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H.105

Introduced by Representatives Rachelson of Burlington, Ram of Burlington,
Burke of Brattleboro, Chesnut-Tangerman of
Middletown Springs, Christie of Hartford, Gonzalez of
Winooski, Jewett of Ripton, Krowinski of Burlington, LaLonde
of South Burlington, Lenex of Shelburne, Masland of Thetford,
McCullough of Williston, Morris of Bennington, Olsen of
Londonderry, Russell of Rutland City, Till of Jericho,
Townsend of South Burlington, Trieber of Rockingham, Wright
of Burlington, Yantachka of Charlotte, and Zagar of Barnard

Referred to Committee on

Date:

Subject: Crimes; lewd and indecent conduct; voyeurism

Statement of purpose of bill as introduced: This bill proposes to create
criminal sanctions and civil remedies for the display or disclosure of sexually
explicit images without the subject's knowledge and consent.

~~An act relating to disclosure of sexually explicit images without consent~~ *An
act relating to disclosure of sexually explicit images without consent,
charging fees for removing booking photographs from the Internet, and
expanding the scope of practice of Level II certified law enforcement
officers*

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

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

2 § 2605. VOYEURISM

3 (a) As used in this section:

4 (1) “Bona fide private investigator or bona fide security guard” means
5 an individual lawfully providing services, whether licensed or unlicensed,
6 pursuant to 26 V.S.A. §§ 3151 and 3151a.

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

9 (3) “Circumstances in which a person has a reasonable expectation of
10 privacy” means circumstances in which a reasonable person would believe that
11 his or her intimate areas or engagement in sexual conduct would not be visible
12 to the public, regardless of whether that person is in a public or private area.

13 This definition includes circumstances in which:

14 (A) a person knowingly disrobes or engages in sexual conduct in
15 front of another, but does not expect nor give consent for the other person to
16 photograph, film, or record his or her intimate areas or sexual conduct;

17 (B) a person knowingly disrobes or engages in sexual conduct in
18 front of another and gives consent for the other person to photograph, film, or
19 record his or her intimate areas or sexual conduct, but not to display or disclose
20 the photograph, film, or recording to a third party.

1 ~~(4) "Intimate areas" means the naked or undergarment clad genitals,~~
2 public area, buttocks, or female breast of a person.

3 (5) "Place where a person has a reasonable expectation of
4 privacy" means:

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

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

10 (6) "Sexual conduct" shall have the same meaning as in section 2821 of
11 this title.

12 (7) "Surveillance" means secret observation of the activities of another
13 person for the purpose of spying upon and invading the privacy of the person.

14 ~~(7)~~(8) "View" means the intentional looking upon another person for
15 more than a brief period of time, in other than a casual or cursory manner, with
16 the unaided eye or a device designed or intended to improve visual acuity.

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

19 (1) the intimate areas of another person without that person's knowledge
20 and consent while the person being viewed, photographed, filmed, or recorded

1 ~~is in a place where he or she would have a reasonable expectation of~~

2 privacy; or

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

6 (c) No person shall intentionally or knowingly display or disclose to a
7 third party:

8 (1) any image recorded in violation of subsection (b), (d), or (e) of
9 this section;

10 (2) any photograph, film, or recording of another person whose intimate
11 areas are exposed or who is engaged in sexual conduct under circumstances in
12 which a person has a reasonable expectation of privacy without the subject's
13 knowledge and consent to the display or disclosure;

14 (3) any digital or otherwise altered image of another person to
15 fraudulently portray that person with exposed intimate areas or engaged in
16 sexual conduct without the subject's knowledge and consent to the display
17 or disclosure.

18 (d) No person shall intentionally conduct surveillance or intentionally
19 photograph, film, or record in any format a person without that person's
20 knowledge and consent while the person being surveilled, photographed,
21 filmed, or recorded is in a place where he or she would have a reasonable

1 ~~expectation of privacy within a home or residence. Bona fide private~~

2 investigators and bona fide security guards engaged in otherwise lawful
3 activities within the scope of their employment are exempt from
4 this subsection.

