

**1395 INVASION OF PRIVACY: LOOKING INTO A DWELLING UNIT —
§ 942.08(2)(d)**

Statutory Definition of the Crime

Invasion of privacy, as defined in §942.08(2)(d) of the Criminal Code of Wisconsin, is committed by one who enters [another person's private property without that person's consent] [a common area of a multiunit dwelling or condominium]¹ and looks into any individual's dwelling unit and all the following apply:

- (he)(she) 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; and,
- (he)(she) looks into a part of the dwelling unit in which an individual is present; and,
- the individual has a reasonable expectation of privacy in that part of the dwelling unit; and,
- the individual does not consent to (him)(her) looking into that part of the dwelling unit.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following six elements are present.

Elements of the Crime That the State Must Prove

1. The defendant entered [another person's private property without that person's consent] [a common area of a multiunit dwelling or condominium].²
2. The defendant looked into (name of individual)'s dwelling unit.

3. The defendant looked into the dwelling unit for the purpose of sexual arousal or gratification and with the intent to intrude upon or interfere with (name of individual)'s privacy.
4. The defendant looked into a part of the dwelling unit in which (name of individual) was present.
5. (Name of individual) had a reasonable expectation of privacy in that part of the dwelling unit.
6. (Name of individual) did not consent to the defendant looking into that part of the dwelling unit.

Meaning of "Reasonable Expectation of Privacy"³

"Reasonable expectation of privacy" requires

- that (name of individual) had an actual expectation of privacy in the part of the dwelling unit in question; and,
- that expectation of privacy was reasonable.

Deciding About Intent

You cannot look into a person's mind to find out intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all six elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

ADD THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS I FELONY AND THERE IS EVIDENCE THAT THE VICTIM HAD NOT ATTAINED THE AGE OF 18 YEARS AT THE TIME OF THE OFFENSE.⁴

If you find the defendant guilty, you must answer the following question:

Was (name of victim) under the age of 18 years at the time of the offense?

Before you may answer the question "yes," you must be satisfied beyond a reasonable doubt that the answer is "yes."

If you are not so satisfied, you must answer the question "no."

COMMENT

Wis JI-Criminal 1395 was originally published in 2007 and revised in 2009. This revision was approved by the Committee in October 2016; it reflects changes made by 2015 Wisconsin Act 320.

This instruction is for a violation of sub. (2)(d) of § 942.08. Three additional offenses are defined in subs. (2)(b), (c), and (d). See Wis JI-Criminal 1392 for violations of sub. (2)(a); uniform instructions have not been drafted for the other two offenses.

1. The second bracketed phrase was added by 2007 Wisconsin Act 198 – effective date April 11, 2008. The statute refers to "an enclosed or unenclosed common area." The Committee concluded that it was not necessary to include that reference in the instruction.

2. See footnote 1, supra.

3. The definition of "reasonable expectation of privacy" is based on one originally used in Wis JI-Criminal 1396, Representations Depicting Nudity – § 942.09. The note in that instruction stated that the definition was based on the one used for 4th Amendment purposes.

In State v. Nelson, 2006 WI App 124, 294 Wis.2d 578, 718 N.W.2d 168, the court of appeals acknowledged Wis JI-Criminal 1396 and the footnote referring to the 4th Amendment meaning of the term:

The comment does not purport to be an analysis of whether "reasonable expectation of privacy" was intended by the legislature to import all Fourth Amendment case law applying this term, as Nelson argues. Moreover, there is no need to resort to Fourth Amendment case law, as opposed to the language of the statute, to arrive at the definition the comment refers to: the common and ordinary meaning of "a person who has a reasonable expectation of privacy" is that the person actually has an expectation of privacy and the expectation is a reasonable one.

2006 WI App 124, footnote 7.

The Committee believes the definition in the instruction is consistent with the Nelson decision.

4. 2015 Wisconsin Act 320 [effective date: April 1, 2016] changed the penalty structure for violations of sec. 942.08: the offense is a Class I felony if the victim had not attained the age of 18 years at the time of the offense. See § 942.08(4). The instruction reflects this change by providing a special question to be used where the Class I felony is charged. If the Class I felony is not charged, the instruction should be used without the special question.