

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.

~~(c)(1) Except as provided in subdivision (c)(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.