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

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

12 (g) This section shall not apply to:

13 (1) to a law enforcement officer conducting official law enforcement
14 activities in accordance with ~~state~~ State and federal law; ~~or~~

15 (2) to official activities of the Department of Corrections, a law
16 enforcement agency, the Agency of Human Services, or a court for security
17 purposes or during the investigation of alleged misconduct by a person in the
18 custody of the Department of Corrections, a law enforcement agency, the
19 Agency of Human Services, or a court; or

1 ~~(3) if the photograph, film, or recording was created under an agreement~~
2 by the person appearing in the image for its public use, display, or disclosure
3 or otherwise intended by that person for public use, display, or disclosure.

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

7 (i) It shall be an affirmative defense to a violation of subsection (b) of this
8 section that the defendant was a bona fide private investigator or bona fide
9 security guard conducting surveillance in the ordinary course of business, and
10 the violation was unintentional and incidental to otherwise legal surveillance.
11 However, an unintentional and incidental violation of subsection (b) of this
12 section shall not be a defense to a violation of subsection (c) of this section.

13 (j)(1) For a first offense, a person who violates subsection (b), (d), or (e) of
14 this section shall be imprisoned not more than two years or fined not more than
15 \$1,000.00, or both. For a second or subsequent offense, a person who violates
16 subsection (b), (d), or (e) of this section shall be imprisoned not more than
17 three years or fined not more than \$5,000.00, or both.

18 (2) A person who violates ~~subsection (e)~~ subdivision (c)(1) of this
19 section shall be imprisoned not more than five years or fined not more than
20 \$5,000.00, or both. A person who violates subdivision (c)(2) or (c)(3) of this

1 ~~section shall be imprisoned not more than three years or fined not more than~~
2 ~~\$3,000.00, or both.~~

3 ~~(k)(1) A plaintiff shall have a private cause of action against a defendant~~
4 ~~who, without the plaintiff's knowledge and consent, causes the plaintiff~~
5 ~~emotional distress or economic loss by intentionally displaying or disclosing to~~
6 ~~a third party:~~

7 ~~(A) any image of the plaintiff recorded in violation of subsection (b),~~
8 ~~(d), or (e) of this section; or~~

9 ~~(B) any photograph, film, or recording of the plaintiff whose intimate~~
10 ~~areas are exposed or who is engaged in sexual conduct under circumstances in~~
11 ~~which a person has a reasonable expectation of privacy;~~

12 ~~(C) any digital or otherwise altered image of the plaintiff to~~
13 ~~fraudulently portray the plaintiff with exposed intimate areas or engaged in~~
14 ~~sexual conduct without the plaintiff's knowledge and consent to the display~~
15 ~~or disclosure.~~

16 ~~(2) In addition to any other relief available at law, the Court may order~~
17 ~~equitable relief, including a temporary restraining order, a preliminary~~
18 ~~injunction, or a permanent injunction ordering the defendant to cease display~~
19 ~~or disclosure of the image. The Court may grant injunctive relief maintaining~~
20 ~~the confidentiality of a plaintiff using a pseudonym.~~

1 ~~(3) The Court may also grant, after holding a properly noticed hearing,~~
2 ~~reasonable attorney's fees and costs to the prevailing plaintiff.~~

3 Sec. 2. EFFECTIVE DATE

4 ~~This act shall take effect on July 1, 2015.~~

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

§ 2605. VOYEURISM

(a) As used in this section:

** * **

(6) "Sexual conduct" shall have the same meaning as in section 2821 of this title.

(7) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

~~(7)~~(8) "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.

** * **

(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 conduct.

** * **

~~Sec. 2. 13 V.S.A. § 2606 is added to read:~~

~~§ 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT
CONSENT~~

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

~~(1) "Disclose" includes transfer, publish, distribute, exhibit, or
reproduce.~~

~~(2) "Minor" means a person less than 18 years of age.~~

~~(3) "Nude" means any one or more of the following uncovered parts of
the human body:~~

~~(A) genitals;~~

~~(B) pubic area;~~

~~(C) buttocks; or~~

~~(D) female breast below the top of the areola.~~

~~(4) "Sexual conduct" shall have the same meaning as in section 2821 of
this title.~~

~~(5) "Visual image" includes a photograph, film, videotape, recording,
or digital reproduction.~~

~~(b)(1) No person shall knowingly disclose a visual image of an identifiable
person who is nude or who is engaged in sexual conduct when the actor knows
or should have known that the depicted person did not consent to the
disclosure. A person may be identifiable from the image itself or information~~

