

SB0210S03 compared with SB0210S02

~~text~~ shows text that was in SB0210S02 but was deleted in SB0210S03.

text shows text that was not in SB0210S02 but was inserted into SB0210S03.

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Senator Wayne A. Harper proposes the following substitute bill:

UNMANNED AIRCRAFT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill establishes provisions related to unmanned aircraft.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ reorganizes existing code related to unmanned aircraft;
- ▶ preempts local law;
- ▶ amends provisions related to a law enforcement agency's use of an unmanned aircraft:
- ▶ establishes limitations and safety and use requirements for the operation of an unmanned aircraft;
- ▶ prohibits a person from:

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- committing a trespass with an unmanned aircraft;
- committing a privacy violation with an unmanned aircraft; or
- committing voyeurism with an unmanned aircraft;
- ▶ allows a law enforcement officer to neutralize an unmanned aircraft in certain situations; and
- ▶ establishes criminal penalties.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-18-101, as last amended by Laws of Utah 2015, Chapter 269

63G-18-102, as last amended by Laws of Utah 2015, Chapter 269

76-6-206, as last amended by Laws of Utah 2015, Chapter 412

76-9-402, as enacted by Laws of Utah 1973, Chapter 196

76-9-702.7, as last amended by Laws of Utah 2004, Chapter 52

ENACTS:

63G-18-106, Utah Code Annotated 1953

63G-18-107, Utah Code Annotated 1953

63G-18-201, Utah Code Annotated 1953

63G-18-202, Utah Code Annotated 1953

63G-18-301, Utah Code Annotated 1953

63G-18-302, Utah Code Annotated 1953

63G-18-303, Utah Code Annotated 1953

63G-18-401, Utah Code Annotated 1953

63G-18-402, Utah Code Annotated 1953

63G-18-403, Utah Code Annotated 1953

63G-18-404, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63G-18-203, (Renumbered from 63G-18-103, as last amended by Laws of Utah 2015,

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Chapter 269)

63G-18-204, (Renumbered from 63G-18-104, as last amended by Laws of Utah 2015, Chapter 269)

63G-18-205, (Renumbered from 63G-18-105, as last amended by Laws of Utah 2015, Chapter 269)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63G-18-101** is amended to read:

CHAPTER 18. UNMANNED AIRCRAFT -- DRONES

63G-18-101. Title.

This chapter is known as [~~the "Government Use of Unmanned Aircraft Systems Act."~~]
"Unmanned Aircraft -- Drones."

Section 2. Section **63G-18-102** is amended to read:

63G-18-102. Definitions.

As used in this chapter:

~~[(1) "Law enforcement agency" means an entity of the state or an entity of a political subdivision of the state, including an entity of a state institution of higher education, that exists primarily to prevent, detect, or prosecute crime and enforce criminal statutes or ordinances;]~~

~~[(2) "Nongovernment actor" means a person that is not:]~~

~~[(a) an agency, department, division, or other entity within state government;]~~

~~[(b) a person employed by or otherwise acting in an official capacity on behalf of the state;]~~

~~[(c) a political subdivision of the state; or]~~

~~[(d) a person employed by or otherwise acting in an official capacity on behalf of a political subdivision of the state;]~~

~~[(3) "Target" means a person upon whom, or a structure or area upon which, a person:]~~

~~[(a) has intentionally collected or attempted to collect information through the operation of an unmanned aircraft system; or]~~

~~[(b) plans to collect or attempt to collect information through the operation of an unmanned aircraft system.]~~

~~[(4) "Testing site" means an area that:]~~

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~~[(a) has boundaries that are clearly identified using GPS coordinates;]~~

~~[(b) a law enforcement agency identifies in writing to the Department of Public Safety, including the boundaries identified under Subsection (4)(a);]~~

~~[(c) is not more than three square miles; and]~~

~~[(d) contains no occupied structures.]~~

(1) "Airport" means any area of land, water, or both that:

(a) is used or is made available for landing or takeoff by an aircraft;

(b) provides a facility for the shelter, supply, or repair of aircraft and the handling of passengers and cargo;

(c) is identified in the current version of the Federal Aviation Administration's form 5010, Airport Master Record; and

(d) includes all land areas shown as part of the airport in the current airport layout plan approved by the Federal Aviation Administration.

(2) (a) "Airport operator" means the entity that is authorized by statute to operate an airport.

(b) "Airport operator" includes the department or division of a political subdivision responsible for operating a specific airport.

(3) "Emergency" means:

(a) a natural or man-made disaster, a fire, a flood, or extreme weather; or

(b) a circumstance that presents an imminent threat to life or property, or public health, safety, or welfare.

