

SUBJECT: Offense for looking into private area in public place

COMMITTEE: Criminal Jurisprudence — favorable, with amendment

VOTE: 8 ayes — Talton, Dunnam, Farrar, Galloway, Hinojosa, Keel, Nixon, A. Reyna
0 nays
1 absent— Place

WITNESSES: *(On original version):*
For — John Davis, El Paso District Attorneys Office; Elaine S. Hengen, City of El Paso; Robert Morton, Naturist Action Committee, American Association for Nude Recreation, Southwestern Sunbathing Association

Against — Robert Morton, Naturist Action Committee, American Association for Nude Recreation, Southwestern Sunbathing Association

DIGEST: HB 2516, as amended, would make it an offense under disorderly conduct to be on the premises of a public place and, for a lewd or unlawful purpose, look into an area such as a restroom or shower stall or a changing or dressing room designed to provide privacy to persons using the area. The offense would be a Class A misdemeanor (maximum penalty of one year in jail and a \$4,000 fine).

HB 2516 also would raise current penalties from a Class C misdemeanor (maximum penalty of a \$500 fine) to a Class A misdemeanor for disorderly conduct involving: (1) entering the property of another and looking into a dwelling on the property through a window or other opening for a lewd or unlawful purpose; and (2) being on a hotel or comparable establishment's premises and looking into another's guest room through a window or other opening for a lewd or unlawful purpose.

HB 2516 would take effect September 1, 1997.

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SUPPORTERS SAY: HB 2516 is necessary to close a loophole in the current disorderly conduct law so that it clearly would be illegal for peeping toms to look into private areas on public property.

Current law makes it an offense to look into a dwelling on private property and into another's hotel room for lewd or unlawful purposes. However, the law does not cover the same act if done on public property. This loophole came to light when a man, dressed as a woman, went on the property of a high school and tried to peer into the girl's dressing room. Because he was not on private property, current law outlawing peeping toms did not apply. HB 2516 would close this loophole by making it an offense to look into private areas, such as restrooms, in public places if done for lewd or unlawful purposes.

The bill also would make this new offense and similar offenses involving peeping into persons' homes or hotel rooms Class A misdemeanors so that the punishment would more accurately fit the crime. Intruding on persons privacy by peeping into homes, hotel rooms or private areas is an intrusive crime that victimizes those who are looked at and that should carry potential jail time. These acts would have to be done for lewd or unlawful purposes, ensuring that casual glances or other lawful acts would not be considered offenses. The bill, with its amendment, would not affect naturists engaged in lawful activity.

OPPONENTS SAY: It may be too harsh to punish as Class A misdemeanors the offense created by HB 2516 and other disorderly conduct involving looking into homes or hotel rooms. These offenses should be punished the same as the majority of disorderly conduct offenses, which are Class C misdemeanors. Only disorderly conduct involving firearms should carry the more serious penalty of a Class B misdemeanor, as current law requires.

NOTES: The original version of the bill would have included under the types of disorderly conduct subject to higher penalties conduct involving persons exposing their anus or genitals in a public place if reckless about whether

another persons may be present who would be offended or alarmed. The committee amendment would exclude this type of conduct from the higher penalties in the bill.