



Sub. H.B. 74

127th General Assembly
(As Passed by the General Assembly)

Reps. Schlichter, J. McGregor, Bacon, Wagoner, Setzer, Fende, Dodd, Combs, Adams, Collier, Aslanides, Batchelder, Boyd, Daniels, DeBose, Domenick, Dyer, Evans, Flowers, Gibbs, Goyal, J. Hagan, Harwood, Heard, Hughes, Luckie, Mandel, Patton, Schindel, Szollosi, B. Williams

Sens. Schaffer, Stivers, Fedor, Turner, Carey, Cates, Harris, Padgett

Effective date: *

ACT SUMMARY

- Modifies the elements of voyeurism committed for the purpose of sexual arousal or gratification when the victim is a minor in a state of nudity so that it prohibits a person, for the purpose of sexually arousing or gratifying the person's self, from trespassing or otherwise surreptitiously invading the privacy of another person who is a minor to videotape, film, photograph, otherwise record, *or spy or eavesdrop upon* the minor in a state of nudity.
- Provides that the penalty for the offense of voyeurism committed in the manner described in the previous dot point is a felony of the fifth degree in all cases.

CONTENT AND OPERATION

Spying upon a minor in a state of nudity for the purpose of sexual gratification or arousal--committed by any person

Preexisting law provided a number of ways of committing the offense of voyeurism. Formerly, one of the ways in which a person committed the offense of voyeurism was if the person, for the purpose of sexually arousing or gratifying the

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

person's self, committed trespass or otherwise surreptitiously invaded the privacy of another person who was a minor to videotape, film, photograph, or otherwise record the minor in a state of nudity (see **COMMENT** for other ways in which a person committed the offense of voyeurism under preexisting law and that are not changed by the act). Formerly, a violation of this prohibition was a misdemeanor of the first degree. (R.C. 2907.08(C) and (F)(4).)

The act modifies this prohibition to instead prohibit a person, for the purpose of sexually arousing or gratifying the person's self, from trespassing or otherwise surreptitiously invading the privacy of another person who is a minor to videotape, film, photograph, otherwise record, *or spy or eavesdrop upon* the minor in a state of nudity. The act also increases the penalty for a violation of this prohibition from a misdemeanor of the first degree to a felony of the fifth degree. (R.C. 2907.09(C) and (E).)

Spying upon a minor in a state of nudity for the purpose of sexual gratification or arousal--committed by a person with authority over the minor

Formerly, a person also committed the offense of voyeurism when the person, for the purpose of sexually arousing or gratifying the person's self, committed trespass or otherwise surreptitiously invaded the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity if the other person was a minor and any of the following applied (R.C. 2907.09(D)):

(1) The offender was the minor's natural or adoptive parent, stepparent, guardian, or custodian, or person *in loco parentis* of the minor.

(2) The minor was in custody of law or was a patient in a hospital or other institution, and the offender had supervisory or disciplinary authority over the minor.

(3) The offender was a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards, the minor was enrolled in or attended that school, and the offender was not enrolled in and did not attend that school.

(4) The offender was a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the minor was enrolled in or attended that institution.

(5) The offender was a caregiver, administrator, or other person in authority employed by or serving in a child day-care center, type A family day-care home, or type B family day-care home, and the minor was enrolled in or attended that center or home.

(6) The offender was the minor's athletic or other type of coach, was the minor's instructor, was the leader of a scouting troop of which the minor was a member, provided babysitting care for the minor, or was a person with temporary or occasional disciplinary control over the minor.

A violation of this prohibition was a felony of the fifth degree (R.C. 2907.09(F)(4)).

Because the act increases the penalty for voyeurism committed by any person to a felony of the fifth degree when the victim is a minor in a state of nudity, this special prohibition and its related penalty no longer are needed, and the act removes them from the offense of voyeurism. (Removal of existing R.C. 2907.09(D) and (G), and conforming change in R.C. 2907.09(E).)

COMMENT

Under preexisting law, unchanged by the act, a person also commits the offense of voyeurism, regardless of whether the victim is an adult or a minor, if the person does any of the following (R.C. 2907.09(A), (B), and (E)):

(1) For the purpose of sexually arousing or gratifying the person's self, commits trespass or otherwise surreptitiously invades the privacy of another, to spy or eavesdrop upon another (a misdemeanor of the third degree);

(2) For the purpose of sexually arousing or gratifying the person's self, commits trespass or otherwise surreptitiously invades the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity (a misdemeanor of the second degree);

(3) Secretly or surreptitiously videotapes, films, photographs, or otherwise records another person under or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person (a misdemeanor of the first degree).

HISTORY

ACTION	DATE
Introduced	02-27-07
Reported, H. Criminal Justice	05-15-08
Passed House (97-0)	05-21-08
Reported, S. Judiciary - Criminal Justice	12-17-08
Passed Senate (31-1)	12-17-08
House concurred in Senate amendments (94-0)	12-17-08

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