942.09 (1) (a) “Captures a representation” means takes a photograph, makes
13 a motion picture, videotape, recording, or other visual or audio representation, or
14 records or stores in any medium data that represents a visual image.

15 **SECTION 4.** 942.09 (1) (ae) of the statutes is created to read:

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1 942.09 (1) (ae) “Consent” means words or overt actions by a person who is
2 competent to give informed consent indicating a freely given agreement to the act.
3 A person who has not attained the age of 18 is incapable of consent. The following
4 persons are presumed incapable of consent but the presumption may be rebutted by
5 competent evidence, subject to the provisions of s. 972.11 (2):

6 1. A person suffering from a mental illness or defect that impairs capacity to
7 appraise personal conduct.

8 2. A person who is unconscious or for any other reason is physically unable to
9 communicate unwillingness to an act.

10 **SECTION 5.** 942.09 (1) (ag) of the statutes is created to read:

11 942.09 (1) (ag) “Intimate representation” means any of the following:

12 1. A representation of a nude or partially nude person.

13 2. A representation of clothed, covered, or partially clothed or covered genitalia
14 or buttock that is not otherwise visible to the public.

15 3. A representation of a person urinating, defecating, or using a feminine
16 hygiene product.

17 4. A representation of person engaged in sexual intercourse or sexual contact,
18 as defined in s. 940.225 (5) (b) or (c).

19 **SECTION 6.** 942.09 (1) (c) of the statutes is amended to read:

20 942.09 (1) (c) “Representation” means a photograph, exposed film, motion
21 picture, videotape, recording, other visual or audio representation, or data that
22 represents a visual image or audio recording.

23 **SECTION 7.** 942.09 (2) (am) 1., 2. and 3. of the statutes are amended to read:

24 942.09 (2) (am) 1. Captures ~~a~~ an intimate representation that depicts nudity
25 without the knowledge and consent of the person who is depicted ~~nude while that~~

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1 ~~person is nude in a circumstance~~ under circumstances in which he or she has a
2 reasonable expectation of privacy, if the person knows or has reason to know that the
3 person who is depicted ~~nude~~ does not ~~know of and~~ consent to the capture of the
4 intimate representation.

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

10 3. Possesses, distributes, or exhibits ~~a~~ an intimate representation that was
11 captured in violation of subd. 1. or a reproduction made in violation of subd. 2., if the
12 person knows or has reason to know that the intimate representation was captured
13 in violation of subd. 1. or the reproduction was made in violation of subd. 2., and if
14 the person who is depicted ~~nude~~ in the intimate representation or reproduction did
15 not consent to the possession, distribution, or exhibition.

16 **SECTION 8.** 942.09 (2) (bm) (intro.) of the statutes is amended to read:

17 942.09 (2) (bm) (intro.) Notwithstanding par. (am), if the person depicted ~~nude~~
18 in ~~a~~ an intimate representation or reproduction is a child and the capture,
19 possession, exhibition, or distribution of the intimate representation, or making,
20 possession, exhibition, or distribution of the reproduction, does not violate s. 948.05
21 or 948.12, a parent, guardian, or legal custodian of the child may do any of the
22 following:

23 **SECTION 9.** 972.11 (2) (b) (intro.) of the statutes is amended to read:

24 972.11 (2) (b) (intro.) If the defendant is accused of a crime under s. 940.225,
25 942.09, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, 948.09, or

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1 948.095, or under s. 940.302 (2), if the court finds that the crime was sexually
2 motivated, as defined in s. 980.01 (5), any evidence concerning the complaining
3 witness's prior sexual conduct or opinions of the witness's prior sexual conduct and
4 reputation as to prior sexual conduct shall not be admitted into evidence during the
5 course of the hearing or trial, nor shall any reference to such conduct be made in the
6 presence of the jury, except the following, subject to s. 971.31 (11):

7 **SECTION 10.** 972.11 (2) (d) 1. (intro.) of the statutes is amended to read:

8 972.11 (2) (d) 1. (intro.) If the defendant is accused of a crime under s. 940.225,
9 942.09, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095, evidence of the manner
10 of dress of the complaining witness at the time when the crime occurred is admissible
11 only if it is relevant to a contested issue at trial and its probative value substantially
12 outweighs all of the following:

13

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

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SENATE
ASSEMBLY AMENDMENT,
TO ASSEMBLY BILL 521^{e 410}

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SA ✓
xref ✓

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At the locations indicated, amend the bill as follows:

1. Page 4, line 22: after that line insert:

"SECTION 8g. 942.09 (2) (dm) of the statutes is created to read:

942.09 (2) (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 third party.

SECTION 8p. 942.09 (3m) (b) 4. of the statutes is amended to read:

942.09 (3m) (b) 4. A provider of ~~electronic communication services that provides Internet access service to customers~~ 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

1 interactive computer service, information service, or telecommunications service by
2 a third party.

3 **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.

(END)