

SENATE BILL REPORT

SB 5018

As Reported By Senate Committee On:
Judiciary, January 30, 2003

Title: An act relating to voyeurism.

Brief Description: Revising laws against voyeurism.

Sponsors: Senators Roach, Winsley, Zarelli, Honeyford, Johnson, Carlson, Schmidt, Mulliken, Esser, T. Sheldon, Franklin, Fraser, McCaslin, Kastama, Keiser, Kline, Regala, Sheahan and Kohl-Welles.

Brief History:

Committee Activity: Judiciary: 1/22/03, 1/30/03 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5018 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Lidia Mori (786-7755)

Background: "Upskirt" photography is accomplished by concealing a camera in another article, a sack or gym bag for example, which is then placed on the floor or held beneath a female's skirt or dress. The camera, pointing up out of the sack or bag, is used to photograph the female's body and underwear.

The current voyeurism statute provides a criminal penalty for viewing, photographing, or filming another person, without that person's knowledge and consent, for the purpose of arousing or gratifying any person's sexual desire. The statute only applies if the person being viewed is in a place where he or she would have a reasonable expectation of privacy. The statute defines the place where a person would have a reasonable expectation of privacy as either a place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance. In *State v. Glas*, the Washington Supreme Court held that the voyeurism statute does not render upskirt photography unlawful in public places. The court noted that casual surveillance occurs frequently in public. Therefore, public places could not logically constitute locations where a person could reasonably expect no casual or hostile intrusion or surveillance. It concluded that the plain meaning of the current statute does not cover intrusions of privacy in public places.

Summary of Substitute Bill: The crime of voyeurism includes knowingly viewing, photographing or filming, for the purpose of arousing or gratifying the sexual desire of any

person, the intimate areas of another person. It must be done without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place. Intimate areas is defined as any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view. A court may order the destruction of any photograph, film, digital image, videotape, or any other recording of an image that was made by the convicted voyeur.

Substitute Bill Compared to Original Bill: In the substitute bill, a person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films the intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place. "Intimate areas" is defined. A judge may order the destruction of any photograph, film, digital image, videotape, or any other recording of an image that was made by the convicted voyeur.

Appropriation: None.

Fiscal Note: Requested on January 15, 2003.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The people that do upskirt photography are very clever and this kind of behavior is premeditated and intentional. Voyeurism should be a ranked felony so offenders get one to five years. The tapes should be destroyed and protective orders issued for victims. Twenty-four states have laws against this kind of photography, including Ohio. It was suggested that perhaps an exception should be made for airport security. Department stores should have to post a notice when using surveillance in dressing rooms.

Testimony Against: None.

Testified: Tom McBride, WA Assoc. of Prosecuting Attorneys; Suzanne Brown, WA Coalition of Sexual Assault Programs; Larry Erickson, WA Assoc. of Sheriffs and Police Chiefs; Sherry Appleton, WA Defender Assoc., WA Assoc. of Criminal Defense Lawyers; Jolene Jang.