

# HOUSE BILL REPORT

## HB 1200

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to the crime of voyeurism.

**Brief Description:** Concerning the crime of voyeurism.

**Sponsors:** Representatives McCabe, Goodman, Klippert, Orwall, Hayes, Johnson, Griffey, Caldier, Dye, Sells, McDonald, Kilduff and Smith.

**Brief History:**

**Committee Activity:**

Public Safety: 1/23/17, 2/9/17 [DPS].

<p><b>Brief Summary of Substitute Bill</b></p> <ul style="list-style-type: none"><li>• Creates the crime of Voyeurism in the second degree.</li></ul>
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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Hayes, Assistant Ranking Minority Member; Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

**Minority Report:** Do not pass. Signed by 1 member: Representative Klippert, Ranking Minority Member.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Appleton.

**Staff:** Kelly Leonard (786-7147).

**Background:**

*Voyeurism.* 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:

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- another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or
- the intimate areas of another person without that person's knowledge, consent, and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

Voyeurism is a sex offense and is a class C felony with a seriousness level of II.

*Diversion of Juvenile Cases.* If a juvenile is alleged to have committed a misdemeanor or gross misdemeanor, and it is his or her first violation, the prosecutor is required to "divert" the case rather than file a complaint. In some circumstances, the prosecutor has discretion whether to allow the juvenile to enter into a diversion or file the case. Except under certain circumstances, a juvenile may have no more than three diversions.

A case is diverted when the juvenile enters into an agreement, which may include, among other things, a requirement that the juvenile attend counseling or educational or informational sessions at a community agency. A diversion agreement may be between a juvenile and a probation counselor, community accountability board, youth court under the supervision of the juvenile court, or other entity.

If a juvenile violates his or her diversion agreement, then the case is referred back to the prosecuting attorney for the filing of criminal charges in court.

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### **Summary of Substitute Bill:**

*Voyeurism.* Voyeurism is renamed Voyeurism in the first degree.

A new crime of Voyeurism in the second degree is created. A person commits the offense if he or she intentionally photographs or films another person for the purpose of photographing or filming the person's intimate areas with the intent to distribute or disseminate the photograph or film, 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.

Voyeurism in the second degree is a gross misdemeanor offense, and it is not a sex offense for the purposes of sentencing and sex offender registration.

*Diversion of Juvenile Cases.* A prosecutor must divert the case of a juvenile alleged to have committed Voyeurism in the second degree if it is his or her first violation of Voyeurism in the second degree, unless the juvenile has already received two diversions for any offense in the previous two years.

### **Substitute Bill Compared to Original Bill:**

The substitute bill removes from the Voyeurism in the second degree offense the circumstances where a person being viewed, photographed, or filmed is in a location where

he or she has a reasonable expectation of privacy. The substitute bill specifies that the crime is committed intentionally (rather than knowingly). The substitute bill limits the offense to circumstances where a person intentionally photographs or films another person for the purpose of photographing or filming the person's intimate areas with the intent to distribute or disseminate the photograph or film, 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.

The substitute bill clarifies that Voyeurism in the second degree is not a sex offense for the purposes of sex offender registration requirements.

The substitute bill removes the private investigator defense to Voyeurism created in the bill.

The substitute bill requires a prosecutor to divert the case of a juvenile alleged to have committed Voyeurism in the second degree if it is his or her first violation of Voyeurism in the second degree, unless the juvenile has already received two diversions for any offense in the previous two years.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill is important in order to address voyeuristic behavior not covered under the current law. In one particular instance, cheerleaders said they did not want to wear skirts because perpetrators were using cell phone cameras to film under their skirts, which is a form of upskirting. There was also a report of a teacher upskirting his students. This is happening in schools, churches, airports, and other places. However, prosecutors do not charge cases because they cannot prove sexual gratification. The bill addresses this situation by creating a lesser offense where sexual gratification is not an element.

(Opposed) There are issues with the language in the underlying bill. The language is not precise. It does not capture the behavior intended by the sponsor, and instead captures other behavior.

**Persons Testifying:** (In support) Representative McCabe, prime sponsor.

(Opposed) Elisabeth Smith, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying:** None.