

1 H.714

2 Introduced by Representatives Ram of Burlington, Buxton of Tunbridge,  
3 Clarkson of Woodstock, Fay of St. Johnsbury, Grad of  
4 Moretown, Haas of Rochester, Komline of Dorset, Krowinski  
5 of Burlington, Lanpher of Vergennes, Martin of Springfield,  
6 O'Sullivan of Burlington, Pugh of South Burlington, Rachelson  
7 of Burlington, Spengler of Colchester, Strong of Albany,  
8 Sweaney of Windsor, Toll of Danville, Waite-Simpson of  
9 Essex, and Wilson of Manchester

10 Referred to Committee on

11 Date:

12 Subject: Crimes; lewd and indecent conduct; voyeurism

13 Statement of purpose of bill as introduced: This bill proposes to criminalize  
14 the display or disclosure of a recorded image of another person whose intimate  
15 areas are exposed or who is engaged in sexual conduct under circumstances in  
16 which a person has a reasonable expectation of privacy without the subject's  
17 knowledge and consent to the display or disclosure.

1 An act relating to nonconsensual disclosure of sexually-explicit images

2 It is hereby enacted by the General Assembly of the State of Vermont:

3 Sec. 1. 13 V.S.A. § 2605 is amended to read:

4 § 2605. VOYEURISM

5 (a) As used in this section:

6 (1) “Bona fide private investigator or bona fide security guard” means  
7 an individual lawfully providing services, whether licensed or unlicensed,  
8 pursuant to 26 V.S.A. §§ 3151 and 3151a.

9 (2) “Female breast” means any portion of the female breast below the  
10 top of the areola.

11 (3) “Circumstances in which a person has a reasonable expectation of  
12 privacy” means circumstances in which a reasonable person would believe that  
13 his or her intimate areas or engagement in sexual conduct would not be visible  
14 to the public, regardless of whether that person is in a public or private area.

15 This definition includes circumstances in which:

16 (A) a person knowingly disrobes or engages in sexual conduct in  
17 front of another, but does not expect nor give consent for the other person to  
18 photograph, film, or record his or her intimate areas or sexual conduct; or

19 (B) a person knowingly disrobes or engages in sexual conduct in  
20 front of another and gives consent for the other person to photograph, film, or

1 record his or her intimate areas or sexual conduct, but not to display or disclose  
2 the image to a third party.

3 (4) "Intimate areas" means the naked or undergarment-clad genitals,  
4 pubic area, buttocks, or female breast of a person.

5 (5) "Place where a person has a reasonable expectation of privacy"  
6 means:

7 (A) a place in which a reasonable person would believe that he or she  
8 could disrobe in privacy, without his or her undressing being viewed by  
9 another; or

10 (B) a place in which a reasonable person would expect to be safe  
11 from unwanted intrusion or surveillance.

12 (6) "Sexual conduct" shall have the same meaning as in section 2821 of  
13 this title.

14 (7) "Surveillance" means secret observation of the activities of another  
15 person for the purpose of spying upon and invading the privacy of the person.

16 ~~(7)~~(8) "View" means the intentional looking upon another person for  
17 more than a brief period of time, in other than a casual or cursory manner, with  
18 the unaided eye or a device designed or intended to improve visual acuity.

19 (b) No person shall intentionally view, photograph, film, or record in any  
20 format:

1           (1) the intimate areas of another person without that person's knowledge  
2           and consent while the person being viewed, photographed, filmed, or recorded  
3           is in a place where he or she would have a reasonable expectation of  
4           privacy; or

5           (2) the intimate areas of another person without that person's knowledge  
6           and consent and under circumstances in which the person has a reasonable  
7           expectation of privacy.

8           (c) No person shall intentionally or knowingly display or disclose to a third  
9           party;

10           (1) any image recorded in violation of subsection (b), (d), or (e) of this  
11           section; or

12           (2) any photograph, film, or recording of another person whose intimate  
13           areas are exposed or who is engaged in sexual conduct under circumstances in  
14           which a person has a reasonable expectation of privacy without the subject's  
15           knowledge and consent to the display or disclosure.

16           (d) No person shall intentionally conduct surveillance or intentionally  
17           photograph, film, or record in any format a person without that person's  
18           knowledge and consent while the person being surveilled, photographed,  
19           filmed, or recorded is in a place where he or she would have a reasonable  
20           expectation of privacy within a home or residence. Bona fide private  
21           investigators and bona fide security guards engaged in otherwise lawful

1 activities within the scope of their employment are exempt from this  
2 subsection.

3 (e) No person shall intentionally photograph, film, or record in any format  
4 a person without that person's knowledge and consent while that person is in a  
5 place where a person has a reasonable expectation of privacy and that person is  
6 engaged in a sexual ~~act as defined in section 3251 of this title~~ conduct.

7 (f) This section shall apply to a person who intentionally views,  
8 photographs, films, or records the intimate areas of a person as part of a  
9 security or theft prevention policy or program at a place of business.

10 (g) This section shall not apply to:

11 (1) a law enforcement officer conducting official law enforcement  
12 activities in accordance with state and federal law; ~~or~~

13 (2) official activities of the Department of Corrections, a law  
14 enforcement agency, the Agency of Human Services, or a court for security  
15 purposes or during the investigation of alleged misconduct by a person in the  
16 custody of the Department of Corrections, a law enforcement agency, the  
17 Agency of Human Services, or a court; or

18 (3) situations involving voluntary exposure in public or commercial  
19 settings.

1 (h) This section is not intended to infringe upon the freedom of the press to  
2 gather and disseminate news as guaranteed by the First Amendment to the  
3 Constitution of the United States.

4 (i) It shall be an affirmative defense to a violation of subsection (b) of this  
5 section that the defendant was a bona fide private investigator or bona fide  
6 security guard conducting surveillance in the ordinary course of business, and  
7 the violation was unintentional and incidental to otherwise legal surveillance.  
8 However, an unintentional and incidental violation of subsection (b) of this  
9 section shall not be a defense to a violation of subsection (c).

10 (j)(1) For a first offense, a person who violates subsection (b), (d), or (e) of  
11 this section shall be imprisoned not more than two years or fined not more than  
12 \$1,000.00, or both. For a second or subsequent offense, a person who violates  
13 subsection (b), (d), or (e) of this section shall be imprisoned not more than  
14 three years or fined not more than \$5,000.00, or both.

15 (2) A person who violates ~~subsection (e)~~ subdivision (c)(1) of this  
16 section shall be imprisoned not more than five years or fined not more than  
17 \$5,000.00, or both. A person who violates subdivision (c)(2) of this section  
18 shall be imprisoned not more than three years or fined not more than  
19 \$3,000.00, or both.

20 Sec. 2. EFFECTIVE DATE

21 This act shall take effect on July 1, 2014.