
ENGROSSED SUBSTITUTE HOUSE BILL 1001

State of Washington

58th Legislature

2003 Regular Session

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

READ FIRST TIME 01/21/03.

1 AN ACT Relating to voyeurism; amending RCW 9A.44.115, 9A.04.080,
2 and 43.43.754; adding a new section to chapter 9A.44 RCW; prescribing
3 penalties; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9A.44.115 and 1998 c 221 s 1 are each amended to read
6 as follows:

7 (1) As used in this section:

8 (a) "Intimate areas" means any portion of a person's body or
9 undergarments that is covered by clothing and intended to be protected
10 from public view;

11 (b) "Photographs" or "films" means the making of a photograph,
12 motion picture film, digital image, videotape, or any other recording
13 or transmission of the image of a person;

14 ((+b+)) (c) "Place where he or she would have a reasonable
15 expectation of privacy" means:

16 (i) A place where a reasonable person would believe that he or she
17 could disrobe in privacy, without being concerned that his or her
18 undressing was being photographed or filmed by another; or

1 (ii) A place where one may reasonably expect to be safe from casual
2 or hostile intrusion or surveillance;

3 ~~((e))~~ (d) "Surveillance" means secret observation of the
4 activities of another person for the purpose of spying upon and
5 invading the privacy of the person;

6 ~~((d))~~ (e) "Views" means the intentional looking upon of another
7 person for more than a brief period of time, in other than a casual or
8 cursory manner, with the unaided eye or with a device designed or
9 intended to improve visual acuity.

10 (2)(a) A person commits the crime of voyeurism in the first degree
11 if, for the purpose, whether private or commercial, of arousing or
12 gratifying the sexual desire of any person, he or she knowingly views,
13 photographs, or films another person, without that person's knowledge
14 and consent, while the person being viewed, photographed, or filmed is
15 in a place where he or she would have a reasonable expectation of
16 privacy.

17 (b) A person commits the crime of voyeurism in the second degree
18 if, under circumstances not constituting voyeurism in the first degree,
19 for the purpose, whether private or commercial, of arousing or
20 gratifying the sexual desire of any person, he or she knowingly views,
21 photographs, or films the intimate areas of another person without that
22 person's knowledge and consent and under circumstances where the person
23 has a reasonable expectation of privacy, whether in a public or private
24 place.

25 (3)(a) Voyeurism in the first degree is a class C felony.

26 (b) Voyeurism in the second degree is a gross misdemeanor, unless
27 the person who commits the crime of voyeurism in the second degree has
28 previously been convicted under this section or of a sex offense as
29 defined in RCW 9.94A.030, in which case voyeurism in the second degree
30 is a class C felony.

31 (4) This section does not apply to viewing, photographing, or
32 filming by personnel of the department of corrections or of a local
33 jail or correctional facility for security purposes or during
34 investigation of alleged misconduct by a person in the custody of the
35 department of corrections or the local jail or correctional facility.

36 (5) If a person is convicted of a violation of this section, the
37 court may order the destruction of any photograph, motion picture film,

1 digital image, videotape, or any other recording of an image that was
2 made by the person in violation of this section.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.44 RCW
4 to read as follows:

5 (1) A person who distributes, disseminates, or otherwise discloses
6 any photograph, motion picture film, digital image, videotape, or any
7 other recording that the person knows was made or acquired in violation
8 of RCW 9A.44.115(2)(a) is guilty of a class C felony.

9 (2) A person who distributes, disseminates, or otherwise discloses
10 any photograph, motion picture film, digital image, videotape, or any
11 other recording that the person knows was made or acquired in violation
12 of RCW 9A.44.115(2)(b) is guilty of a gross misdemeanor, unless the
13 person has previously been convicted under this section, under RCW
14 9A.44.115, or of a sex offense as defined in RCW 9.94A.030, in which
15 case the person is guilty of a class C felony.

16 **Sec. 3.** RCW 9A.04.080 and 1998 c 221 s 2 are each amended to read
17 as follows:

18 (1) Prosecutions for criminal offenses shall not be commenced after
19 the periods prescribed in this section.