~~displayed in connection with the image. Consent to recording of the visual image does not, by itself, constitute consent for disclosure of the image. Except as provided in subdivision (3) of this subsection, a person who violates this subdivision shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.~~

~~(2) No person shall violate subdivision (1) of this subsection with the intent to harm the person depicted in the image. Except as provided in subdivision (3) of this subsection, a person who violates this subdivision shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.~~

~~(3) A delinquency petition shall be filed in the Family Division of the Superior Court for a minor who violates subdivision (1) or (2) of this subsection. The minor may be referred to the Juvenile Diversion Program of the district in which the action is filed.~~

~~(4) No person shall violate subdivision (1) of this subsection with the intent of disclosing the image for profit or knowingly maintain an Internet website, online service, online application, or mobile application for the purpose of disclosing such images. A person who violates this subdivision shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.~~

~~(c) A person who maintains an Internet website, online service, online application, or mobile application that contains a visual image of an identifiable person who is nude or who is engaged in sexual conduct shall not solicit or accept a fee or other consideration to remove, delete, correct, modify, or refrain from posting or disclosing the visual image if requested by the depicted person.~~

~~(d) This section shall not apply to:~~

~~(1) Images involving voluntary exposure nudity or sexual conduct in public or commercial settings, or in a place where a person does not have a reasonable expectation of privacy.~~

~~(2) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment.~~

~~(3) Disclosures of materials that constitute a matter of public concern.~~

~~(4) Interactive computer services, as defined in 47 U.S.C. § 230(f)(2), or information services or telecommunications services, as defined in 47 U.S.C. § 153, for content provided by another person. This subdivision shall not preclude other remedies available at law.~~

~~(e)(1) A plaintiff shall have a private cause of action against a defendant who violates subsection (b) of this section and causes the plaintiff emotional distress or economic loss.~~

~~(2) In addition to any other relief available at law, the Court may order equitable relief including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the image. The Court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.~~

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

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

§ 2605. VOYEURISM

(a) As used in this section:

** * **

(6) “Sexual conduct” shall have the same meaning as in section 2821 of this title.

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

(7)(8) “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.

** * **

(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 conduct.

* * *

Sec. 2. 13 V.S.A. § 2606 is added to read:

§ 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT
CONSENT

(a) As used in this section:

(1) “Disclose” includes transfer, publish, distribute, exhibit, or reproduce.

(2) “Harm” means physical injury, financial injury, or serious emotional distress.

(3) “Nude” means any one or more of the following uncovered parts of the human body:

(A) genitals;

(B) pubic area;

(C) anus; or

(D) post-pubescent female nipple.

(4) “Sexual conduct” shall have the same meaning as in section 2821 of this title.

(5) “Visual image” includes a photograph, film, videotape, recording, or digital reproduction.

(b)(1) A person violates this section if he or she knowingly discloses a visual image of an identifiable person who is nude or who is engaged in sexual conduct, without his or her consent, with the intent to harm, harass, intimidate, threaten, or coerce the person depicted, and the disclosure would cause a reasonable person to suffer harm. A person may be identifiable from the image itself or information offered in connection with the image. Consent to recording of the visual image does not, by itself, constitute consent for disclosure of the image. A person who violates this subdivision (1) shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(2) A person who violates subdivision (1) of this subsection with the intent of disclosing the image for financial profit shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(c) A person who maintains an Internet website, online service, online application, or mobile application that contains a visual image of an identifiable person who is nude or who is engaged in sexual conduct shall not solicit or accept a fee or other consideration to remove, delete, correct, modify, or refrain from posting or disclosing the visual image if requested by the depicted person.

(d) This section shall not apply to:

(1) Images involving voluntary nudity or sexual conduct in public or commercial settings or in a place where a person does not have a reasonable expectation of privacy.

(2) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment.

(3) Disclosures of materials that constitute a matter of public concern.

(4) Interactive computer services, as defined in 47 U.S.C. § 230(f)(2), or information services or telecommunications services, as defined in 47 U.S.C. § 153, for content solely provided by another person. This subdivision shall not preclude other remedies available at law.

(e)(1) A plaintiff shall have a private cause of action against a defendant who knowingly discloses, without the plaintiff's consent, an identifiable visual image of the plaintiff while he or she is nude or engaged in sexual conduct and the disclosure causes the plaintiff harm.

