

SUBJECT: Creating a “peeping tom” offense for looking into a public restroom

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Keel, Riddle, Ellis, Denny, Hodge, Pena, Talton
0 nays
2 absent — Dunnam, P. Moreno

WITNESSES: For — Chuck Noll, Harris County District Attorney’s Office
Against — None

BACKGROUND: Penal Code, sec. 42.01 defines as disorderly conduct the act of entering the property of another and looking through a window or other opening of a dwelling for a lewd or unlawful purpose and the act of looking into a guest room of a hotel or comparable establishment for a similar purpose. Such an offense is a Class C misdemeanor, punishable by a maximum fine of \$500.

The 77th Legislature enacted HB 73 by Garcia, et. al., establishing a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) for photographing or visually recording another person by videotape or other electronic means without that person’s consent and with the intent to arouse or gratify the sexual desire of any person.

DIGEST: CSHB 12 would define as disorderly conduct the act of looking for a lewd or unlawful purpose into a semi-public place designed to provide privacy for a person using the area, such as a restroom, shower stall, or changing or dressing room.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 12 would provide a common-sense remedy for Texas' lack of a general "peeping tom" law, allowing prosecution of a person who tries to look into a public restroom, shower stall, or changing room for a lewd or unlawful purpose. Under current law, unless such people are committing other forms of prohibited lewd conduct, police cannot arrest them. In the Austin area, for example, police have investigated cases where store employees have drilled peepholes or removed ceiling tiles above women's restrooms or have hidden under a skirted display table to peep, but the current statute on disorderly conduct does not prohibit such acts specifically.

CSHB 12 would provide a mechanism for early detection and effective prosecution of potential serial rapists and sexual predators, especially those who target children. Law enforcement officers who investigate sex crimes understand that while not all peepers become rapists, all rapists are peepers. People lurking outside public restrooms or changing rooms could be selecting vulnerable victims. Given that serial sexual predators escalate their level of offenses from peeping to sexual assault, it is appropriate that law enforcement and prosecutors have a lower-level sanction against these types of offenders. Also, arrests and convictions for less serious sex crimes provide information that can be useful in tracking possible suspects for rapes and other aggravated sex crimes.

Police and prosecutors in large jurisdictions such as Harris County are willing to file and prosecute disorderly conduct cases, and they welcome this additional law-enforcement tool. Strict enforcement of seemingly minor offenses can prevent disorderly conduct from leading to more serious crimes. Also, the inability of police to act against those lurking near public facilities can frustrate citizens and encourage the public to take the law into their own hands in vigilante-like actions against the offenders.

CSHB 12 also would address a gap in the current law against photographing or visually recording another person by videotape or other electronic means without that person's consent and with the intent to arouse or gratify the sexual desire of any person. This bill would make it possible to prosecute a person who possessed but did not use a video camera or other device for such a purpose in a semi-public place.

The U.S. Supreme Court ruled in *Minnesota v. Carter*, 525 U.S. 83 (1998), that people committing illegal acts have no reasonable expectation of privacy. Thus, the courts would reject a defense argument that a search by a “peeping tom police officer” committing this offense would be illegal under the Fourth Amendment to the U.S. Constitution.

**OPPONENTS
SAY:**

CSHB 12 would create a vague law that would be difficult to enforce. It could be difficult to determine or prove that someone’s purpose was lewd or illegal. Also, law enforcement agencies and prosecutors might not be willing to pursue such Class C misdemeanor cases.

This bill could create unintentionally a “peeping tom police officer” defense when law enforcement officers check public bathrooms or shower stalls for prohibited sexual or drug activities. Those arrested could claim that officers who looked into these semi-public places with an unlawful purpose were conducting a search prohibited by the Fourth Amendment to the U.S. Constitution.

NOTES:

The committee substitute reorganized Penal Code, sec. 42.01 to combine the proposed change with existing prohibitions against peeping into private dwellings and hotel rooms. It made conforming changes to other subsections.

On March 11, the House Criminal Jurisprudence Committee reported favorably, without amendment, HB 1060 by Thompson and Pena. It would amend the current prohibition against photographing or visually recording another person without that person’s consent and with the intent to arouse or gratify sexual desire so as to prevent the promotion of such images or recordings, such as by posting them on the Internet.