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WORK SESSION

Assembly Committee on Judiciary

May 17, 2005

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

Bills Under Consideration

The following measures may be considered for action during today's work session, as time allows, or continued to the Committee's next regular meeting. In some cases, possible amendments are noted. These were either suggested during testimony or submitted after the hearing and do not necessarily have the approval of the Committee, but are merely compiled here to assist the Committee in its deliberations.

- Senate Bill 28 _____
Floor Assignment _____
- Senate Bill 173 _____
Floor Assignment _____
- Senate Bill 272 _____
Floor Assignment _____
- Senate Bill 347 _____
Floor Assignment _____
- Senate Bill 444 _____
Floor Assignment _____
- Senate Bill 452 _____
Floor Assignment _____
- Senate Bill 489 _____
Floor Assignment _____
- Senate Bill 423 _____
Floor Assignment _____

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ASSEMBLY JUDICIARY
DATE: 5.17.05 EXHIBIT B PAGE 1 OF 8
SUBMITTED BY: Allison Combs

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Senate Bill 432 _____
Floor Assignment _____

Senate Bill 443 _____
Floor Assignment _____

Senate Bill 445 _____
Floor Assignment _____

- SENATE BILL 28(R1)—Prohibits a person from knowingly and intentionally capturing the image of a private area of another person under certain circumstances and prohibits a person from knowingly distributing, disclosing, displaying, transmitting, or publishing an image captured under such circumstances. (BDR 15-8)**

Sponsored by: Senator Barbara K. Cegavske

Date Heard: May 9, 2005

May 11, 2005 (work session)

Summary of the Bill - First Reprint

Senate Bill 28 prohibits a person from knowingly and intentionally capturing an image of the private area of another person without the consent of the other person and under circumstances in which the other person has a reasonable expectation of privacy. This bill exempts certain lawful law enforcement, correctional, or intelligence activity, and also prohibits the inspection or release of such images under certain circumstances to protect the privacy of the victim.

Discussion

Senator Care, representatives of law enforcement and district attorneys, and a member of the public testified in favor of the measure. The American Civil Liberties Union (ACLU) testified in a neutral position.

Proposed Conceptual Amendments for S.B. 28(R1)

The following areas of concern were raised for possible amendment during the hearing:

1. **Clarify that a person who is a defendant in a civil action and his attorney may have access to a confidential image** – Expand subsection 6(a) of Section 1 to include an exception for civil actions. This subsection currently provides an exception to the confidentiality protections to allow the inspection or release of the image as necessary for the purpose of allowing a person charged with a violation of this section and his attorney to prepare a defense. (*Proposed by Allen Lichtenstein, ACLU*)
2. **Exception for Law Enforcement** – To address concerns raised by members of the Committee, revise the exception for law enforcement to mirror federal law (a copy of which is attached) as follows:
 4. ~~*This section does not prohibit any lawful law enforcement, correctional or intelligence activities. activity, including, without limitation, capturing, distributing, disclosing, displaying, transmitting or publishing an image for the purpose of investigating or prosecuting a violation of this section.*~~
3. **Penalty** – Lower the penalty from a category E felony to a gross misdemeanor for a first violation (See subsection 3 at lines 13 and 14 of page 1). Provide that a subsequent offense is a category E felony. (*Proposed by Assemblyman Horne*). (A copy of Assembly Bill 190, which was referenced during the hearing is attached.)

Westlaw.

Page 1

18 U.S.C.A. § 1801

C**Effective: December 23, 2004**

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

▣ Part I. Crimes

▣ Chapter 88. Privacy

→ § 1801. Video voyeurism

(a) Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.

(b) In this section--

(1) the term "capture", with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;

(2) the term "broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person or persons;

(3) the term "a private area of the individual" means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;

(4) the term "female breast" means any portion of the female breast below the top of the areola; and

(5) the term "under circumstances in which that individual has a reasonable expectation of privacy" means--

(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or

(B) circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place .

(c) This section does not prohibit any lawful law enforcement, correctional, or intelligence activities.

CREDIT(S)

(Added Pub.L. 108-495, § 2(a), Dec. 23, 2004, 118 Stat. 3999.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

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18 U.S.C.A. § 1801

2004 Acts. House Report No. 108-504, see 2004 U.S. Code Cong. and Adm. News, p. 3292.

Short Title

2004 Acts. Pub.L. 108-495, § 1, Dec. 23, 2004, 118 Stat. 3999, provided that: "This Act [enacting this chapter] may be cited as the 'Video Voyeurism Prevention Act of 2004'."

