



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for HB1438  
Sponsored by Representative Hawks**

**Subtitle** CONCERNING THE OFFENSES OF VOYEURISM AND VIDEO VOYEURISM AND PERSONS WHO COMMIT REPEAT OFFENSES.

**Impact Summary**<sup>1</sup> Minimal, affecting fewer than ten offenders per year.

**Change from current law**<sup>2</sup> Amends Arkansas Code Annotated § 5-16-101, Video voyeurism. Under current law, it is unlawful to use any camera, videotape, photo-optical, photoelectric, or any other image recording device for the purpose of secretly observing, viewing, photographing, filming, or videotaping a person present in a residence, place of business, school, or other structure, or any room or particular location within that structure, if that person is in a private area out of public view, has a reasonable expectation of privacy, and has not consented to the observation. Under current law, the above conduct is a Class D felony. The proposed bill increases the penalty when a person commits a third or subsequent offense of the aforementioned conduct from a Class D felony to a Class C felony. A.C.A. § 5-16-101 also contains misdemeanor prohibitions, which remain unchanged by this proposed bill. (See attached for full text of current statute.)

Amends A.C.A § 5-16-102, Voyeurism, to increase the penalty in some circumstances. Under current law, voyeurism is a Class A misdemeanor unless the victim is under seventeen (17) years of age and the person who commits the offense holds a position of trust or authority over the victim, in which case voyeurism is Class D felony. Under the proposed bill, voyeurism is also a Class D felony if the person has been previously convicted of voyeurism or video voyeurism. (See attached for full text of current statute.)

**Impact Information**

The Arkansas Department of Correction (ADC) reports sixteen (16) inmates currently serving a term of incarceration for a violation of A.C.A. § 5-16-101, Video voyeurism, a Class D felony, as currently written. Four (4) of these offenders are serving a sentence for which A.C.A. § 5-16-101 is the most serious offense. ADC reports two (2) inmates currently serving a term of incarceration for a violation of § 5-16-102,

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<sup>1</sup> This impact assessment was prepared (2/15/19 2:06 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

<sup>2</sup> Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

Voyeurism, a Class D felony, as currently written. One (1) of these offenders is serving a sentence for which A.C.A. § 5-16-102 is the most serious offense.

The above data reflects all courses of conduct in the current voyeurism and video voyeurism statutes. Data is currently unavailable on the number of instances in which a person with prior convictions for video voyeurism or voyeurism was convicted of a subsequent offense.

**A.C.A. § 5-16-101. Crime of video voyeurism.**

(a) It is unlawful to use any camera, videotape, photo-optical, photoelectric, or any other image recording device for the purpose of secretly observing, viewing, photographing, filming, or videotaping a person present in a residence, place of business, school, or other structure, or any room or particular location within that structure, if that person:

- (1) Is in a private area out of public view;
- (2) Has a reasonable expectation of privacy; and
- (3) Has not consented to the observation.

(b) It is unlawful to knowingly use a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means a person:

- (1) For the purpose of viewing any portion of the person's body that is covered with clothing and for which the person has a reasonable expectation of privacy;
- (2) Without the knowledge or consent of the person being videotaped, filmed, photographed, recorded, or viewed by electronic means; and
- (3) Under circumstances in which the person being videotaped, filmed, photographed, recorded, or viewed by electronic means has a reasonable expectation of privacy.

(c) (1) A violation of subsection (a) of this section is a Class D felony.

(2) (A) A violation of subsection (b) of this section is a Class B misdemeanor.

(B) However, a violation of subsection (b) of this section is a Class A misdemeanor if:

(i) The person who created the video recording, film, or photo obtained as described in subsection (b) of this section distributed or transmitted it to another person; or

(ii) The person who created the video recording, film, or photo obtained as described in subsection (b) of this section posted it in a format accessible by another person via the Internet.

(d) The provisions of this section do not apply to any of the following:

(1) Video recording or monitoring conducted under a court order from a court of competent jurisdiction;

(2) Security monitoring operated by or at the direction of an occupant of a residence;

(3) Security monitoring operated by or at the direction of the owner or administrator of a place of

business, school, or other structure;

(4) Security monitoring operated in a motor vehicle used for public transit;

(5) Security monitoring and observation associated with a correctional facility, regardless of the location of the monitoring equipment;

(6) Video recording or monitoring conducted by a law enforcement officer within the official scope of his or her duty; or

(7) Videotaping under § 12-18-615(b).

**HISTORY:** Acts 1999, No. 757, § 1; 2001, No. 532, § 1; 2007, No. 187, § 1; 2009, No. 330, § 1; 2009, No. 758, § 5.

**A.C.A. § 5-16-102. Voyeurism.**

(a) As used in this section:

(1) "Nude or partially nude" means any person who has less than a fully opaque covering over the genitals, pubic area, buttocks, or breast of a female;

(2) "Private place" means a place where a person may reasonably expect to be safe from being observed without his or her knowledge and consent; and

(3) "Public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility where a good, service, facility, privilege, advantage, or accommodation is offered, sold, or otherwise made available to the public.

(b) A person commits the offense of voyeurism if for the purpose of sexual arousal or gratification, he or she knowingly:

(1) Without the consent of each person who is present in the private place, looks into a private place that is, or is part of, a public accommodation and in which a person may reasonably be expected to be nude or partially nude; or

(2) Enters another person's private property without the other person's consent and looks into any person's dwelling unit if all of the following apply:

(A) The person looks into the dwelling with the intent to intrude upon or interfere with a person's privacy;

(B) The person looks into a part of the dwelling in which an individual is present;

(C) The individual present has a reasonable expectation of privacy in that part of the dwelling; and

(D) The individual present does not consent to the person's looking into that part of the dwelling.

(c) (1) Except as provided in subdivision (c)(2) of this section, a violation of this section is a Class A misdemeanor.

(2) A violation of this section is a Class D felony if:

(A) A victim is under seventeen (17) years of age; and

(B) The person who commits the offense holds a position of trust or authority over the victim.

HISTORY: Acts 2005, No. 1642, § 1; 2007, No. 187, § 2.