

HOUSE No. 1765

The Commonwealth of Massachusetts

PRESENTED BY:

Paul W. Mark

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act strengthening the upskirting law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	<i>2/18/2021</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/22/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/26/2021</i>

HOUSE No. 1765

By Mr. Mark of Peru, a petition (accompanied by bill, House, No. 1765) of Paul W. Mark, Susannah M. Whipps and Michelle M. DuBois relative to photographing, videotaping or electronically surveilling certain persons. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act strengthening the upskirting law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 272 of the General Laws is hereby amended by striking section 105 in its entirety
2 and replacing it with the following:-

3 Section 105 (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Electronically surveils” or “electronically surveilled”, to view, obtain, or record a
6 person’s visual image by the use or aid of a camera, cellular or other wireless communications
7 device, computer, television, or other electronic device.

8 “Nude”, unclothed, such that one or more sexual or other intimate parts as defined herein
9 is exposed.

10 “Partially nude”, partially unclothed, such that one or more sexual or other intimate parts
11 as defined herein is exposed.

12 “Sexual or other intimate parts”, human genitals, buttocks, pubic area, or female nipples
13 and areola, or any part thereof.

14 (b) (i) Whoever willfully photographs, videotapes, or electronically surveils another
15 person who is nude or partially nude, with the intent to secretly conduct or hide such activity,
16 when the other person in such place and circumstance would have a reasonable expectation of
17 privacy in not being so photographed, videotaped, or electronically surveilled, or

18 (ii) Whoever willfully photographs, videotapes, or electronically surveils the sexual or
19 other intimate parts of another person, whether or not such parts are clothed, with the intent to
20 secretly conduct or hide such activity, and with the prurient intent to focus on or otherwise
21 invade the privacy of the person’s sexual or other intimate parts, shall be punished by
22 imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more
23 than \$5,000, or by both, if the victim is 18 years or older; or by imprisonment in the house of
24 correction for not more than 2 1/2 years, or by imprisonment in the state prison for not more than
25 5 years, or by a fine of not of not more than \$10,000, or by both such fine and imprisonment, if
26 the victim is less than 18 years of age or is otherwise incompetent. The actual knowledge and
27 consent of the person or the parent or guardian of the child or incompetent person so
28 photographed, videotaped, or electronically surveilled shall be an affirmative defense to the
29 offense stated herein.

30 (iii) Whoever willfully photographs, videotapes or electronically surveils, with the intent
31 to secretly conduct or hide such activity, the sexual or other intimate parts of a child under the
32 age of 18 under or around the child's clothing to view or attempt to view the child's sexual or
33 other intimate parts when a reasonable person would believe that the person's sexual or other

34 intimate parts would not be visible to the public shall be punished by imprisonment in the house
35 of correction for not more than 21/2 years, by imprisonment in the state prison for not more than
36 5 years, or by a fine of not more than \$10,000, or by both such fine and imprisonment.

37 (c) Whoever willfully disseminates the visual image of another person, with knowledge
38 that such visual image was unlawfully obtained in violation of the first and second paragraphs of
39 subsection (b) and without consent of the person so depicted, shall be punished by imprisonment
40 in the house of correction for not more than 21/2 years or in the state prison for not more than 5
41 years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

42 Whoever willfully disseminates the visual image of the sexual or other intimate parts of a
43 child under the age of 18, with knowledge that such visual image was unlawfully obtained in
44 violation of the third paragraph of subsection (b) shall be punished by imprisonment in the house
45 of correction for not more than 21/2 years or in the state prison for not more than 10 years or by
46 a fine of not more than \$10,000, or by both such fine and imprisonment.

47 (d) This section shall not apply to a merchant that electronically surveils a customer
48 changing room, provided that signage warning customers of the merchant's surveillance activity
49 is conspicuously posted at all entrances and in the interior of any changing room electronically
50 surveilled.

51 (e) This section shall not apply to a law enforcement officer acting within the scope of the
52 officer's authority under applicable law, or by an order or warrant issued by a court.

53 (f) A sheriff, deputy sheriff or police officer may arrest without a warrant, a person whom
54 he has probable cause to believe has violated this section.

55 (g) A photograph, videotape or other recorded visual image, depicting a person who is
56 nude or partially nude or which depicts a person's sexual or other intimate parts that is part of
57 any court record arising from a prosecution under this section, shall not be open to public
58 inspection and shall only be made available by court personnel to a law enforcement officer,
59 prosecuting attorney, defendant's attorney, defendant, or victim connected to such prosecution
60 for inspection, unless otherwise ordered by the court.

61 (h) In a prosecution under this section, a justice of the superior court or district court may
62 issue appropriate orders to restrain or prevent the unlawful dissemination of a person's visual
63 image in violation of this section.