(2) In addition to any other relief available at law, the Court may order equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the image. The Court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.

Sec. 3. 9 V.S.A. chapter 117 is redesignated to read:

CHAPTER 117. INTERNET ~~SALES~~ COMMERCE

Sec. 4. 9 V.S.A. § 4191 is added to read:

§ 4191. REMOVAL OF BOOKING PHOTOGRAPHS FROM THE
INTERNET; FEES PROHIBITED

(a) As used in this section, "booking photograph" means any photograph taken by a law enforcement office or other authorized person pursuant to 20 V.S.A. chapter 117.

(b) A person who posts or otherwise disseminates a booking photograph on the Internet shall not solicit or accept a fee or other consideration to remove, delete, correct, modify, or refrain from posting or disseminating the booking photograph if requested by the depicted person.

(c) A person who violates subsection (b) of this section shall be assessed a civil penalty of not more than \$1,000.00 for the first violation and not more than \$2,500.00 for each subsequent violation.

(d) A person who sustains damages or injury as a result of a violation of this section may bring an action in Superior Court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees. The Court may issue an award for the person's actual damages or \$500.00 for a first violation, or \$1,000.00 for each subsequent violation, whichever is greater. This subsection shall not limit any other

claims a person who sustains damages or injury as a result of a violation of this section may have under applicable law.

(e) This section shall not be construed to limit a person's liability under any other law.

Sec. 5. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(26) Violations of 9 V.S.A. § 4191 relating to the solicitation or acceptance of a fee to remove a booking photograph from the Internet.

* * *

Sec. 6. 20 V.S.A. § 2358(b)(1) and (2), as amended by 2014 Acts and Resolves No. 141, Sec. 5, are amended to read:

(1) Level I certification.

(A) An applicant for certification as a Level I law enforcement officer shall first complete an off-site training program prior to entering and completing Level I basic training. Level I basic training shall include training to react to the circumstances described in subdivision (B) of this subdivision (1).

(B)(i) The scope of practice of a Level I law enforcement officer shall be limited to security, transport, vehicle escorts, and traffic control, as those terms are defined by the Council by rule, except that a Level I officer may react in the following circumstances if the officer determines that it is necessary to do any of the following:

(I) protect an individual in the presence of the officer from the imminent infliction of serious bodily injury;

(II) provide immediate assistance to an individual who has suffered or is threatened with serious bodily injury;

(III) detain or arrest an individual ~~whom~~ who the officer reasonably believes has committed a crime in the presence of the officer; or

(IV) detain or arrest an individual ~~whom~~ who the officer reasonably believes has committed a felony under Vermont law.

(ii) If a Level I officer reacts to any of the circumstances described in subdivision (i) of this subdivision (B), he or she shall call upon an officer certified to respond and assume law enforcement authority over the incident.

(2) Level II certification.

(A) An applicant for certification as a Level II law enforcement officer shall first complete Level II basic training and may then become certified in a specialized practice area as set forth in subdivision (B)(ii) of this subdivision (2). Level II basic training shall include training to respond to

calls regarding alleged crimes in progress and to react to the circumstances described in subdivision (B)(iii) of this subdivision (2).

(B)(i) Except as provided in subdivisions (ii) and (iii) of this subdivision (B), the scope of practice of a Level II law enforcement officer shall be limited to investigating the following matters:

(I) 7 V.S.A. § 658 (sale or furnishing to minors; enabling consumption by minors);

(II) 13 V.S.A. chapter 7 (advertisements);

~~(H)~~(III) 13 V.S.A. chapter 8 (humane and proper treatment of animals);

(IV) 13 V.S.A. §§ 505 (fourth degree arson), 508 (setting fires), and 509 (attempts);

~~(H)~~(V) 13 V.S.A. chapter 19, subchapter 1 (riots);

~~(H)~~(VI) 13 V.S.A. §§ 1022 (noise in the nighttime), 1023 (simple assault), 1025 (recklessly endangering another person), 1026 (disorderly conduct), ~~and~~ 1027 (disturbing peace by use of telephone or other electronic communications), 1030 (violation of an abuse prevention order, an order against stalking or sexual assault, or a protective order concerning contact with a child), 1031 (interference with access to emergency services), 1042 (domestic assault), and 1062 (stalking);

