

1396A REPRESENTATIONS DEPICTING NUDITY — SYNTHETIC INTIMATE REPRESENTATION — 942.09(2)(am)4.**Statutory Definition of the Crime**

Section 942.09(2)(am)4. of the Criminal Code of Wisconsin is violated by a person who posts, publishes, distributes, or exhibits a synthetic intimate representation of an identifiable person with intent to coerce, harass, or intimidate that person.

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant posted, published, distributed, or exhibited a synthetic intimate representation.

“Synthetic intimate representation” means a representation generated using technological means that uses an identifiable person’s face, likeness, or other distinguishing characteristic to depict an intimate representation of that person, regardless of whether the representation includes artificial, legally generated, or generally accessible components, and that is so realistic that a reasonable person would believe it depicts conduct of the identifiable person.¹

“Intimate representation” means (a representation of a nude or partially nude person) (a representation of clothed, covered, or partially clothed or covered genitalia or buttock that is not otherwise visible to the public.

the public) (a representation of a person urinating, defecating, or using a feminine hygiene product) (a representation of a person engaged in sexual intercourse or sexual contact).²

IF THE MEANING OF “NUDE OR PARTIALLY NUDE PERSON” IS REQUIRED, ADD THE FOLLOWING DEFINITION

[“Nude or partially nude person” means (any human being with less than fully and opaquely covered genitals, pubic area, or buttocks) (any female human being with less than a fully opaque covering over any portion of a breast below the top of the nipple) (any male human being with covered genitals in a discernibly turgid state).³]

2. The person depicted in the synthetic intimate representation was identifiable as (name of the person depicted).
3. The defendant acted with intent to coerce, harass, or intimidate (name of the person depicted).

Jury’s Decision

If you are satisfied beyond a reasonable doubt that all three 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 H FELONY AND THERE IS EVIDENCE THAT THE VICTIM HAD NOT ATTAINED THE AGE OF 18 YEARS AT THE TIME OF THE OFFENSE.

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 1396A was approved in February 2026.

This instruction is for a violation of sub. (2)(am)4. of § 942.09. Section 942.09 was formerly § 944.025, the original version of which was found to be unconstitutional in State v. Stevenson, 2000 WI 71, 236 Wis.2d 86, 613 N.W.2d 90. Section 944.025 was amended by 2001 Wisconsin Act 16, but those changes were superseded by 2001 Wisconsin Act 33, which renumbered the statute § 942.09 [effective date: December 18, 2001].

For violations of § 942.09(2)(am)1. capturing an intimate representation without the consent of the person depicted, see Wis JI–Criminal 1396.

Two other offenses are defined in § 942.09(2)(am): making a reproduction of a representation captured in violation of sub. (2)(a) [see sub. (2)(am)2.]; and possessing, distributing, or exhibiting a representation captured in violation of sub. (2)(a) [see sub. (2)(am)3.]. Uniform instructions have not been drafted for those offenses.

For violations of §§ 942.09(3m)(a)1., 2., and 3, see Wis JI–Criminal 1398A, 1398B, and 1398C.

Subsection (2)(bm) of § 942.09 creates an exception for representations of nude children, captured or possessed by parents, that do not constitute violations of § 948.05, Sexual Exploitation of a Child, or § 948.12, Possession of Child Pornography. Subsection (2)(cm) extends the exception to those who receive a representation covered by sub. (2)(am) in a non-commercial context. Both provisions were amended by 2015 Wisconsin Act 370 [effective date: April 21, 2016]. Act 370 also created an exception to providers of an interactive computer service or an information service or telecommunications service if the

representation is provided by a third party or the representation is provided to a person who posts or publishes a private representation that is newsworthy or of public importance. See § 942.09(2)(dm).

1. This is the definition provided in § 942.09(1)(e).
2. This is the definition provided in § 942.09(1)(ag).
3. This is the definition provided in § 942.08(1)(a), which applies to this offense because of a cross-reference in § 942.09(1)(am).