

HOUSE BILL REPORT

ESHB 1001

As Amended by the Senate

Title: An act relating to voyeurism.

Brief Description: Revising voyeurism laws.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Chase, Ruderman, Fromhold, Dickerson, Conway, Schindler, Veloria, O'Brien, Kenney, Campbell, Nixon and Darneille).

Brief History:

Committee Activity:

Judiciary: 1/16/03, 1/17/03 [DPS].

Floor Activity:

Passed House: 2/5/03, 96-0.

Senate Amended.

Passed Senate: 4/17/03, 48-0.

Brief Summary of Engrossed Substitute Bill

- Creates the crime of voyeurism in the second degree involving viewing, photographing or filming the portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.
- Adds voyeurism in the second degree to the mandatory DNA testing statute.
- Creates the crime of distributing or disseminating photographs or images that are made or acquired in violation of the voyeurism law.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Edie Adams (786-7180).

Background:

In 1998 the Legislature created the new crime of voyeurism. A person commits voyeurism if the person views, photographs, or films a person without his or her consent, if done for the purpose of arousing or gratifying the sexual desire of anyone and when the person viewed is in a place where he or she would have a reasonable expectation of privacy.

The definition of a place of reasonable expectation of privacy has two components:

- a place where a reasonable person would believe he or she could disrobe without being photographed or filmed; or
- a place where a person can reasonably expect to be safe from casual or hostile intrusion or surveillance.

Voyeurism is a class C felony and is sentenced under the Sentencing Reform Act (SRA). However, since voyeurism has not been given a seriousness ranking under the SRA, it is not subject to the sentencing grid. Rather, the court may impose a penalty of up to one year in jail.

The voyeurism statute was recently interpreted by the Washington Supreme Court in the case State v. Glas. The Glas case involved the consolidation of two cases, both of which involved the conviction of men who photographed or videotaped under the skirts of unsuspecting women in public places.

The Supreme Court in Glas ruled that the voyeurism statute, as written, does not cover voyeuristic acts that take place in a public place. The court noted that the statute's definition of a place of reasonable expectation of privacy focuses entirely on the location of the person, not a part of the person's body or the nature of the conduct. The second part of the definition of place of reasonable expectation of privacy is any place where a person can reasonably expect to be free of casual or hostile intrusion or surveillance. The court held that since casual intrusions and surveillance happen all the time when people go into public places, public places can not fit into the statute's definition of a place where a person can have a reasonable expectation of privacy.

All persons who are convicted of a felony offense, or certain specified gross misdemeanor offenses, are required to submit to mandatory DNA testing. The DNA sample may be retained and used only for the purpose of identification analysis and prosecution of criminal offenses and identification of human remains or missing persons.

There are time periods specified in statute, called statutes of limitations, after which crimes may not be prosecuted. Generally, a class C felony may not be prosecuted more than three years after its commission. However, for the crime of voyeurism, if the victim did not realize that he or she was being viewed, photographed or filmed, the prosecution must be commenced within two years of the victim's discovery that he or she

was viewed, photographed or filmed. The general statute of limitations for gross misdemeanors is two years.

Summary of Engrossed Substitute Bill:

The current crime of voyeurism is renamed voyeurism in the first degree and the crime of voyeurism in the second degree is created. The crime of disseminating photographs or other images made or acquired in violation of the voyeurism law is created.

Voyeurism in the second degree is committed if a person, for the private or commercial purpose of arousing or gratifying the sexual desires of anyone, knowingly views, photographs or films the intimate areas of another person, without that person's knowledge and consent and under circumstances where that person has a reasonable expectation of privacy, whether in a public or private place. "Intimate areas" means the portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

Voyeurism in the second degree is a gross misdemeanor, unless the person has previously been convicted of voyeurism or a sex offense, in which case voyeurism in the second degree is a class C felony. The court may order the destruction of any photographs, films, digital images, videotapes or other images that were taken by a person in violation of the voyeurism statute.

The crime of distributing or disseminating photographs or other images made or acquired in violation of the voyeurism law is created. It is a crime for a person to distribute, disseminate or otherwise disclose a photograph, film, digital image, videotape or other recording that the person knows was made or acquired in violation of the voyeurism law. Dissemination of materials made or acquired in violation of voyeurism in the first degree is a class C felony. Dissemination of materials made or acquired in violation of voyeurism in the second degree is a gross misdemeanor, unless the person has a prior conviction for voyeurism, dissemination of voyeuristic materials, or a sex offense, in which case the offense is a class C felony.

Voyeurism in the second degree is added to the statute requiring mandatory DNA testing upon conviction.

The two-year statute of limitations for gross misdemeanors is amended to provide an exception for voyeurism in the second degree. If the victim did not realize that he or she was being viewed, photographed or filmed, the prosecution must be commenced within one year of the victim's discovery that he or she was viewed, photographed or filmed or within two years of the offense, whichever is later. The statute of limitations for voyeurism in the first degree is amended to clarify that it is the later of within three years of the commission of the offense, or within two years of the victim's discovery that the

crime was committed.

EFFECT OF SENATE AMENDMENT(S):

Effect of Senate Amendment: The Senate amendment replaces the underlying bill with the provisions of SSB 5018. The amendment: (1) includes up-skirt type voyeurism as a class C felony, rather than a gross misdemeanor; (2) deletes the new crime of distributing voyeuristic material; (3) deletes language that specifically stated that the crimes of voyeurism may be committed for either the private or commercial purpose of arousing or gratifying anyone's sexual desires; (4) removes the amendment to the statute of limitations for voyeurism that clarified that the applicable limitation period is the later of three years from commission of the offense or two years from when the victim discovered that he or she had been viewed, photographed or filmed; and (5) removes provisions that are no longer necessary as a result of including the offense as a class C felony (gross misdemeanor statute of limitations provision and DNA testing provision).

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill is needed to hold accountable people who are engaging in reprehensible, premeditated behavior that can be quite traumatic for victims. It is difficult and rare to catch voyeurs, so they need to be seriously punished so that there is more of a deterrent. There is a strong link between voyeurism and other offenses like rape. Voyeurism is often a precursor for more serious sex offenses. We need to stop the behavior before it escalates. It is important that the crime be classified as a felony so that it is a part of the offender's criminal history and is subject to DNA testing and sex offender registration. If it is not classified as a felony, it should at least be added to the DNA testing statute. There are some concerns with potential unintended consequences, for example the scenario of a young boy engaged in a prank. It would be too harsh to have that behavior punished as a felony.

Testimony Against: None.

Testified: (In support) Larry Erickson, Washington Association of Sheriffs and Police Chiefs; Suzanne Brown, Washington Coalition of Sexual Assault Programs; Bryan Suits, KVI Radio; and Jolene Jang.

(In support, with amendments) Tom McBride, Washington Association of Prosecuting Attorneys.

(In support, with concerns) Sherry Appleton, Washington Defender's Association and Washington Association of Criminal Defense Lawyers.