18 U.S.C.A. § 1801, 18 USCA § 1801

Current through P.L. 109-12, approved 05/05/05

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ASSEMBLY BILL NO. 190—ASSEMBLYMEN PERKINS, CONKLIN,
HORNE, ATKINSON, BUCKLEY, GERHARDT, GIUNCHIGLIANI,
GRADY, HETRICK, KIRKPATRICK, LESLIE, OCEGUERA,
PARKS, PIERCE, SHERER AND SIBLEY

MARCH 9, 2005

JOINT SPONSORS: SENATORS CARLTON, COFFIN AND HECK

Referred to Committee on Judiciary

SUMMARY—Prohibits person from entering upon certain property, with intent to surreptitiously conceal himself on property and peer, peep or spy through opening in building or other structure used as dwelling. (BDR 15-631)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to crimes; prohibiting a person from entering upon certain property with the intent to surreptitiously conceal himself and peer, peep or spy through an opening in a building or other structure used as a dwelling; exempting law enforcement officers conducting criminal investigations or surveillance from the prohibition; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law creates various crimes to protect a person on his property and in
- 2 his home, including the crimes of burglary, entering property with the intent to
- 3 damage or destroy property and trespassing. (NRS 205.060, 206.040, 207.200)
- 4 This bill creates a new crime to prohibit a person from entering upon the
- 5 property of another person or upon his own property which is leased or rented to



* A B 1 9 0 R 1 *

6 another, with the intent to surreptitiously conceal himself on the property and peer,
 7 peep or spy through a window, door or other opening of a dwelling on the property.
 8 A person who violates these provisions is guilty of: (1) a category B felony if
 9 the person possesses a deadly weapon at the time of the violation; (2) a gross
 10 misdemeanor if the person possesses a photographic, digital or video camera or any
 11 other image-recording or sound-recording device at the time of the violation; or (3)
 12 a misdemeanor if the person does not possess a deadly weapon or any image-
 13 recording or sound-recording device at the time of the violation.
 14 This bill provides that a law enforcement officer conducting a criminal
 15 investigation or surveillance is exempt from these provisions.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Chapter 200 of NRS is hereby amended by adding
 2 thereto a new section to read as follows:

3 1. A person shall not knowingly enter upon the property or
 4 premises of another or upon the property or premises owned by
 5 him and leased or rented to another with the intent to
 6 surreptitiously conceal himself on the property or premises and
 7 peer, peep or spy through a window, door or other opening of a
 8 building or structure that is used as a dwelling on the property or
 9 premises.

10 2. A person who violates subsection 1 is guilty of:

11 (a) If the person is in possession of a deadly weapon at the
 12 time of the violation, a category B felony and shall be punished by
 13 imprisonment in the state prison for a minimum term of not less
 14 than 1 year and a maximum term of not more than 6 years, and
 15 may be further punished by a fine of not more than \$5,000.

B Felony

16 (b) If the person is not in possession of a deadly weapon at the
 17 time of the violation, but is in possession of a photographic or
 18 digital camera, video camera or other device capable of recording
 19 images or sound at the time of the violation, a gross misdemeanor.

Gross Misdemeanor

20 (c) If the person is not in possession of a deadly weapon or a
 21 photographic or digital camera, video camera or other device
 22 capable of recording images or sound at the time of the violation,
 23 a misdemeanor.

Misdemeanor

24 3. This section does not apply to a law enforcement officer
 25 conducting a criminal investigation or surveillance.

26 Sec. 2. NRS 207.200 is hereby amended to read as follows:

27 207.200 1. ~~Any~~ Unless a greater penalty is provided
 28 pursuant to section 1 of this act, any person who, under
 29 circumstances not amounting to a burglary:

30 (a) Goes upon the land or into any building of another with
 31 intent to vex or annoy the owner or occupant thereof, or to commit
 32 any unlawful act; or



1 (b) Willfully goes or remains upon any land or in any building
2 after having been warned by the owner or occupant thereof not to
3 trespass,
4 is guilty of a misdemeanor. The meaning of this subsection is not
5 limited by subsections 2 and 4.
6 2. A sufficient warning against trespassing, within the meaning
7 of this section, is given by either of the following methods:
8 (a) Painting, at intervals of not more than 200 feet on each side
9 of the land, upon or near the boundary, a post, structure or natural
10 object with not less than 50 square inches of fluorescent orange
11 paint or, if the post is a metal fence post, painting the entire post
12 with such paint.
13 (b) Fencing the area.
14 3. It is prima facie evidence of trespass for any person to be
15 found on private or public property which is posted or fenced as
16 provided in subsection 2 without lawful business with the owner or
17 occupant of the property.
18 4. An entryman on land under the laws of the United States is
19 an owner within the meaning of this section.
20 5. As used in this section, "fence" means a barrier sufficient to
21 indicate an intent to restrict the area to human ingress, including, but
22 not limited to, a wall, hedge or chain link or wire mesh fence.

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