

1 S.218

2 Introduced by Senator Ayer

3 Referred to Committee on Judiciary

4 Date: January 5, 2010

5 Subject: Crimes; voyeurism

6 Statement of purpose: This bill proposes to clarify that it is illegal under the
7 voyeurism statute for a person who is engaged in consensual sexual conduct
8 with another to surreptitiously film or make a recording of that person's
9 intimate areas without his or her knowledge and consent. The bill also clarifies
10 that it is illegal to display or disclose such a film or recording to a third party.

11 An act relating to voyeurism

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. 13 V.S.A. § 2605 is amended to read:~~

14 ~~§ 2605. VOYEURISM~~

15 ~~(a) As used in this section:~~

16 * * *

17 ~~(3) "Circumstances in which a person has a reasonable expectation of~~
18 ~~privacy" means circumstances in which a reasonable person would believe that~~
19 ~~his or her intimate areas would not be visible to the public, regardless of~~
20 ~~whether that person is in a public or private area. This definition includes~~

1 ~~circumstances in which a person knowingly disrobes in front of another, but~~
2 ~~does not expect nor give consent for the other person to photograph, film, or~~
3 ~~record his or her intimate areas.~~

4 (4) "Intimate areas" means the naked or undergarment-clad genitals,
5 pubic area, buttocks, or female breast of a person.

6 (5) "Place where a person has a reasonable expectation of privacy"
7 means:

8 (A) a place in which a reasonable person would believe that he or she
9 could disrobe in privacy, without his or her undressing being viewed by
10 another; or

11 (B) a place in which a reasonable person would expect to be safe
12 from unwanted intrusion or surveillance.

13 * * *

14 (b) No person shall intentionally view, photograph, film, or record in any
15 format:

16 (1) the intimate areas of another person without that person's knowledge
17 and consent while the person being viewed, photographed, filmed, or recorded
18 is in a place where he or she would have a reasonable expectation of privacy;
19 or

1 ~~(2) the intimate areas of another person without that person's knowledge~~
2 and consent and under circumstances in which the person has a reasonable
3 expectation of privacy.

4 (c) No person shall ~~disseminate~~ display or disclose to a third party any
5 image recorded in violation of subsection (b) of this section.

6 (d) No person shall intentionally conduct surveillance or intentionally
7 photograph, film, or record in any format a person without that person's
8 knowledge and consent while the person being surveilled, photographed,
9 filmed, or recorded is in a place where he or she would have a reasonable
10 expectation of privacy within a home or residence. Bona fide private
11 investigators and bona fide security guards engaged in otherwise lawful
12 activities within the scope of their employment are exempt from this
13 subsection.

14 (e) This section shall apply to a person who intentionally views,
15 photographs, films, or records the intimate areas of a person as part of a
16 security or theft prevention policy or program at a place of business.

17 * * *

18 (i) For a first offense, a person who violates subsection (b) or (d) of this
19 section shall be imprisoned not more than two years or fined not more than
20 \$1,000.00, or both. For a second or subsequent offense, a person who violates
21 subsection (b) or (d) of this section shall be imprisoned not more than three

1 ~~years or fined not more than \$5,000.00, or both. A person who violates~~
2 ~~subsection (c) of this section shall be imprisoned not more than five years or~~
3 ~~fined not more than \$5,000.00, or both.~~

Sec. 1. 13 V.S.A. § 2605 is amended to read:

§ 2605. VOYEURISM

(a) As used in this section:

(1) “Bona fide private investigator or bona fide security guard” means an individual lawfully providing services, whether licensed or unlicensed, pursuant to sections 3151 and 3151a of Title 26.

(2) “Female breast” means any portion of the female breast below the top of the areola.

(3) “Circumstances in which a person has a reasonable expectation of privacy” means circumstances in which a reasonable person would believe that his or her intimate areas would not be visible to the public, regardless of whether that person is in a public or private area. This definition includes circumstances in which a person knowingly disrobes in front of another, but does not expect nor give consent for the other person to photograph, film, or record his or her intimate areas.

(4) “Intimate areas” means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of a person.

(5) “Place where a person has a reasonable expectation of privacy” means:

(A) a place in which a reasonable person would believe that he or she could disrobe in privacy, without his or her undressing being viewed by another; or

(B) a place in which a reasonable person would expect to be safe from unwanted intrusion or surveillance.

(6) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

(7) “View” means the intentional looking upon another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or a device designed or intended to improve visual acuity.

(b) No person shall intentionally view, photograph, film, or record in any format:

(1) the intimate areas of another person without that person's knowledge and consent while the person being viewed, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy; or

(2) the intimate areas of another person without that person's knowledge and consent and under circumstances in which the person has a reasonable expectation of privacy.

(c) No person shall ~~disseminate~~ display or disclose to a third party any image recorded in violation of subsection (b), (d), or (e) of this section.

(d) No person shall intentionally conduct surveillance or intentionally photograph, film, or record in any format a person without that person's knowledge and consent while the person being surveilled, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy within a home or residence. Bona fide private investigators and bona fide security guards engaged in otherwise lawful activities within the scope of their employment are exempt from this subsection.

(e) No person shall intentionally photograph, film, or record in any format a person without that person's knowledge and consent while that person is in a place where a person has a reasonable expectation of privacy and that person is engaged in a sexual act as defined in section 3251 of this title.

(f) This section shall apply to a person who intentionally views, photographs, films, or records the intimate areas of a person as part of a security or theft prevention policy or program at a place of business.

~~(f)~~(g) This section shall not apply to:

(1) a law enforcement officer conducting official law enforcement activities in accordance with state and federal law; or

(2) official activities of the department of corrections, a law enforcement agency, the agency of human services, or a court for security purposes or during the investigation of alleged misconduct by a person in the custody of the department of corrections, a law enforcement agency, the agency of human services, or a court.

~~(g)~~(h) This section is not intended to infringe upon the freedom of the press to gather and disseminate news as guaranteed by the First Amendment to the - Constitution of the United States.

~~(h)~~(i) It shall be an affirmative defense to a violation of subsection (b) of this section that the defendant was a bona fide private investigator or bona fide security guard conducting surveillance in the ordinary course of business,

and the violation was unintentional and incidental to otherwise legal surveillance. However, an unintentional and incidental violation of subsection (b) of this section shall not be a defense to a violation of subsection (c).

~~(j)~~(i) For a first offense, a person who violates subsection (b) ~~or~~ (d), or (e) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both. For a second or subsequent offense, a person who violates subsection (b) ~~or~~ (d), or (e) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both. A person who violates subsection (c) of this section shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.