20 (a) The following offenses may be prosecuted at any time after
21 their commission:

- 22 (i) Murder;
- 23 (ii) Homicide by abuse;
- 24 (iii) Arson if a death results;
- 25 (iv) Vehicular homicide;
- 26 (v) Vehicular assault if a death results;
- 27 (vi) Hit-and-run injury-accident if a death results (RCW
28 46.52.020(4)).

29 (b) The following offenses shall not be prosecuted more than ten
30 years after their commission:

- 31 (i) Any felony committed by a public officer if the commission is
32 in connection with the duties of his or her office or constitutes a
33 breach of his or her public duty or a violation of the oath of office;
- 34 (ii) Arson if no death results; or
- 35 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
36 reported to a law enforcement agency within one year of its commission;

1 except that if the victim is under fourteen years of age when the rape
2 is committed and the rape is reported to a law enforcement agency
3 within one year of its commission, the violation may be prosecuted up
4 to three years after the victim's eighteenth birthday or up to ten
5 years after the rape's commission, whichever is later. If a violation
6 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape
7 may not be prosecuted: (A) More than three years after its commission
8 if the violation was committed against a victim fourteen years of age
9 or older; or (B) more than three years after the victim's eighteenth
10 birthday or more than seven years after the rape's commission,
11 whichever is later, if the violation was committed against a victim
12 under fourteen years of age.

13 (c) Violations of the following statutes shall not be prosecuted
14 more than three years after the victim's eighteenth birthday or more
15 than seven years after their commission, whichever is later: RCW
16 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
17 9A.44.100(1)(b), or 9A.64.020.

18 (d) The following offenses shall not be prosecuted more than six
19 years after their commission: Violations of RCW 9A.82.060 or
20 9A.82.080.

21 (e) The following offenses shall not be prosecuted more than five
22 years after their commission: Any class C felony under chapter 74.09,
23 82.36, or 82.38 RCW.

24 (f) Bigamy shall not be prosecuted more than three years after the
25 time specified in RCW 9A.64.010.

26 (g) A violation of RCW 9A.56.030 must not be prosecuted more than
27 three years after the discovery of the offense when the victim is a tax
28 exempt corporation under 26 U.S.C. Sec. 501(c)(3).

29 (h) No other felony may be prosecuted more than three years after
30 its commission; except that in a prosecution under RCW 9A.44.115(2)(a),
31 if the person who was viewed, photographed, or filmed did not realize
32 at the time that he or she was being viewed, photographed, or filmed,
33 the prosecution must be commenced within two years of the time the
34 person who was viewed or in the photograph or film first learns that he
35 or she was viewed, photographed, or filmed, or within three years after
36 the commission of the offense, whichever is later.

37 (i) No gross misdemeanor may be prosecuted more than two years
38 after its commission; except that in a prosecution under RCW

1 9A.44.115(2)(b), if the person who was viewed, photographed, or filmed
2 did not realize at the time that he or she was being viewed,
3 photographed, or filmed, the prosecution must be commenced within one
4 year of the time the person who was viewed or in the photograph or film
5 first learns that he or she was viewed, photographed, or filmed, or
6 within two years after the commission of the offense, whichever is
7 later.

8 (j) No misdemeanor may be prosecuted more than one year after its
9 commission.

10 (2) The periods of limitation prescribed in subsection (1) of this
11 section do not run during any time when the person charged is not
12 usually and publicly resident within this state.

13 (3) If, before the end of a period of limitation prescribed in
14 subsection (1) of this section, an indictment has been found or a
15 complaint or an information has been filed, and the indictment,
16 complaint, or information is set aside, then the period of limitation
17 is extended by a period equal to the length of time from the finding or
18 filing to the setting aside.

