
SUBSTITUTE HOUSE BILL 1001

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lantz, Chase, Ruderman, Fromhold, Dickerson, Conway, Schindler, Veloria, O'Brien, Kenney, Campbell, Nixon and Darneille)

READ FIRST TIME 01/21/03.

1 AN ACT Relating to voyeurism; amending RCW 9A.44.115, 9A.04.080,
2 and 43.43.754; prescribing penalties; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9A.44.115 and 1998 c 221 s 1 are each amended to read
5 as follows:

6 (1) As used in this section:

7 (a) "Intimate areas" means any portion of a person's body or
8 undergarments that is covered by clothing and intended to be protected
9 from public view;

10 (b) "Photographs" or "films" means the making of a photograph,
11 motion picture film, digital image, videotape, or any other recording
12 or transmission of the image of a person;

13 ~~((b))~~ (c) "Place where he or she would have a reasonable
14 expectation of privacy" means:

15 (i) A place where a reasonable person would believe that he or she
16 could disrobe in privacy, without being concerned that his or her
17 undressing was being photographed or filmed by another; or

18 (ii) A place where one may reasonably expect to be safe from casual
19 or hostile intrusion or surveillance;

1 (~~(e)~~) (d) "Surveillance" means secret observation of the
2 activities of another person for the purpose of spying upon and
3 invading the privacy of the person;

4 (~~(d)~~) (e) "Views" means the intentional looking upon of another
5 person for more than a brief period of time, in other than a casual or
6 cursory manner, with the unaided eye or with a device designed or
7 intended to improve visual acuity.

8 (2)(a) A person commits the crime of voyeurism in the first degree
9 if, for the purpose of arousing or gratifying the sexual desire of any
10 person, he or she knowingly views, photographs, or films another
11 person, without that person's knowledge and consent, while the person
12 being viewed, photographed, or filmed is in a place where he or she
13 would have a reasonable expectation of privacy.

14 (b) A person commits the crime of voyeurism in the second degree
15 if, under circumstances not constituting voyeurism in the first degree,
16 for the purpose of arousing or gratifying the sexual desire of any
17 person, he or she knowingly views, photographs, or films the intimate
18 areas of another person without that person's knowledge and consent and
19 under circumstances where the person has a reasonable expectation of
20 privacy, whether in a public or private place.

21 (3)(a) Voyeurism in the first degree is a class C felony.

22 (b) Voyeurism in the second degree is a gross misdemeanor, unless
23 the person who commits the crime of voyeurism in the second degree has
24 previously been convicted under this section or of a sex offense as
25 defined in RCW 9.94A.030, in which case voyeurism in the second degree
26 is a class C felony.

27 (4) This section does not apply to viewing, photographing, or
28 filming by personnel of the department of corrections or of a local
29 jail or correctional facility for security purposes or during
30 investigation of alleged misconduct by a person in the custody of the
31 department of corrections or the local jail or correctional facility.

32 (5) If a person is convicted of a violation of this section, the
33 court may order the destruction of any photograph, motion picture film,
34 digital image, videotape, or any other recording of an image that was
35 made by the person in violation of this section.

36 **Sec. 2.** RCW 9A.04.080 and 1998 c 221 s 2 are each amended to read
37 as follows:

1 (1) Prosecutions for criminal offenses shall not be commenced after
2 the periods prescribed in this section.

3 (a) The following offenses may be prosecuted at any time after
4 their commission:

5 (i) Murder;

6 (ii) Homicide by abuse;

7 (iii) Arson if a death results;

8 (iv) Vehicular homicide;

9 (v) Vehicular assault if a death results;

10 (vi) Hit-and-run injury-accident if a death results (RCW
11 46.52.020(4)).

12 (b) The following offenses shall not be prosecuted more than ten
13 years after their commission:

14 (i) Any felony committed by a public officer if the commission is
15 in connection with the duties of his or her office or constitutes a
16 breach of his or her public duty or a violation of the oath of office;

17 (ii) Arson if no death results; or

18 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
19 reported to a law enforcement agency within one year of its commission;
20 except that if the victim is under fourteen years of age when the rape
21 is committed and the rape is reported to a law enforcement agency
22 within one year of its commission, the violation may be prosecuted up
23 to three years after the victim's eighteenth birthday or up to ten
24 years after the rape's commission, whichever is later. If a violation
25 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape
26 may not be prosecuted: (A) More than three years after its commission
27 if the violation was committed against a victim fourteen years of age
28 or older; or (B) more than three years after the victim's eighteenth
29 birthday or more than seven years after the rape's commission,
30 whichever is later, if the violation was committed against a victim
31 under fourteen years of age.

32 (c) Violations of the following statutes shall not be prosecuted
33 more than three years after the victim's eighteenth birthday or more
34 than seven years after their commission, whichever is later: RCW
35 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
36 9A.44.100(1)(b), or 9A.64.020.

37 (d) The following offenses shall not be prosecuted more than six

1 years after their commission: Violations of RCW 9A.82.060 or
2 9A.82.080.

3 (e) The following offenses shall not be prosecuted more than five
4 years after their commission: Any class C felony under chapter 74.09,
5 82.36, or 82.38 RCW.

6 (f) Bigamy shall not be prosecuted more than three years after the
7 time specified in RCW 9A.64.010.

8 (g) A violation of RCW 9A.56.030 must not be prosecuted more than
9 three years after the discovery of the offense when the victim is a tax
10 exempt corporation under 26 U.S.C. Sec. 501(c)(3).

11 (h) No other felony may be prosecuted more than three years after
12 its commission; except that in a prosecution under RCW 9A.44.115(2)(a),
13 if the person who was viewed, photographed, or filmed did not realize
14 at the time that he or she was being viewed, photographed, or filmed,
15 the prosecution must be commenced within two years of the time the
16 person who was viewed or in the photograph or film first learns that he
17 or she was viewed, photographed, or filmed, or within three years after
18 the commission of the offense, whichever is later.

