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## FISCAL IMPACT REPORT

**SPONSOR** Clahchischilliage      **ORIGINAL DATE** 02/04/14  
**LAST UPDATED** 02/17/14      **HB** 201/aHJC  
**SHORT TITLE** Expand Crime of Voyeurism      **SB** \_\_\_\_\_  
**ANALYST** Chenier

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General’s Office (AGO)

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 201 strikes “while that person is in a state of undress or partial dress”.

#### Synopsis of Bill

House Bill 201 would amend Section 30-9-20 NMSA 1978 in the list of Criminal Offenses, particularly Sexual Offenses, regarding voyeurism. Current law contains a definition that voyeurism consists of intentionally using the unaided eye to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person. The bill would insert new language to expand current law by adding “attempt to view” or using an instrumentality to “attempt to view” the intimate areas of another person. The bill also clarifies that the voyeurism statute applies “while that person is in a state of undress or partial dress.”

### FISCAL IMPLICATIONS

Some additional prosecutions may arise from this bill, given penalties for the attempted offenses, but more likely the impact would come from more time spent assessing the prosecutorial strength of attempted misdemeanor-level voyeurism cases (where the victim is age eighteen or over).

## SIGNIFICANT ISSUES

Many states' voyeurism laws include the crime of attempting to view, including the neighboring states of Utah and Arizona; and some litigation has arisen regarding the intent of the offender to view or attempt to view.

Absent statutory language to the contrary, attempts to commit crimes are punished only in felony offenses, where in most cases an attempt drops the penalty level down one degree (Escape from Jail being one exception, where attempts are punished at the same level as the completed offense). Thus, an attempt to commit voyeurism against a child under the age of eighteen could be prosecuted, under current law, as a full misdemeanor. However, an attempt to commit voyeurism against a person eighteen or over would not be prosecutable under current law.

The AGO provided the following:

The verbiage added in this bill “while that person is in a state of undress or partial dress” could cause confusion. Section C (1) defines “intimate areas” to include undergarments that cover primary genital areas, groin, buttocks, anus or breasts. With this change, a person who “upskirts” another person might not be a voyeur because the target is completely dressed. “upskirt” is a term used to describe the actions of voyeur types who place cameras, usually cell phones, in a position to photograph the intimate parts of another person. “upskirting” is an increasing problem. The victims are almost always young women or girls. Several countries have already banned photographing or recording of private areas of the body, even when the photo was taken in a public place.

The House Judiciary Committee amendment addresses this issue by striking the language “while that person is in a state of undress or partial dress”.

EC/ds:jl