19 **Sec. 4.** RCW 43.43.754 and 2002 c 289 s 2 are each amended to read
20 as follows:

21 (1) Every adult or juvenile individual convicted of a felony,
22 stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,
23 communicating with a minor for immoral purposes under RCW 9.68A.090,
24 voyeurism in the second degree under RCW 9A.44.115, or adjudicated
25 guilty of an equivalent juvenile offense must have a biological sample
26 collected for purposes of DNA identification analysis in the following
27 manner:

28 (a) For persons convicted of such offenses or adjudicated guilty of
29 an equivalent juvenile offense who do not serve a term of confinement
30 in a department of corrections facility, and do serve a term of
31 confinement in a city or county jail facility, the city or county shall
32 be responsible for obtaining the biological samples either as part of
33 the intake process into the city or county jail or detention facility
34 for those persons convicted on or after July 1, 2002, or within a
35 reasonable time after July 1, 2002, for those persons incarcerated
36 before July 1, 2002, who have not yet had a biological sample

1 collected, beginning with those persons who will be released the
2 soonest.

3 (b) For persons convicted of such offenses or adjudicated guilty of
4 an equivalent juvenile offense who do not serve a term of confinement
5 in a department of corrections facility, and do not serve a term of
6 confinement in a city or county jail facility, the local police
7 department or sheriff's office is responsible for obtaining the
8 biological samples after sentencing on or after July 1, 2002.

9 (c) For persons convicted of such offenses or adjudicated guilty of
10 an equivalent juvenile offense, who are serving or who are to serve a
11 term of confinement in a department of corrections facility or a
12 department of social and health services facility, the facility holding
13 the person shall be responsible for obtaining the biological samples
14 either as part of the intake process into such facility for those
15 persons convicted on or after July 1, 2002, or within a reasonable time
16 after July 1, 2002, for those persons incarcerated before July 1, 2002,
17 who have not yet had a biological sample collected, beginning with
18 those persons who will be released the soonest.

19 (2) Any biological sample taken pursuant to RCW 43.43.752 through
20 43.43.758 may be retained by the forensic laboratory services bureau,
21 and shall be used solely for the purpose of providing DNA or other
22 tests for identification analysis and prosecution of a criminal offense
23 or for the identification of human remains or missing persons. Nothing
24 in this section prohibits the submission of results derived from the
25 biological samples to the federal bureau of investigation combined DNA
26 index system.

27 (3) The director of the forensic laboratory services bureau of the
28 Washington state patrol shall perform testing on all biological samples
29 collected under subsection (1) of this section, to the extent allowed
30 by funding available for this purpose. The director shall give
31 priority to testing on samples collected from those adults or juveniles
32 convicted of a felony or adjudicated guilty of an equivalent juvenile
33 offense that is defined as a sex offense or a violent offense in RCW
34 9.94A.030.

35 (4) This section applies to all adults who are convicted of a sex
36 or violent offense after July 1, 1990; and to all adults who were
37 convicted of a sex or violent offense on or prior to July 1, 1990, and
38 who are still incarcerated on or after July 25, 1999. This section

1 applies to all juveniles who are adjudicated guilty of a sex or violent
2 offense after July 1, 1994; and to all juveniles who were adjudicated
3 guilty of a sex or violent offense on or prior to July 1, 1994, and who
4 are still incarcerated on or after July 25, 1999. This section applies
5 to all adults and juveniles who are convicted of a felony other than a
6 sex or violent offense, stalking under RCW 9A.46.110, harassment under
7 RCW 9A.46.020, or communicating with a minor for immoral purposes under
8 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,
9 on or after July 1, 2002; and to all adults and juveniles who were
10 convicted or adjudicated guilty of such an offense before July 1, 2002,
11 and are still incarcerated on or after July 1, 2002.

12 (5) This section creates no rights in a third person. No cause of
13 action may be brought based upon the noncollection or nonanalysis or
14 the delayed collection or analysis of a biological sample authorized to
15 be taken under RCW 43.43.752 through 43.43.758.

16 (6) The detention, arrest, or conviction of a person based upon a
17 data base match or data base information is not invalidated if it is
18 determined that the sample was obtained or placed in the data base by
19 mistake, or if the conviction or juvenile adjudication that resulted in
20 the collection of the biological sample was subsequently vacated or
21 otherwise altered in any future proceeding including but not limited to
22 posttrial or postfact-finding motions, appeals, or collateral attacks.

23 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 immediately.

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