

1395A INVASION OF PRIVACY: USE OF A DEVICE TO VIEW UNDER THE OUTER CLOTHING OF AN INDIVIDUAL — § 942.08(3)**Statutory Definition of the Crime**

Invasion of privacy, as defined in § 942.08(3) of the Criminal Code of Wisconsin, is committed by one who knowingly installs or uses any device¹ 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.

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 four elements are present.

Elements of the Crime That the State Must Prove

1. The defendant knowingly (installed) (used) a device.
2. The defendant (installed) (used) the device to intentionally [(view) (broadcast) (record) under the outer clothing of an individual that individual's genitals, pubic area, breast, or buttocks, whether or not covered by undergarments] [(view) (broadcast) (record) a body part of an individual that is not otherwise visible].
3. (Name of victim) did not consent² to the (installation) (use) of the device.

4. The defendant knew (name of victim) did not consent to the (installation) (use) of the device.³

Deciding About Intent and Knowledge

You cannot look into a person's mind to find out intent or knowledge. Intent and knowledge 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 and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four 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.

COMMENT

Wis JI-Criminal 1395A was approved by the Committee in February 2016.

This instruction is for a violation of sub. (3) of § 942.08, which was created by 2015 Wisconsin Act 80 [effective date: November 13, 2015]. The offense is a Class I felony. Additional violation of § 942.08 are defined in subs. (2)(a) through (d). See Wis JI-Criminal 1392 for violations of sub. (2)(a) and Wis JI-Criminal 1395 for violations of sub. (2)(d); uniform instructions have not been drafted for the offenses defined in subs. (2)(b) or (2)(c).

1. The offense definition refers to "device, instrument, mechanism, or contrivance." The instruction refers only to "device," the Committee having concluded that the term is broad enough to include the other items referred to.

2. If definition of "without consent" is believed to be necessary, see Wis JI-Criminal 948 which provides an instruction based on the definition provided in § 939.22(48). That definition provides that "without consent" means "no consent in fact" or that consent was given because of fear, a claim of legal authority by the defendant, or misunderstanding.

3. The requirement that the defendant know there is no consent is based on the definition of "intentionally" in § 939.23(3): ". . . the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word intentionally."