



ARKANSAS SENTENCING COMMISSION

1302 Pike Avenue, Suite E • North Little Rock, AR 72114
Phone: (501) 682-5001 • Fax: (501) 682-5018

Impact Assessment for HB1732 Sponsored by Representative Collins

Subtitle CONCERNING THE OFFENSES OF VOYEURISM AND VIDEO VOYEURISM.

Impact Summary¹ Cannot be determined. The proposed bill increases the penalty for certain occurrences of the offenses of voyeurism and video voyeurism. Existing data does not distinguish between the circumstances surrounding the offense. For these reasons, the projected impact of the proposed bill cannot be determined.

Change from Current Law² Amends A.C.A. § 5-16-101, Video voyeurism, to increase the penalty for some courses of conduct if the victim is under fourteen (14) years of age. A person commits the offense of Video voyeurism if he or she uses a camera, videotape, photo-optical, photoelectric, or other image recording device for the purpose of secretly observing, viewing, photographing, filming, or videotaping another person who is present in a residence, place of business, school, or other structure, or a room or particular location within that structure, if the other 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. Under the proposed bill, this conduct is a Class D felony for a first or second offense and a Class C felony for a third or subsequent offense *or if the victim is under fourteen (14) years of age*. [New language is in *italics*. See attached for a complete reprint of the code section. Penalty provisions for other conduct sections remain unchanged by the proposed bill.]

Amends A.C.A. § 5-16-102, Voyeurism, to increase the penalty for some courses of conduct if the victim is under fourteen (14) years of age. A person commits the offense of Voyeurism if, for the purposes of sexual arousal or gratification, he or she knowingly (1) without the consent of each person who is present in a private place, personally or through the use of an unmanned vehicle or aircraft, 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 personally or through the use of an unmanned vehicle or aircraft, another person's private property without the other person's consent and looks into any person's dwelling unit with the purpose to intrude upon or interfere with a person's privacy, the person looks into a part of the dwelling in which a person is present and has a reasonable expectation of privacy, and the person present does not consent to the looking. Under the proposed bill, this conduct is a Class D felony if 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, the person has previously been convicted of Voyeurism or Video voyeurism, *or the victim is under fourteen (14) years of age*, and a Class A misdemeanor if otherwise committed. [New language is in *italics*. See attached for a complete reprint of the code section. Penalty provisions for other conduct sections remain unchanged by the proposed bill.]

Impact Information The proposed bill increases the penalty for some occurrences of voyeurism and video voyeurism. Available data does not differentiate between offenses committed against victims under fourteen

¹ This impact assessment was prepared 3/17/2021 4:12 PM 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 Corrections 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

² Standard punishment ranges:

Class Y 10-40 years or life
Class A 6-30 years; up to \$15,000
Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000
Class D 0-6 years; up to \$10,000
Unclassified As specified in statute

Misdemeanors
Class A Up to 1 year; up to \$2,500
Class B Up to 90 days; up to \$1,000
Class C Up to 30 days; up to \$500

(14) years of age. For this reason, the projected impact of the proposed bill cannot be determined. The following data is provided for informational purposes only.

The Administrative Office of the Courts (AOC) reports that for the three (3) year period beginning January 1, 2017 and ending December 31, 2019, there were forty-three (43) convictions for a violation of A.C.A. § 5-16-101, Video voyeurism, covering both Class D and Class C felonies, as currently written. For the same three (3) year period, AOC reports one (1) conviction for a violation of A.C.A. § 5-16-102, Voyeurism, a Class D felony, as currently written.

The Division of Correction (ADC) reports that there are ten (10) inmates serving a term of incarceration for a violation of A.C.A. § 5-16-101, Video voyeurism, as currently written. Four (4) of these offenders are serving a term of incarceration for which A.C.A. § 5-16-101 is the most serious offense. These inmates cover both Class D and Class C felonies. The ADC reports that there are two (2) inmates serving a term of incarceration for a violation of A.C.A. § 5-16-102, Voyeurism, a Class D felony, as currently written. One (1) of these offenders is serving a term of incarceration for which A.C.A. § 5-16-102 is the most serious offense.

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

(a) It is unlawful for a person to use a camera, videotape, photo-optical, photoelectric, or other image recording device for the purpose of secretly observing, viewing, photographing, filming, or videotaping another person who is present in a residence, place of business, school, or other structure, or a room or particular location within that structure, if the other 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 for a person to knowingly use an unmanned vehicle or aircraft, a camcorder, a motion picture camera, a photographic camera of any type, or other equipment that is concealed, operated in a manner to escape detection, or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means another person:

- (1) For the purpose of viewing any portion of the other person's body and for which the other person has a reasonable expectation of privacy;
- (2) Without the knowledge or consent of the other person; and
- (3) Under circumstances in which the other person has a reasonable expectation of privacy.

(c)

(1)

(A) A person who violates subsection (a) of this section for a first or second offense upon conviction is guilty of a Class D felony.

(B) A person who violates subsection (a) of this section for a third or subsequent offense upon conviction is guilty of a Class C felony.

(2)

(A) A person who violates subsection (b) of this section upon conviction is guilty of a Class B misdemeanor.

(B) However, a person who violates subsection (b) of this section upon conviction is guilty of a Class A misdemeanor if the person:

- (i) Distributed or transmitted the video recording, film, or photo to another person;
- (ii) Posted the video recording, film, or photo in a format accessible by another person via the internet; or
- (iii) Has previously been convicted of a violation of this section or § 5-16-102.

(d) This section does not apply to:

- (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; 2015, No. 293, § 1; 2019, No. 461, § 1.

A.C.A. § 5-16-102. Voyeurism.

(a) As used in this section:

- (1) "Nude or partially nude" means a 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, personally or through the use of an unmanned vehicle or aircraft, 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 personally or through the use of an unmanned vehicle or aircraft another person's private property without the other person's consent and looks into any person's dwelling unit if:
 - (A) The person looks into the dwelling with the purpose to intrude upon or interfere with a person's privacy;
 - (B) The person looks into a part of the dwelling in which a person is present;
 - (C) The person present has a reasonable expectation of privacy in that part of the dwelling; and
 - (D) The person present does not consent to the person's looking into that part of the dwelling.

(c) A person who violates this section upon conviction is guilty of a:

(1) Class D felony if:

- (A) A 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; or
- (B) The person has previously been convicted of an offense under this section or § 5-16-101; or

(2) Class A misdemeanor if otherwise committed.

History

Acts 2005, No. 1642, § 1; 2007, No. 187, § 2; 2015, No. 293, § 2; 2019, No. 461, § 2.