(4) "Law enforcement agency" means an entity of the state or an entity of a political subdivision of the state, including an entity of a state institution of higher education, that exists primarily to prevent, detect, or prosecute crime and enforce criminal statutes or ordinances.

(5) "Law enforcement officer" means a sworn and certified peace officer:

(a) who is an employee of a law enforcement agency that is part of, or administered by, the state or a political subdivision of the state; and

(b) whose primary duties consist of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of the state or a political subdivision of the state.

~~[(5)(a)]~~ (6) "Unmanned aircraft [system]" means an aircraft that is:

~~[(i) is]~~ (a) capable of sustaining flight; and

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~~[(ii) operates]~~ (b) operated with no possible direct human intervention from on or within the aircraft.

~~[(b)]~~ (7) "Unmanned aircraft system" ~~[does not include an unmanned aircraft that is flown]~~ means the entire system used to operate an unmanned aircraft, including:

~~[(i) within visual line of sight of the individual operating the aircraft; and]~~

~~[(ii) strictly for hobby or recreational purposes.]~~

(a) the unmanned aircraft;

(b) communications equipment;

(c) navigation equipment;

(d) controllers;

(e) support equipment; and

(f) autopilot functionality.

Section 3. Section **63G-18-106** is enacted to read:

63G-18-106. Preemption of local ordinance.

(1) A political subdivision of the state, or an entity within a political subdivision of the state, may not enact a law, ordinance, or rule governing the private use of an unmanned aircraft unless:

(a) authorized by this chapter; or

(b) the political subdivision or entity is an airport operator that enacts the law, rule, or ordinance to govern:

(i) the operation of an unmanned aircraft within the geographic boundaries of the airport over which the airport operator has authority; or

(ii) the takeoff or landing of an unmanned aircraft at the airport over which the airport operator has authority.

(2) This chapter supercedes any law, ordinance, or rule enacted by a political subdivision of the state before July 1, 2016.

(3) This section does not apply to an unmanned aircraft system that is operated for commercial purposes in compliance with authorization granted by the Federal Aviation Administration.

Section 4. Section **63G-18-107** is enacted to read:

63G-18-107. Applicability.

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The following parts do not apply to a person who operates an unmanned aircraft system under a Certificate of Waiver, Certificate of Authorization, or other exemption obtained from the Federal Aviation Administration that specifically authorizes the operation of the unmanned aircraft system:

(1) Title 63G, Chapter 18, Part 3, Criminal Use of Unmanned Aircraft, except for Section 63G-18-304; and

(2) Title 63G, Chapter 18, Part 4, Safe Use of Unmanned Aircraft, except for Section 63G-18-404.

Section 5. Section **63G-18-201** is enacted to read:

Part 2. Government Use of Unmanned Aircraft

63G-18-201. Title.

This part is known as "Government Use of Unmanned Aircraft."

Section 6. Section **63G-18-202** is enacted to read:

63G-18-202. Definitions.

As used in this part:

(1) "Nongovernment actor" means a person that is not:

(a) an agency, department, division, or other entity within state government;

(b) employed by or otherwise acting in an official capacity on behalf of the state;

(c) a political subdivision of the state; or

(d) employed by or otherwise acting in an official capacity on behalf of a political subdivision of the state.

(2) "Target" means a person upon whom, or a structure or area upon which, a person:

(a) has intentionally collected or attempted to collect information through the operation of an unmanned aircraft system; or

(b) plans to collect or to attempt to collect information through the operation of an unmanned aircraft system.

(3) "Testing site" means an area that:

(a) has boundaries that are clearly identified using GPS coordinates;

(b) a law enforcement agency identifies in writing to the Department of Public Safety, including the boundaries identified under Subsection (3)(a);

(c) is not more than three square miles;

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(d) contains no occupied structures; and

(e) a law enforcement agency intends to use for the testing of an unmanned aircraft system.

Section 7. Section **63G-18-203**, which is renumbered from Section 63G-18-103 is renumbered and amended to read:

~~[63G-18-103].~~ **63G-18-203. Unmanned aircraft system use requirements -- Exceptions -- Testing.**

(1) A law enforcement agency may not obtain, receive, or use data acquired through an unmanned aircraft system unless the data is obtained:

(a) pursuant to a search warrant;

(b) in accordance with judicially recognized exceptions to warrant requirements;

(c) (i) in a public location in which a person has no reasonable expectation of privacy; and

(ii) while the unmanned aircraft controlled by the unmanned aircraft system is clearly audible and visible without aid:

(A) by all persons who are targets; and

(B) from all portions of the area on which data is collected;

~~[(c)]~~ (d) subject to Subsection (2), from a person who is a nongovernment actor;

~~[(d)]~~ (e) at a testing site; or

~~[(e)]~~ (f) to locate a lost or missing person in an area in which a person has no reasonable expectation of privacy.

