

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

This Bill expands voyeurism to include the attempt to view or use any recording device to view the intimate parts of another person. A voyeur need merely attempt to view another’s intimate parts, same criminal intent, regardless of whether the voyeur actually succeeds in seeing anything. In other words, a person who installed a camera in a restaurant restroom, for example, could be found guilty of voyeurism, even if nobody used that room, or if no intimate parts were actually exposed.

If the victim is less than 18 years old, the offense is a fourth degree felony. If the victim is an adult, the offense is a misdemeanor

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

Unknown

SIGNIFICANT LEGAL ISSUES

1. Section A: Inserting the word attempt expands the criminal offenses to persons who intend to see others’ intimate parts but do not succeed. In other words, a person who installed a camera in a restaurant restroom, for example, could be found guilty of voyeurism, even if nobody used that room, or if no intimate parts were actually exposed.

2. Section A: The verbiage added in this bill while that person is in a state of undress or partial dress could cause confusion. Section C (1) defines “intimate areas” to include undergarments that cover primary genital areas, groin, buttocks anus or breasts.

With this change, a person who “upskirts” another person might not be a voyeur because the target is completely dressed. “Upskirt” is a term used to describe the actions of voyeur types who place cameras, usually cell phones, in a position to photograph the intimate parts of another person. “Upskirting” is an increasing problem. The victims are almost always young women or girls. Several countries have already banned photographing or recording of private areas of the body, even when the photo was taken in a public place. See UPSKIRT from Wikipedia. According to Wikipedia, Australia, Finland, India, Japan, New Zealand, United Kingdom and the United States have banned “upskirting.”

See also: Video Voyeurism Prevention Act, signed by the United States President in December 2004.

LIBRARY OF CONGRESS SUMMARY

The summary below was written by the Congressional Research Service, which is a nonpartisan division of the Library of Congress.

12/23/2004. Amends the Federal criminal code to prohibit knowingly videotaping, photographing, filming, recording by any means, or broadcasting an image of a private area of an individual, without that individual's consent, under circumstances in which that individual has a reasonable expectation of privacy. (Defines a "private area" as the naked or undergarment clad genitals, pubic area, buttocks, or female breast of an individual.) Makes such prohibition inapplicable to lawful law enforcement, correctional, or intelligence activity.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

1. Similar to HB 238 Unauthorized Distribution of Sensitive Images, Brian Egolf
2. Similar to Video Voyeurism Prevention Act of 2004. See above
3. Similar to federal prohibition against possessing child pornography, 18 U.S.C. 2252, 2252A, et. seq.

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

First amendment issues re "upskirting". See Huffington Post, Nov 6, 2013 "[Michael Robertson Say it's His Constitutional Right to Take 'Upskirt' Photos.](#)" Prior to the case, Senator Katherine Clark in Massachusetts had submitted legislation to prohibit such conduct. According to the article, a similar case in Oklahoma in 2006 outraged the public. The state of Oklahoma responded by passing a law explicitly making it illegal to take photos of a person's private areas in public without his or her permission.

The First Amendment does not protect images of child pornography

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

1. Delete wording in lines 24 and 25 while that person is in a state of undress or partial dress.
2. Consider adding a provision to prohibit dissemination of photos, especially on the internet. Once posted on the internet, the repeating injuries to the victims are nearly

impossible to prevent.

This provision could also discourage “revenge porn” a burgeoning problem in which ex-spouses, or ex-boyfriend/girlfriends post sexually explicit of their former lovers on internet sites.