



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 320
[2015 Assembly Bill 566]

**Penalty When Victim of a Privacy
Crime is a Minor**

2015 Wisconsin Act 320 (“the Act”) increases the penalties for certain violations of the crimes of invasion of privacy and representations depicting nudity when the victim is under the age of 18.

THE CRIME OF INVASION OF PRIVACY

Under prior law, it was a **Class A misdemeanor** violation of the crime of invasion of privacy to do any of the following:

- Knowingly install a surveillance device in any private place, or use a surveillance device to observe in a private place, with the intent to observe any nude or partially nude person without the consent of the person observed.
- For the purpose of sexual arousal or gratification and without the consent of each person who is present in the private place, look into a private place that is, or is part of, a public accommodation¹ and in which a person may reasonably be expected to be nude or partially nude.
- For the purpose of sexual arousal or gratification, look into a private place that is, or is part of, a public accommodation and in which a person may reasonably be expected to be nude or partially nude but in which no person is present.
- Enter another person’s private property without that person’s consent or enter an enclosed or unenclosed common area of a multiunit dwelling or condominium and

¹ A “public accommodation” means a business, accommodation, refreshment, entertainment, recreation, or transportation facility where goods, services, facilities, privileges, advantages, or accommodations are offered, sold, or otherwise made available to the public. [s. 134.48 (1) (b), Stats.]

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

look into any individual's dwelling unit if all of the following apply: (1) the actor looks into the dwelling unit for the purpose of sexual arousal or gratification and with the intent to intrude upon or interfere with an individual's privacy; (2) the actor looks into a part of the dwelling unit in which an individual is present; (3) the individual has a reasonable expectation of privacy in that part of the dwelling unit; and (4) the individual does not consent to the actor looking into that part of the dwelling.

The penalty for a Class A misdemeanor is a fine up to \$10,000, imprisonment up to nine months, or both. **The Act** increased the penalty to a **Class I felony**, which is a fine up to \$10,000, imprisonment up to nine months, or both if, at the time of the violation, the victim was under the age of 18.

THE CRIME OF REPRESENTATIONS DEPICTING NUDITY

Related to representations depicting nudity, there are various ways to commit a violation of the crime, some of which are punishable by a felony and some by a misdemeanor.

Under prior law and with limited exceptions, it was generally a **Class I felony**, to do any of the following: (1) capture a "representation"² that depicts nudity without the knowledge and consent of the person who is depicted nude while the person is nude in a circumstance in which he or she has a reasonable expectation of privacy, if the person knows or has reason to know that the person who is nude did not consent to the capture of the representation; or (2) make, possess, distribute, or exhibit such a representation. **The Act** increased the penalty to a **Class H felony**, which is a fine up to \$10,000, imprisonment up to six years, or both if, at the time of the violation, the victim was under the age of 18.

Also **under prior law**, and with limited exceptions, it was generally a **Class A misdemeanor** violation of this crime to do any of the following:

- Post, publish, or cause to be posted or published either a "private representation,"³ or a depiction of a person that he or she knows is a private representation, if the actor knows that the person depicted did not consent to the posting or publication of the private representation.
- Intentionally capture a representation of a nude or partially nude person while the actor is present in, and the person is nude or partially nude in, the locker room and exhibit or distribute the representation to another.
- Transmit or broadcast an image of a nude or partially nude person from a locker room while the person is nude or partially nude in the locker room.

² A "representation" means a photograph, exposed film, motion picture, videotape, other visual representation, or data that represents a visual image. [s. 942.09 (c), Stats.]

³ A "private representation" means a representation depicting a nude or partially nude person or depicting a person engaging in sexually explicit conduct that is intended by the person depicted in the representation to be captured, viewed, or possessed only by the person who, with the consent of the person depicted, captured the representation or to whom the person depicted directly and intentionally gave possession of the representation. [s. 942.09 (1) (bn), Stats.]

The Act increased the penalty for violating any of the prohibited acts listed above from a Class A misdemeanor to a **Class I felony** if, at the time of the violation, the victim was under the age of 18.

Lastly, **under prior law**, and with certain exceptions, it was generally a **Class B misdemeanor** to, while present in a locker room, intentionally capture a representation of a nude or partially nude person while the person is nude or partially nude in the locker room. The penalty for a Class B misdemeanor is a fine up to \$1,000, imprisonment up to 90 days, or both. **The Act** increased the penalty to a **Class A misdemeanor** if, at the time of the violation, the victim was under the age of 18.

Effective date: This Act took effect on April 1, 2016.

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