

SENATE BILL REPORT

ESHB 1001

As Reported By Senate Committee On:
Judiciary, April 16, 2003

Title: An act relating to voyeurism.

Brief Description: Revising voyeurism laws.

Sponsors: 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: 3/21/03, 4/16/03 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Lidia Mori (786-7755)

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.

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 noted that casual intrusions and surveillance happen all the time when people go into public places;

therefore, public places do 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, must 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.

For the crime of voyeurism, if the victim did not realize that he or she was being viewed, photographed or filmed, 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 Amended Bill: The crime of voyeurism includes knowingly viewing, photographing or filming, for the purpose of arousing or gratifying the sexual desire of any person, the intimate areas of another person. It must be done without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place. Intimate areas is defined as any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view. A court may order the destruction of any photograph, film, digital image, videotape, or any other recording of an image that was made by the convicted voyeur.

Amended Bill Compared to Substitute Bill: The amended bill alters the definition of the crime of voyeurism to include behavior whereby a person, for the purpose of arousing or gratifying the sexual desire of any person, knowingly views, photographs, or films the intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place. Intimate areas is defined. If a person is convicted of voyeurism, the court may order the destruction of any photograph, film, digital image, videotape, or any other recording of an image that was made by the person.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This legislation doesn't target a particular business or socio-economic group; it helps protect all women and children. The notion that a woman could be standing with a police officer and someone could come up and take photographs under her skirt and sell them and the officer could not do anything about it is not right. The Washington Association of Prosecuting Attorneys leans towards not ranking the offense of voyeurism. Leaving it unranked gives the sentencing judge the discretion to impose between zero and 12 months incarceration, even if it's the offender's first or second conviction for voyeurism.

Testimony Against: None.

Testified: Jolene Jang; Christi Hurt, WA Coalition of Sexual Assault Programs; Tom McBride, WA Assn. of Prosecuting Attorneys; Larry Erickson, WASPC.