~~(V)~~(VII) 13 V.S.A. chapter 35 (escape);

~~(VI)~~(VIII) 13 V.S.A. chapter 41 (false alarms and reports);

~~(VII)~~(IX) 13 V.S.A. chapter 45 (flags and ensigns);

~~(VIII)~~(X) 13 V.S.A. chapter 47 (frauds);

~~(IX)~~(XI) 13 V.S.A. chapter 49 (fraud in commercial transactions);

~~(X)~~(XII) 13 V.S.A. chapter 51 (gambling and lotteries);

~~(XI)~~(XIII) 13 V.S.A. chapter 57 (larceny and embezzlement), except for subchapter 2 (embezzlement);

~~(XII)~~(XIV) 13 V.S.A. chapter 67 (public justice and public officers);

~~(XIII)~~(XV) 13 V.S.A. chapter 69 (railroads);

~~(XIV)~~(XVI) 13 V.S.A. chapter 77 (trees and plants);

~~(XV)~~(XVII) 13 V.S.A. chapter 81 (trespass and malicious injuries to property);

~~(XVI)~~(XVIII) 13 V.S.A. chapter 83 (vagrants);

~~(XVII)~~(XIX) 13 V.S.A. chapter 85 (weapons);

~~(XVIII)~~(XX) 18 V.S.A. §§ 4230(a), 4230c, and 4230d (marijuana possession);

(XXI) 18 V.S.A. § 4231(a) (cocaine possession);

(XXII) 18 V.S.A. § 4232(a) (LSD possession);

(XXIII) 18 V.S.A. § 4233(a) (heroin possession);

(XXIV) 18 V.S.A. § 4234(a) (depressant, stimulant, or narcotic drug possession);

(XXV) 18 V.S.A. § 4234a(a) (methamphetamine possession);

(XXVI) 18 V.S.A. § 4235(b) (hallucinogenic drug possession);

(XXVII) 18 V.S.A. § 4235a(a) (ecstasy possession);

(XXVIII) 18 V.S.A. § 4476 (drug paraphernalia offenses);

(XXIX) 21 V.S.A. § 692(c)(2) (criminal violation of stop-work order);

(XXX) any misdemeanor set forth in Title 23 of the Vermont Statutes Annotated, except for 23 V.S.A. chapter 13, subchapter 13 (drunken driving), 23 V.S.A. § 3207a (snowmobiling under the influence), 23 V.S.A. § 3323 (boating under the influence), or 23 V.S.A. § 3506(b)(8) (operating an all-terrain vehicle under the influence);

(XXXI) any motor vehicle accident that includes property damage and injuries, as permitted by the Council by rule;

(XXXII) any matter within the jurisdiction of the Judicial Bureau as set forth in 4 V.S.A. § 1102;

~~(XIX)~~(XXXIII) municipal ordinance violations;

~~(XX)~~(XXXIV) any matter within the jurisdiction of a game warden or deputy game warden as set forth in 10 V.S.A. chapter 103, subchapter 4 (game wardens); and

~~(XXI)~~(XXXV) any matter within the scope of practice of a Level I law enforcement officer.

(ii) In addition to the scope of practice permitted under subdivision (i) of this subdivision (B), a Level II law enforcement officer may also practice in additional areas approved in writing by the Council based on a special certification or training approved by the Council ~~pursuant to rules adopted by the Council.~~

(iii) Notwithstanding the limitations set forth in subdivisions (i) and (ii) of this subdivision (B), a Level II officer may respond to calls regarding alleged crimes in progress and may react in the following circumstances if the officer determines that it is necessary to do any of the following:

(I) protect an individual in the presence of the officer from the imminent infliction of serious bodily injury;

(II) provide immediate assistance to an individual who has suffered or is threatened with serious bodily injury;

(III) detain or arrest an individual ~~whom~~ who the officer reasonably believes has committed a crime in the presence of the officer; or

(IV) detain or arrest an individual ~~whom~~ who the officer reasonably believes has committed a felony under Vermont law.

(iv) If a Level II officer responds to calls regarding alleged crimes in progress or reacts to any of the circumstances described in subdivision (iii) of this subdivision (B) and that response or reaction is outside the scope of his or her scope of practice, he or she shall call upon an officer certified to respond and assume law enforcement authority over the incident.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2015.