

- SUBJECT:** Creating a class B misdemeanor for voyeurism
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Herrero, Carter, Burnam, Canales, Hughes, Schaefer
0 nays
3 absent — Leach, Moody, Toth
- WITNESSES:** For — James Babb, Texas Municipal Police Association; (*Registered, but did not testify*: Justin Bragieli, Texas Hotel & Lodging Association; Victoria Camp, Texas Association Against Sexual Assault; Lon Craft, Texas Municipal Police Association; Frederick Frazier, Dallas Police Association; David Mintz, Texas Apartment Association; Dan Powers, Children's Advocacy Center of Collin County)

Against — (*Registered, but did not testify*: Bill Shier; Ken Stanford II)
- BACKGROUND:** Under Penal Code sec. 42.01 it is a class C misdemeanor (maximum fine of \$500) under the offense of disorderly conduct if a person intentionally or knowingly, for a lewd or unlawful purpose:
- enters the property of another and looks into a dwelling on the property through a window or other opening;
 - while on the premises of a hotel or similar establishment looks into another's guest room through a window or other opening; or
 - while on the premises of a public place, looks into an area such as a restroom or shower stall or changing or dressing room designed to provide privacy.
- DIGEST:** HB 2371 would create the criminal offense of voyeurism. It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to, with intent to arouse or gratify the sexual desire of anyone, observe another person without the person's consent by looking in a:
- window or other opening in a house on private property while on the property's premises or with binoculars, a telescope, or similar

- device while legally on a premise; or
- a guest room of a hotel or other similar facility, other than a room in which the person was legally authorized to be, while on the premises of the hotel.

It also would be an offense to, with the same intent, look into an area designed to provide privacy to another person using the area, such as a restroom, shower stall, changing or dressing room while on the premises of a public place.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 2371 is needed to address the specific act of voyeurism when it has a sexual component. Currently, voyeurism falls under disorderly conduct and is punished as a class C misdemeanor. Sometimes information about this lowest level of misdemeanors is not consistently shared across the state, making it difficult to track offenders. In addition, even if the information is available, it can be recorded only as “disorderly conduct,” which veils the real nature of the offense when it has a sexual component. This is problematic because there is strong evidence that voyeurism is one way that that some sex offenders begin their offense history.

HB 2371 would create a separate offense for voyeurism when done in a sexual context. This would allow the offense to be tracked and offenders to be identified. Offenders could be put on probation and supervised by probation officers, which could reduce reoffending. The bill would properly punish voyeurism as a class B misdemeanor, consistent with indecent exposure, and one step below improper photography or visual recording, which is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

Rather than foster confusion, HB 2371 would allow for voyeurism cases to be handled more appropriately than under current law. HB 2371 would capture those cases in which voyeurism had a sexual nature by requiring the offense to be done with the intent to arouse or gratify the sexual desire of any person. The current disorderly conduct offense could be used for other instances that did not involve this sexual intent, such as a teenager peeping in a window to spy on someone. There are numerous instances in the Penal Code in which certain behavior can fall under different offenses, and these are handled without problem.

OPPONENTS
SAY:

HB 2371 is unnecessary because current law provides an appropriate penalty for voyeurism. These crimes are punished as class C misdemeanors along with other crimes of the same seriousness, rather than the class B misdemeanor that HB 2371 would impose.

HB 2371 would cause confusion because it would overlap with the current crime under disorderly conduct for the same type of actions. It could raise questions about which section should be used to prosecute in a case and could lead to defendants raising issues about whether they were prosecuted under the proper offense. Having two different offenses for a similar type of crime could make it difficult to track offenders.

It is unnecessary to create a new offense to track voyeurism. Current records for disorderly conduct often note the type of conduct or section of the code that covers an individual case.

OTHER
OPPONENTS
SAY:

Rather than create a new penalty, a better approach would be to raise the penalty for the subsection of disorderly conduct that describes voyeurism.