

- SUBJECT:** Offense for improper broadcast or transmission
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 5 ayes — Peña, Riddle, Escobar, Mallory Caraway, Pierson
0 nays
4 absent — Vaught, Hodge, Moreno, Talton
- WITNESSES:** For — (*Registered, but did not testify:* Clifford Herbert, Bexar County District Attorney's Office)
Against — None
- BACKGROUND:** Under Penal Code, sec. 21.15, a person commits the offense of improper photography or visual recording if the person photographs or by videotape or other electronic means visually records another:
- without the other person's consent; and
 - with intent to arouse or gratify the sexual desire of any person.
- A person also violates this statute by promoting a photograph or visual recording, knowing its content and character, that was produced in the above manner.
- A violation of this section is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).
- DIGEST:** HB 1804 would amend Penal Code, sec. 21.15(b) to prohibit broadcasts and transmissions of visual images of people taken without the subject's consent and for the purpose of the sexual gratification.
- HB 1804 would take effect on September 1, 2007, and would apply only to an offense committed on or after the effective date. An offense would be committed before the effective date if any element of the offense were committed before that date.

**SUPPORTERS
SAY:**

HB 1804 would clarify existing law. Penal Code, sec. 21.15 attempts to prevent the invasion of another's privacy for sexual gratification. By including specific references to broadcasts and transmissions of an image, the bill would ensure these methods of privacy invasion were addressed in the law. Some technologies do not make a permanent record of an image, but instead are more like a broadcast with no recording made that could be played back. This technique circumvents the current law, and HB 1804 is needed to prevent violations of privacy made possible by new technologies that the original law did not foresee, such as cell phones or micro-cameras that transmit live without necessarily recording an image.

HB 1804 is necessary because case law has determined that criminal law must be read narrowly so as not to impinge on personal liberties. Prosecutors report a number of situations in which they were unable to prosecute because the live transmissions made no permanent recording. In order properly to address broadcasting and transmission, these acts specifically should be included in the Penal Code.

HB 1804 would not limit anyone's First Amendment right to freedom of expression. The bill would be restrictive as to what would constitute an offense, and it is not likely that it would ban broadcasting or transmission of images, scenes or activities that took place in the public sphere because a person who acted in public likely would be deemed to have consented to public viewing of their activities. HB 1804 would be tailored to protect what victims have intended to keep private.

**OPPONENTS
SAY:**

HB 1804 is unnecessary. Current law already bans the recording of a visual image of another without that person's consent and with the intent to arouse or gratify the sexual desire of any person. New technologies could be read into the existing statute. Also, other law exists to address these types of invasions, including the civil remedies of assault, intentional infliction of emotional harm, or public nuisance.

**OTHER
OPPONENTS
SAY:**

HB 1804 could infringe upon Texans' First Amendment rights to freedom of expression. People should not be prohibited from taking photographs, making video tapes, broadcasting, or recording images in a public place. The bill also would enhance an already vague law. Determining whether something was intended to arouse anyone's sexual desire would be difficult and subjective.