Video Voyeurism & WI Act 137

Voyeurism is generally defined as the act of observing others without their knowledge and infringing upon their personal privacy. More commonly, it refers to a sexual interest in spying on people engaged in intimate behaviors and activities that are considered to be private.

Voyeurism has been around since the beginning of time but has recently gained increasing media attention. With new technologies, such as mini-cameras, camera phones, and inexpensive surveillance equipment, video voyeurism has become a serious concern. Combined with easy internet access and uploading capabilities, victims of video voyeurism may find themselves unknowingly broadcast on websites and sharing programs. This kind of privacy violation goes beyond “window peeping” or solitary, individual acts of voyeurism by potentially turning one offender’s video into online, non-consensual pornography.

The Federal Video Voyeurism Prevention Act of 2004 (18 U.S.C.A. § 1801) was passed in response to this growing problem. The act’s jurisdiction is limited to maritime and territorial jurisdiction or federal property such as parks and prisons. It prohibits the recording by any means or disseminating images of an individual’s “private areas” without consent under circumstances in which that individual has a reasonable expectation of privacy, regardless of whether the individual is in a private or public location. Violation results in a fine and/or up to one year imprisonment. In addition, almost every state has laws prohibiting non-consensual photographic or video recording of persons in a state of undress or nudity in locations where the individual has a reasonable expectation of privacy.

Wisconsin Chapter 942 criminalizes invasion of privacy in several ways.

Wis. Stat. 942.08 (Invasion of privacy) makes it a crime to:

- Install a surveillance device in any private place with the intent to observe nude/partially nude person without their consent
- To look into a private place or private place of public accommodation where a person may reasonably be expected to be nude for the purpose of sexual arousal or gratification
- To intentionally photograph/videotape/capture any visual representation of a nude or partially nude person in a locker room and exhibit, transmit, broadcast or share that image with another.

Wis. Stat. 942.09 (Representations depicting nudity) makes it a crime to:

- Capture a representation (photo, video, etc.) that depicts nudity without the knowledge and consent of the person who is depicted nude while that 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 depicted nude does not know of and consent to the capture of the representation. (Invasion of sexual privacy/video voyeurism).
- Make a reproduction of the nude representation without knowledge consent of the person depicted
- Possess, distribute or exhibit such a representation or reproduction without consent of the person depicted.
Wisconsin Act 137, passed in 2009, added the option for a court to require a person found guilty of invasion of sexual privacy, whether a misdemeanor or felony, to register as a sex offender. Sex offender registry is not mandated, but within a judge’s sentencing discretion.

Under the new Act, if the court finds that an individual has violated chapter 942.08 or 942.09 the court may require the individual to comply with sex offender reporting requirements if it determines that the underlying conduct was “sexually motivated” and that it is in the interest of public protection to do so. “Sexually motivated” means that one of the purposes of an act is for the actor’s sexual arousal or gratification, or for the sexual humiliation or degradation of the victim.