(2) A nongovernment actor may only disclose data acquired through an unmanned aircraft system to a law enforcement agency if:

(a) the data appears to pertain to the commission of a crime; or

(b) the nongovernment actor believes, in good faith, that:

(i) the data pertains to an imminent or ongoing emergency involving danger of death or serious bodily injury to an individual; and

(ii) disclosing the data would assist in remedying the emergency.

(3) A law enforcement agency that obtains, receives, or uses data acquired under Subsection (1)(d) or (e) shall destroy the data as soon as reasonably possible after the law enforcement agency obtains, receives, or uses the data.

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(4) A law enforcement agency that operates an unmanned aircraft system under Subsection (1)(d) may not operate the unmanned aircraft system outside of the testing site.

Section 8. Section **63G-18-204**, which is renumbered from Section 63G-18-104 is renumbered and amended to read:

~~**63G-18-104**~~. **63G-18-204**. **Data retention.**

(1) Except as provided in this section, a law enforcement agency:

(a) may not use, copy, or disclose data collected by an unmanned aircraft system on a person, structure, or area that is not a target; and

(b) shall ensure that data described in Subsection (1)(a) is destroyed as soon as reasonably possible after the law enforcement agency collects or receives the data.

(2) A law enforcement agency is not required to comply with Subsection (1) if:

(a) deleting the data would also require the deletion of data that:

(i) relates to the target of the operation; and

(ii) is requisite for the success of the operation;

(b) the law enforcement agency receives the data:

(i) through a court order that:

(A) requires a person to release the data to the law enforcement agency; or

(B) prohibits the destruction of the data; or

(ii) from a person who is a nongovernment actor;

(c) (i) the data was collected inadvertently; and

(ii) the data appears to pertain to the commission of a crime;

(d) (i) the law enforcement agency reasonably determines that the data pertains to an emergency situation; and

(ii) using or disclosing the data would assist in remedying the emergency; or

(e) the data was collected through the operation of an unmanned aircraft system over public lands outside of municipal boundaries.

Section 9. Section **63G-18-205**, which is renumbered from Section 63G-18-105 is renumbered and amended to read:

~~**63G-18-105**~~. **63G-18-205**. **Reporting.**

(1) Except as provided by Subsections (2) and (3), before March 31 of each year, a law enforcement agency that operated an unmanned aircraft system in the previous calendar year

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shall submit to the Utah Department of Public Safety, and make public on the law enforcement agency's website, a written report containing:

(a) the number of times the law enforcement agency operated an unmanned aircraft system in the previous calendar year;

(b) the number of criminal investigations aided by the use of an unmanned aircraft system operated by the law enforcement agency in the previous calendar year;

(c) a description of how the unmanned aircraft system was helpful to each investigation described in Subsection (1)(b);

(d) the frequency with which data was collected, and the type of data collected, by an unmanned aircraft system operated by the law enforcement agency on any person, structure, or area other than a target in the previous calendar year;

(e) the number of times a law enforcement agency received, from a person who is not a law enforcement agency, data collected by an unmanned aircraft system; and

(f) the total cost of the unmanned aircraft system program operated by the law enforcement agency in the previous calendar year, including the source of any funds used to operate the program.

(2) (a) A law enforcement agency that submits a report described in Subsection (1) may exclude from the report information pertaining to an ongoing investigation.

(b) A law enforcement agency that excludes information under Subsection (2)(a) from the report shall report the excluded information to the Utah Department of Public Safety on the annual report in the year following the year in which the investigation to which the information pertains is concluded.

(3) A law enforcement agency is not required to submit, under Subsection (1), to the Department of Public Safety information pertaining to the use of an unmanned aircraft system operated at a testing site.

(4) Before May 31 of each year, the Utah Department of Public Safety shall, for all reports received under Subsection (1) during the previous calendar year:

(a) transmit to the Government Operations Interim Committee and post on the department's website a report containing:

(i) a summary of the information reported to the department;

(ii) the total number of issued warrants authorizing the operation of an unmanned

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aircraft system; and

(iii) the number of denied warrants for the operation of an unmanned aircraft system;

and

(b) post on the department's website each report the department received.

