

HOUSE No. 1739

The Commonwealth of Massachusetts

PRESENTED BY:

Robert P. Spellane

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 passage of the accompanying bill:
An Act relative to prohibiting video voyeurism.

PETITION OF:

NAME: _____ DISTRICT/ADDRESS: _____

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
—————

AN ACT RELATIVE TO PROHIBITING VIDEO VOYEURISM.

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

SECTION 1. Section 178C of chapter 6 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended, by inserting, after the figure “272” in line 81, the following words:-
;dissemination of a visual image of a nude or partially nude person under section 104 (c) of chapter 272 .

SECTION 2. Chapter 272 of the General Laws is hereby amended by striking out section 104 and inserting in place thereof the following section:-

Section 104. (a) As used in this section, the following words shall have the following meanings:-

“Broadcast”, electronically transmitting a visual image with the intent that it be viewed by another person.

“Electronically surveils” or “electronically surveilled”, to view, obtain or record a person’s visual image by the use or aid of a mechanical, digital or electronic viewing device; camera, camcorder or any other instrument, equipment or format capable of recording, storing or transmitting visual images of another person, including a cellular or other wireless communication device, computer, television or other electronic device.

“Partially nude”, the exposure of the human genitals, buttocks, pubic area or female breast below a point immediately above the top of the areola.

“Video voyeurism”, the act of obtaining, recording or broadcasting a person’s intimate, partially nude visual image underneath clothing, through electronic surveillance, in a public place, without the consent of the person.

(b) Whoever willfully photographs, videotapes or electronically surveils another person who is nude or partially nude, with the intent to secretly or surreptitiously view, broadcast or record the person, at a place and time and circumstance when the person has a reasonable expectation of privacy in not being so photographed, videotaped or electronically surveilled, including video voyeurism, and without that person’s knowledge and consent, shall be punished by imprisonment in a jail or house of correction for not more than 2 ½ years or by a fine of not more than \$5,000, or by both such fine and imprisonment. Any person who commits a subsequent violation of this subsection shall be punished by imprisonment in the state prison for not more than 3 years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

(c) Whoever willfully disseminates, distributes or transfers the visual image of another person who is nude or partially nude, with the knowledge or reason to believe that such visual image

was unlawfully obtained in violation of subsection (b) and without the consent of the person so depicted, shall be punished by imprisonment in a jail or house of correction for not more than 2 ½ years or in state prison for not more than 5 years, or by a fine of not more than \$10,000, or by both such fine and imprisonment. Any person who commits a subsequent violation of this subsection shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$25,000 or by both such fine and imprisonment and shall register with the Sex Offender Registry Board under chapter 6.

(d) In any prosecution under subsections (b) or (c), a justice of the superior or district court may issue an appropriate restraining order to prevent the photographing, videotaping, electronic surveillance or dissemination of a person's visual image in violation of this section.

(e) This section shall not apply to:

- (i.) a merchant that electronically surveils a customer changing room, provided that signage warning customers of the merchant's surveillance activity is conspicuously posted at all entrances, and in the interior of any changing room electronically surveilled;
- (ii.) a law enforcement officer who is acting within the scope of his authority under applicable law, or by an order or warrant issued by a court;

(f) A sheriff, deputy sheriff or police officer may arrest without a warrant, any person believed upon probable cause to have violated this section.

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