CHAPTER 942
CRIMES AGAINST REPUTATION, PRIVACY AND CIVIL LIBERTIES

942.01 Defamation. (1) Whoever with intent to defame communicates any defamatory matter to a 3rd person without the consent of the person defamed is guilty of a Class A misdemeanor.

(2) Defamatory matter is anything which exposes the other to hatred, contempt, ridicule, degradation or disgrace in society or injury in the other’s business or occupation.

(3) This section does not apply if the defamatory matter was true and was communicated with good motives and for justifiable ends or if the communication was otherwise privileged.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of 2 other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or no contest.

The defense of conditional privilege applies to criminal defamation, but the defense is not absolute and may be forfeited if abused. State v. Gilles, 173 Wis. 2d 101, 496 N.W.2d 133 (Ct. App. 1992).

Perjury committed in a judicial proceeding is absolutely privileged under sub. (3). The sanction for perjury is under the perjury statute, s. 946.31, and not under the defamation statute. State v. Cardenas-Hernandez, 219 Wis. 2d 516, 579 N.W.2d 678 (1998), 96–3605.

942.03 Giving false information for publication. Whoever, with intent that it be published and that it injure any person, and with knowledge that it is false, communicates to a newspaper, magazine, or other publication any false statement concerning any person or any false and unauthorized advertisement is guilty of a Class A misdemeanor.

History: 1977 c. 173.

942.05 Opening letters. Whoever does either of the following is guilty of a Class A misdemeanor:

(1) Knowing that he or she does not have the consent of either the sender or the addressee, intentionally opens any sealed letter or package addressed to another; or

(2) Knowing that a sealed letter or package has been opened without the consent of either the sender or addressee, intentionally publishes any of the contents thereof.

History: 1977 c. 173; 1993 a. 486.

942.06 Use of polygraphs and similar tests. (1) Except as provided in sub. (2m), no person may require or administer a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty without the prior written and informed consent of the subject.

(2) Except as provided in sub. (2q), no person may disclose that another person has taken a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty and no person may disclose the results of such a test to any person except the person tested, without the prior written and informed consent of the subject.

(2m) Subsection (1) does not apply to any of the following:

(a) An employee or agent of the department of corrections who conducts a lie detector test of a sex offender under s. 301.132.

(b) An employee or agent of the department of health services who conducts a lie detector test of a person under s. 51.375.

(2q) Subsection (2) does not apply to any of the following:

(a) An employee or agent of the department of corrections who discloses, to any of the followings, the fact that a sex offender has had a lie detector test under s. 301.132 or the results of such a lie detector test:

1. Another employee or agent of the department of corrections.

2. Another agency or person, if the information disclosed will be used for purposes related to correctional programming or care and treatment.

(b) An employee or agent of the department of health services who discloses, to any of the following, the fact that a person has had a lie detector test under s. 51.375 or the results of such a lie detector test:

1. Another employee or agent of the department of health services or another person to whom disclosure is permitted under s. 51.375 (2) (b).

2. Another agency or person, if the information disclosed will be used for purposes related to programming or care and treatment for the person.

(3) Whoever violates this section is guilty of a Class B misdemeanor.

History: 1999 a. 89; 2001 a. 16; 2007 a. 20 s. 9123 (6).
942.08 Invasion of privacy. (1) In this section:

(a) “Nude or partially nude person” means any human being who has less than fully and opaquely covered genitals, pubic area or buttocks, any female human being who has less than a fully opaque covering over any portion of a breast below the top of the nipple, or any male human being with covered genitals in a discernibly turgid state.

(b) “Private place” means a place where a person may reasonably expect to be safe from being observed without his or her knowledge and consent.

(c) “Surveillance device” means any device, instrument, apparatus, implement, mechanism or contrivance used, designed to be used to observe, or capable of observing, the activities of a person. “Surveillance device” includes a peephole.

(2) Except as provided in sub. (4), whoever does any of the following is guilty of a Class A misdemeanor:

(a) Knowingly installs a surveillance device in any private place, or uses 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.

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

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

(d) Enters another person’s private property without that person’s consent or enters an enclosed or unenclosed common area of a multiunit dwelling or condominium and looks 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.

4. The individual does not consent to the actor looking into that part of the dwelling.

(3) Whoever knowingly installs or uses any device, instrument, mechanism, or contrivance to intentionally view, broadcast, or record under the outer clothing of an individual that individual’s genitals, pubic area, breast, or buttocks, including genitals, pubic area, breasts, or buttocks that are covered by undergarments, or to intentionally view, broadcast, or record a body part of an individual that is not otherwise visible, without that individual’s consent, is guilty of a Class I felony.

(4) A person who commits a violation specified under sub. (2) is guilty of a Class I felony if a victim of the violation had not, at the time of the violation, attained the age of 18 years.


942.09 Representations depicting nudity. (1) In this section:

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

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

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

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

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

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

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

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

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

(b) “Nude or partially nude person” has the meaning given in s. 942.08 (1) (a).

(bm) 1m. Notwithstanding par. (am), if the person depicted in an intimate representation or reproduction is a child, a parent, guardian, or legal custodian of the child may do any of the following:

a. Capture and possess the representation or make and possess the reproduction depicting the child.

b. Distribute or exhibit a representation captured or possessed under subd. 1m. a., or distribute or exhibit a reproduction made or possessed under subd. 1m. a.

2m. Subdivision 1m. does not apply to a parent, guardian, or legal custodian of a child who captures, possesses, makes, distributes, or exhibits a representation depicting the child in violation of s. 948.05 or 948.12 or for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.

(cm) Paragraph (am) does not apply to a person who receives a representation or reproduction depicting a child from a parent,
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942.10  Use of a drone.  Whoever uses a drone, as defined in s. 175.55 (1) (a), with the intent to photograph, record, or otherwise observe another individual in a place or location where the individual has a reasonable expectation of privacy is guilty of a Class A misdemeanor.  This section does not apply to a law enforcement officer authorized to use a drone pursuant to s. 175.55 (2).  

History: 2013 a. 213.