Section 10. Section **63G-18-301** is enacted to read:

Part 3. Criminal Use of Unmanned Aircraft

63G-18-301. Title.

This part is known as "Criminal Use of Unmanned Aircraft."

Section 11. Section **63G-18-302** is enacted to read:

63G-18-302. Reserved.

Reserved

Section 12. Section **63G-18-303** is enacted to read:

63G-18-303. Weapon attached to unmanned aircraft -- Penalties.

(1) (a) As used in this section "weapon" means:

(i) a firearm; or

(ii) an object that in the manner of the object's use or intended use is capable of causing death, serious bodily injury, or serious damage to property.

(b) The following factors are used in determining whether an object, other than a firearm, is a dangerous weapon:

(i) the location and circumstances in which the object is used or possessed;

(ii) the primary purpose for which the object is made;

(iii) the character of the wound, if any, produced by the object's use;

(iv) the manner in which the object is used;

(v) whether the manner in which the object is used or possessed constitutes a potential imminent threat to public safety; and

(vi) the lawful purposes for which the object may be used.

(2) (a) Except as provided in Subsection (3), a person may not fly an unmanned aircraft that carries a weapon or to which a weapon is attached.

(b) A person that violates Subsection (2)(a) is guilty of a class B misdemeanor.

(3) A person may fly an unmanned aircraft that carries a weapon or to which a weapon is attached if the person:

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(a) (i) obtains a certificate of authorization, or other written approval, from the Federal Aviation Administration authorizing the person to fly the unmanned aircraft that carries the weapon or to which the weapon is attached; and

(ii) operates the unmanned aircraft in accordance with the certificate of authorization or other written approval;

(b) (i) obtains a contract with the state or the federal government permitting the person to fly the unmanned aircraft that carries the weapon or to which the weapon is attached; and

(ii) operates the unmanned aircraft in accordance with the contract; or

(c) operates the unmanned aircraft that carries the weapon or to which the weapon is attached in airspace controlled by the United States Department of Defense, with the permission of the United States Department of Defense.

Section 13. Section **63G-18-401** is enacted to read:

Part 4. Safe Use of Unmanned Aircraft

63G-18-401. Title.

This part is known as "Safe Use of Unmanned Aircraft."

Section 14. Section **63G-18-402** is enacted to read:

63G-18-402. Reserved.

Reserved

Section 15. Section **63G-18-403** is enacted to read:

63G-18-403. Safe operation of unmanned aircraft.

(1) A person that operates an unmanned aircraft system to fly an unmanned aircraft for recreational purposes shall:

(a) maintain continuous line of sight with the unmanned aircraft, without the assistance of another person or instrumentation other than corrective lenses;

(b) yield right of way to a manned aircraft; and

(c) before flying the unmanned aircraft within five miles of an airport, contact the airport's operator to determine whether there are any restrictions relating to the operation of the unmanned aircraft.

(2) A person that operates an unmanned aircraft system to fly an unmanned aircraft for recreational purposes may not fly the unmanned aircraft:

(a) more than 400 feet above ground;

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(b) within 25 linear or vertical feet of an individual;

(c) within 500 feet of:

(i) a power station;

(ii) a water treatment facility;

(iii) a correctional facility;

(iv) a freeway, state highway, or multi-lane road; or

(v) a government facility;

(d) in a manner that interferes with an official response to an emergency; or

(e) in a manner that interferes with an official response to a wildland fire, as that term is defined in Section 65A-1-1.

(3) (a) A person that violates this section is liable for any damages resulting from the violation.

(b) A law enforcement officer shall issue a written warning to a person that violates this section and that has not previously received a written warning for a violation of this section.

(c) Except as provided in Subsection (3)(d), a person that violates this section after receiving a written warning for a previous violation of this section is guilty of an infraction.

(d) A person that violates this section is guilty of a class B misdemeanor for each conviction of a violation of this section after the person is convicted of an infraction or a misdemeanor for a previous violation of this section.

Section 16. Section **63G-18-404** is enacted to read:

63G-18-404. Neutralizing unmanned aircraft.

(1) As used in this section:

(a) "Law enforcement officer" includes a sworn and certified peace officer within:

(i) the Division of Forestry, Fire, and State Lands;

(ii) the United States Forest Service;

(iii) the Bureau of Land Management; or

(iv) the National Park Service.

(b) "Neutralize" means to force the termination of the flight of an unmanned aircraft by:

(i) disabling or damaging the unmanned aircraft;

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(ii) interfering with any portion of the unmanned aircraft system associated with the unmanned aircraft; or

(iii) otherwise taking control of the unmanned aircraft or the unmanned aircraft system associated with the unmanned aircraft.

