

**2551 INVASION OF PRIVACY: HIGHLY OFFENSIVE INTRUSION; WIS. STAT. § 995.50(2)(a)**

(Plaintiff) claims that (defendant) (invaded) (his) (her) privacy by (insert intrusion).

To prove this claim, (plaintiff) must prove the following three elements:

1. (Defendant) intentionally intruded upon the privacy of (plaintiff);
2. The intrusion by (defendant) was of a nature that would be highly offensive to a reasonable person; and
3. The intrusion was (in a place that a reasonable person would consider private) (or) (in a manner involving trespass).

(Definition of trespass; See Wis JI-Civil 8012)

(Burden of Proof: Middle; See Wis JI-Civil 205)

**SPECIAL VERDICT**

Did (defendant) violate (plaintiff)'s right to privacy by (\_\_\_\_\_)?

Answer: \_\_\_\_\_  
Yes or No

**COMMENT**

Wis. Stat. § 995.50(2) states: In this section, "invasion of privacy" means any of the following:

(a) Intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass.

This invasion of privacy consists of an intentional interference with the plaintiff's interest in solitude or seclusion, either as to his or her person or as to his or her private affairs or concerns, of a kind that is highly offensive. Restatement of Torts, Second, § 652B. The claim does not require a physical intrusion or publicity given to the person whose interest is invaded.

**Intentional Conduct.** The following can be added to explain "intentional conduct":

The requirement that (defendant) intended to intrude means that (defendant) had the mental purpose to intrude upon the privacy of (plaintiff) or was aware that (his) (her) conduct was practically certain to intrude upon the privacy of (plaintiff) (or another person).

**Highly Offensive Intrusion.** The following language can be added to the instruction to guide the jury in determining if the intrusion would be highly offensive to a reasonable person:

In deciding whether an intrusion is highly offensive, among the things you may consider are:

1. The degree of intrusion,
2. The context, conduct, and circumstances of the intrusion,
3. (Defendant)'s motives or objectives,
4. The setting in which the intrusion occurred, and
5. How much privacy a reasonable person could expect in that setting

**Trespass.** If the intrusion is claimed to be a trespass, the following, taken from Wis JI-Civil 1812, can be added:

A person who goes upon premises owned, occupied, or possessed by another, without consent, is a trespasser.

**Privilege.** Wis. Stat. § 995.50(3) provides the right of privacy recognized in the section should be interpreted in accordance with the "developing common law of privacy," including defenses of absolute and qualified privilege, with due regard for maintaining freedom of communication, privately and through the public media.

**Conduct.** In Poston v. Burns, 2010 WI App 73, 325 Wis.2d 404, 784 N.W.2d 717, the court of appeals held that the recording of sounds from the plaintiffs' home using a common recording device placed inside the defendants' window was not an intrusion "of a nature highly offensive to a reasonable person."