19 (i) No gross misdemeanor may be prosecuted more than two years
20 after its commission; except that in a prosecution under RCW
21 9A.44.115(2)(b), if the person who was viewed, photographed, or filmed
22 did not realize at the time that he or she was being viewed,
23 photographed, or filmed, the prosecution must be commenced within one
24 year of the time the person who was viewed or in the photograph or film
25 first learns that he or she was viewed, photographed, or filmed, or
26 within two years after the commission of the offense, whichever is
27 later.

28 (j) No misdemeanor may be prosecuted more than one year after its
29 commission.

30 (2) The periods of limitation prescribed in subsection (1) of this
31 section do not run during any time when the person charged is not
32 usually and publicly resident within this state.

33 (3) If, before the end of a period of limitation prescribed in
34 subsection (1) of this section, an indictment has been found or a
35 complaint or an information has been filed, and the indictment,
36 complaint, or information is set aside, then the period of limitation
37 is extended by a period equal to the length of time from the finding or
38 filing to the setting aside.

1 **Sec. 3.** RCW 43.43.754 and 2002 c 289 s 2 are each amended to read
2 as follows:

3 (1) Every adult or juvenile individual convicted of a felony,
4 stalking under RCW 9A.46.110, harassment under RCW 9A.46.020,
5 communicating with a minor for immoral purposes under RCW 9.68A.090,
6 voyeurism in the second degree under RCW 9A.44.115, or adjudicated
7 guilty of an equivalent juvenile offense must have a biological sample
8 collected for purposes of DNA identification analysis in the following
9 manner:

10 (a) For persons convicted of such offenses or adjudicated guilty of
11 an equivalent juvenile offense who do not serve a term of confinement
12 in a department of corrections facility, and do serve a term of
13 confinement in a city or county jail facility, the city or county shall
14 be responsible for obtaining the biological samples either as part of
15 the intake process into the city or county jail or detention facility
16 for those persons convicted on or after July 1, 2002, or within a
17 reasonable time after July 1, 2002, for those persons incarcerated
18 before July 1, 2002, who have not yet had a biological sample
19 collected, beginning with those persons who will be released the
20 soonest.

21 (b) For persons convicted of such offenses or adjudicated guilty of
22 an equivalent juvenile offense who do not serve a term of confinement
23 in a department of corrections facility, and do not serve a term of
24 confinement in a city or county jail facility, the local police
25 department or sheriff's office is responsible for obtaining the
26 biological samples after sentencing on or after July 1, 2002.

27 (c) For persons convicted of such offenses or adjudicated guilty of
28 an equivalent juvenile offense, who are serving or who are to serve a
29 term of confinement in a department of corrections facility or a
30 department of social and health services facility, the facility holding
31 the person shall be responsible for obtaining the biological samples
32 either as part of the intake process into such facility for those
33 persons convicted on or after July 1, 2002, or within a reasonable time
34 after July 1, 2002, for those persons incarcerated before July 1, 2002,
35 who have not yet had a biological sample collected, beginning with
36 those persons who will be released the soonest.

37 (2) Any biological sample taken pursuant to RCW 43.43.752 through
38 43.43.758 may be retained by the forensic laboratory services bureau,

1 and shall be used solely for the purpose of providing DNA or other
2 tests for identification analysis and prosecution of a criminal offense
3 or for the identification of human remains or missing persons. Nothing
4 in this section prohibits the submission of results derived from the
5 biological samples to the federal bureau of investigation combined DNA
6 index system.

7 (3) The director of the forensic laboratory services bureau of the
8 Washington state patrol shall perform testing on all biological samples
9 collected under subsection (1) of this section, to the extent allowed
10 by funding available for this purpose. The director shall give
11 priority to testing on samples collected from those adults or juveniles
12 convicted of a felony or adjudicated guilty of an equivalent juvenile
13 offense that is defined as a sex offense or a violent offense in RCW
14 9.94A.030.

15 (4) This section applies to all adults who are convicted of a sex
16 or violent offense after July 1, 1990; and to all adults who were
17 convicted of a sex or violent offense on or prior to July 1, 1990, and
18 who are still incarcerated on or after July 25, 1999. This section
19 applies to all juveniles who are adjudicated guilty of a sex or violent
20 offense after July 1, 1994; and to all juveniles who were adjudicated
21 guilty of a sex or violent offense on or prior to July 1, 1994, and who
22 are still incarcerated on or after July 25, 1999. This section applies
23 to all adults and juveniles who are convicted of a felony other than a
24 sex or violent offense, stalking under RCW 9A.46.110, harassment under
25 RCW 9A.46.020, or communicating with a minor for immoral purposes under
26 RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense,
27 on or after July 1, 2002; and to all adults and juveniles who were
28 convicted or adjudicated guilty of such an offense before July 1, 2002,
29 and are still incarcerated on or after July 1, 2002.

30 (5) This section creates no rights in a third person. No cause of
31 action may be brought based upon the noncollection or nonanalysis or
32 the delayed collection or analysis of a biological sample authorized to
33 be taken under RCW 43.43.752 through 43.43.758.

34 (6) The detention, arrest, or conviction of a person based upon a
35 data base match or data base information is not invalidated if it is
36 determined that the sample was obtained or placed in the data base by
37 mistake, or if the conviction or juvenile adjudication that resulted in

1 the collection of the biological sample was subsequently vacated or
2 otherwise altered in any future proceeding including but not limited to
3 posttrial or postfact-finding motions, appeals, or collateral attacks.

4 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and takes effect
7 immediately.

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