

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1438

By: Representatives Hawks, Christiansen, Cloud, McCollum, Slape, Watson
By: Senator Rapert

For An Act To Be Entitled

AN ACT CONCERNING THE OFFENSES OF VOYEURISM AND VIDEO
VOYEURISM AND PERSONS WHO COMMIT REPEAT OFFENSES; AND
FOR OTHER PURPOSES.

Subtitle

CONCERNING THE OFFENSES OF VOYEURISM AND
VIDEO VOYEURISM AND PERSONS WHO COMMIT
REPEAT OFFENSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-16-101 is amended to read as follows:

5-16-101. Crime of video voyeurism.

(a) It is unlawful for a person to use ~~any~~ a camera, videotape, photo-optical, photoelectric, or ~~any~~ other image recording device for the purpose of secretly observing, viewing, photographing, filming, or videotaping ~~a~~ another person who is present in a residence, place of business, school, or other structure, or ~~any~~ a room or particular location within that structure, if ~~that~~ the other person:

- (1) Is in a private area out of public view;
- (2) Has a reasonable expectation of privacy; and
- (3) Has not consented to the observation.

(b) It is unlawful for a person to knowingly use an unmanned vehicle or aircraft, a camcorder, a motion picture camera, a photographic camera of any type, or other equipment that is concealed, ~~flown~~ operated in a manner to escape detection, or disguised to secretly or surreptitiously videotape,



film, photograph, record, or view by electronic means a another person:

(1) For the purpose of viewing any portion of the other person's body ~~that is covered with clothing~~ and for which the other person has a reasonable expectation of privacy;

(2) Without the knowledge or consent of the other person ~~being videotaped, filmed, photographed, recorded, or viewed by electronic means;~~ and

(3) Under circumstances in which the other person ~~being videotaped, filmed, photographed, recorded, or viewed by electronic means~~ has a reasonable expectation of privacy.

(c)(1)(A) ~~A violation of person who violates~~ subsection (a) of this section for a first or second offense upon conviction is guilty of a Class D felony.

(B) A person who violates subsection (a) of this section for a third or subsequent offense upon conviction is guilty of a Class C felony.

(2)(A) ~~A violation of person who violates~~ subsection (b) of this section upon conviction is guilty of a Class B misdemeanor.

(B) However, a ~~violation of a person who violates~~ subsection (b) of this section upon conviction is guilty of a Class A misdemeanor if the person:

(i) ~~The person who created the video recording, film, or photo obtained as described in subsection (b) of this section distributed~~ Distributed or transmitted ~~it~~ the video recording, film, or photo to another person; ~~or~~

(ii) ~~The person who created the video recording, film, or photo obtained as described in subsection (b) of this section posted it~~ Posted the video recording, film, or photo in a format accessible by another person via the internet; or

(iii) Has previously been convicted of a violation of this section or § 5-16-102.

~~The provisions of this section do~~ This section does not apply to ~~any of the following~~:

(1) Video recording or monitoring conducted under a court order from a court of competent jurisdiction;

(2) Security monitoring operated by or at the direction of an

occupant of a residence;

(3) Security monitoring operated by or at the direction of the owner or administrator of a place of business, school, or other structure;

(4) Security monitoring operated in a motor vehicle used for public transit;

(5) Security monitoring and observation associated with a correctional facility, regardless of the location of the monitoring equipment;

(6) Video recording or monitoring conducted by a law enforcement officer within the official scope of his or her duty; or

(7) Videotaping under § 12-18-615(b).

SECTION 2. Arkansas Code § 5-16-102 is amended to read as follows:

5-16-102. Voyeurism.

(a) As used in this section:

(1) "Nude or partially nude" means ~~any~~ a person who has less than a fully opaque covering over the genitals, pubic area, buttocks, or breast of a female;

(2) "Private place" means a place where a person may reasonably expect to be safe from being observed without his or her knowledge and consent; and

(3) "Public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility where a good, service, facility, privilege, advantage, or accommodation is offered, sold, or otherwise made available to the public.

(b) A person commits the offense of voyeurism if for the purpose of sexual arousal or gratification, he or she knowingly:

(1) Without the consent of each person who is present in the private place, personally or through the use of an unmanned vehicle or aircraft, looks into a private place that is, or is part of, a public accommodation and in which a person may reasonably be expected to be nude or partially nude; or

(2) Enters personally or through the use of an unmanned vehicle or aircraft another person's private property without the other person's consent and looks into any person's dwelling unit if ~~all of the following~~ apply:

(A) The person looks into the dwelling with the purpose to intrude upon or interfere with a person's privacy;

(B) The person looks into a part of the dwelling in which ~~an individual~~ a person is present;

(C) The ~~individual~~ person present has a reasonable expectation of privacy in that part of the dwelling; and

(D) The ~~individual~~ person present does not consent to the person's looking into that part of the dwelling.

~~(e)(1) Except as provided in subdivision (e)(2) of this section, a violation of this section is a Class A misdemeanor.~~

~~(2) A violation of this section is a Class D felony if:~~

~~(A) A victim is under seventeen (17) years of age; and~~

~~(B) The person who commits the offense holds a position of trust or authority over the victim.~~

(c) A person who violates this section upon conviction is guilty of a:

(1) Class D felony if:

(A) A victim is under seventeen (17) years of age and the person who commits the offense holds a position of trust or authority over the victim; or

(B) The person has previously been convicted of an offense under this section or § 5-16-101; or

(2) Class A misdemeanor if otherwise committed.

APPROVED: 3/13/19