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HOUSE BILL NO. 663

House Amendments in [ ] — February 16, 2004

A BILL to amend and reenact § 18.2-386.1 of the Code of Virginia, relating to unlawful filming, videotaping or photographing of another; penalty.

Patron Prior to Engrossment—Delegate Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-386.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-386.1. Unlawful filming, videotaping or photographing of another; penalty.

A. It shall be unlawful for any person to videotape, photograph, or film any nonconsenting person if (i) that person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks or female breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location and (ii) the circumstances are otherwise such that the person being videotaped, photographed or filmed would have a reasonable expectation of privacy.

B. The provisions of this section shall not apply to filming, videotaping or photographing by (i) law-enforcement officers pursuant to a criminal investigation which is otherwise lawful or (ii) correctional officials and local or regional jail officials for security purposes or for investigations of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail, or to any sound recording of an oral conversation made as a result of any videotaping or filming pursuant to Chapter 6 (§ 19.2-61 et seq.) of Title 19.2.

C. A violation of subsection A shall be punishable as a Class 1 misdemeanor.

D. A violation of subsection A involving a nonconsenting person under the age of 18 shall be punishable as a Class 6 felony [~~*and a second or subsequent violation shall be punishable as a Class 5 felony.*~~ .]

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is $0 for periods of commitment to the custody of the Department of Juvenile Justice.