

By: Miller of Comal, Thompson of Harris,  
Herrero, Moody, Anderson of Dallas

H.B. No. 3196

Substitute the following for H.B. No. 3196:

By: Herrero

C.S.H.B. No. 3196

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of the offense of improper photography  
or visual recording; increasing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.15, Penal Code, is amended to read as  
follows:

Sec. 21.15. IMPROPER PHOTOGRAPHY OR VISUAL RECORDING.

(a) In this section:

(1) "Changing room" means a room or partitioned area  
provided or primarily used for the changing of clothing, including  
a dressing room, locker room, or swimwear changing area.

(2) "Promote" [~~,"promote"~~] has the meaning assigned  
by Section 43.21.

(3) "Sexual conduct" has the meaning assigned by  
Section 43.25.

(4) "Sexual or other intimate parts" means the human  
genitals, pubic area, anus, buttocks, or any portion of the female  
breast below the top of the areola, regardless of whether those  
parts are naked or covered by undergarments or other clothing.

(b) A person commits an offense if the person:

(1) knowingly photographs or by videotape or other  
electronic means knowingly records, broadcasts, or transmits a  
visual image of the sexual or other intimate parts of another person  
or a visual image of another person engaged in sexual conduct [~~at a~~

1 ~~location that is not a bathroom or private dressing room]:~~

2 (A) without the other person's consent; and

3 (B) when a reasonable person would believe that  
4 the person's sexual or other intimate parts or the person's sexual  
5 conduct would not be visible to the public [~~with intent to arouse or~~  
6 ~~gratify the sexual desire of any person]; or~~

7 (2) [~~photographs or by videotape or other electronic~~  
8 ~~means records, broadcasts, or transmits a visual image of another~~  
9 ~~at a location that is a bathroom or private dressing room:~~

10 [~~(A) without the other person's consent; and~~

11 [~~(B) with intent to:~~

12 [~~(i) invade the privacy of the other~~  
13 ~~person; or~~

14 [~~(ii) arouse or gratify the sexual desire~~  
15 ~~of any person; or~~

16 [~~(3)~~] knowing the character and content of the  
17 photograph, recording, broadcast, or transmission, promotes a  
18 photograph, recording, broadcast, or transmission described by  
19 Subdivision (1) [~~or (2)~~].

20 (b-1) In a prosecution for an offense under this section,  
21 there is a rebuttable presumption that the actor's conduct is  
22 without the consent of the other person if it is shown on the trial  
23 of the offense that:

24 (1) the actor compelled the other person to submit or  
25 participate by:

26 (A) the use of physical force or violence; or

27 (B) threatening to use force or violence against

1 the other person or another person, and the other person believed  
2 that the actor had the ability to execute the threat;

3 (2) the other person did not consent and the actor  
4 knew:

5 (A) the other person was unconscious or  
6 physically unable to resist; or

7 (B) the other person was unaware that the conduct  
8 was occurring;

9 (3) the actor knew that as a result of mental disease  
10 or defect the other person was at the time of the offense incapable  
11 either of appraising the nature of the act or of resisting it;

12 (4) the actor intentionally impaired the other  
13 person's power to appraise or control the other person's conduct by  
14 administering any substance without the other person's knowledge;

15 (5) the actor was a public servant who coerced the  
16 other person to submit or participate;

17 (6) the offense was accomplished by:

18 (A) conduct that was hidden or conducted secretly  
19 or an attempt of such conduct;

20 (B) conduct that used equipment such as a  
21 telephoto lens that allowed a visual image of another person's  
22 sexual or other intimate parts or another person's sexual conduct  
23 to be made, when such conduct would not ordinarily be visible to the  
24 public; or

25 (C) deception, including misrepresenting how the  
26 photograph, recording, broadcast, or transmission would be used or  
27 disseminated; or

1           (7) the victim of the offense was younger than 18 years  
2 of age at the time of the offense.

3           (c) An offense under this section is a state jail felony,  
4 except that the offense is a felony of the third degree if it is  
5 shown on the trial of the offense that the victim was younger than  
6 18 years of age at the time of the offense.

7           (d) If conduct that constitutes an offense under this  
8 section also constitutes an offense under any other law, the actor  
9 may be prosecuted under this section, [or] the other law, or both.

10           (e) In the application of this section to conduct in a  
11 bathroom or changing room [For purposes of Subsection (b)(2)], a  
12 sign or signs posted indicating that the person is being  
13 photographed or that a visual image of the person is being recorded,  
14 broadcast, or transmitted is not sufficient to establish the  
15 person's consent or to negate the person's reasonable expectation  
16 that the person's sexual or other intimate parts or the person's  
17 sexual conduct would not be visible to the public [under that  
18 subdivision].

19           SECTION 2. The change in law made by this Act applies only  
20 to an offense committed on or after the effective date of this Act.  
21 An offense committed before the effective date of this Act is  
22 governed by the law in effect on the date the offense was committed,  
23 and the former law is continued in effect for that purpose. For  
24 purposes of this section, an offense was committed before the  
25 effective date of this Act if any element of the offense occurred  
26 before that date.

27           SECTION 3. This Act takes effect September 1, 2015.