(2) (a) A person may not operate an unmanned aircraft system in a manner that causes an unmanned aircraft to:

(i) threaten the safety of an individual or property immediately affected by an emergency;

(ii) threaten the safety or operation of a response vehicle or a person that is responding to an emergency;

(iii) create unsafe congestion of aircraft above or around an emergency; or

(iv) obstruct the flight path of an aircraft being used to respond to an emergency.

(b) A person that violates Subsection (2)(a) is guilty of a class B misdemeanor.

(~~b~~)c) In accordance with this section, a law enforcement officer may neutralize an unmanned aircraft that is operated in violation of Subsection (2)(a).

(3) A law enforcement officer may not neutralize an unmanned aircraft under this section if neutralizing the unmanned aircraft:

(a) could reasonably cause or lead to the death of, or bodily injury to, an individual; or

(b) is likely to cause or lead to:

(i) the death of, or bodily injury to, an animal; or

(ii) damage to private property, other than the unmanned aircraft system, in an amount greater than \$5,000.

(4) Except as provided in Subsection (3), a law enforcement officer may neutralize an unmanned aircraft under Subsection (2) after:

(a) a law enforcement officer has made a reasonable effort to:

(i) locate the individual operating the unmanned aircraft system; and

(ii) warn the individual that the unmanned aircraft operated by the individual:

(A) is flying in violation of Subsection (2)(a); and

(B) may be neutralized if the individual continues to fly the unmanned aircraft in violation of Subsection (2)(a); and

(b) the law enforcement officer, or the agency to which the law enforcement officer

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belongs, receives approval to neutralize the unmanned aircraft from the director of the governmental entity that is coordinating the response to the emergency, or the director's designee.

(5) A law enforcement officer who neutralizes an unmanned aircraft in accordance with this section shall neutralize the unmanned aircraft:

(a) in the most safe and practicable manner available; and

(b) in a manner that causes as little damage or destruction as possible to the unmanned aircraft system and other property.

Section 17. Section 76-6-206 is amended to read:

76-6-206. Criminal trespass.

(1) As used in this section~~[-,"enter"]~~:

(a) "Enter" means intrusion of the entire body[-] or the entire unmanned aircraft.

(b) "Remains unlawfully," as that term relates to an unmanned aircraft, means remaining on or over private property when:

(i) the private property or any portion of the private property is not open to the public; and

(ii) the person operating the unmanned aircraft is not otherwise licensed or privileged to fly the unmanned aircraft over the private property or any portion of the private property.

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section 76-10-2402 regarding commercial obstruction:

(a) the person enters or remains unlawfully on, or causes an unmanned aircraft to enter and remain unlawfully over, property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Section 76-6-107;

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether [his] the person's or unmanned aircraft's presence will cause fear for the safety of another;

(b) knowing the person's or unmanned aircraft's entry or presence is unlawful, the person enters or remains on, or causes an unmanned aircraft to enter or remain unlawfully over, property [as] to which notice against entering is given by:

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(i) personal communication to the ~~[actor]~~ person by the owner or someone with apparent authority to act for the owner;

(ii) fencing or other enclosure obviously designed to exclude intruders; or

(iii) posting of signs reasonably likely to come to the attention of intruders; or

(c) the person enters a condominium unit in violation of Subsection 57-8-7(8).

(3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless ~~[it was]~~ the violation is committed in a dwelling, in which event [it] the violation is a class A misdemeanor.

(b) A violation of Subsection (2)(c) is an infraction.

(4) It is a defense to prosecution under this section that:

(a) the property was at the time open to the public; and

(b) the actor complied with all lawful conditions imposed on access to or remaining on the property.

Section 18. Section **76-9-402** is amended to read:

76-9-402. Privacy violation.

(1) A person is guilty of privacy violation if, except as authorized by law, ~~[he]~~ the person:

(a) ~~[Trespasses]~~ trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place; ~~[or]~~

(b) ~~[Installs in any]~~ installs, or uses after unauthorized installation, in a private place, without the consent of the person or persons entitled to privacy ~~[there]~~ in the private place, any device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events in the private place ~~[or uses any such unauthorized installation]~~; or

(c) ~~[Installs]~~ installs or uses outside of a private place ~~[any]~~ a device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events originating in the private place which would not ordinarily be audible, visible, or comprehensible outside the private place, without the consent of the person or persons entitled to privacy ~~[there]~~ in the private place.

(2) Privacy violation is a class B misdemeanor.

Section 19. Section **76-9-702.7** is amended to read:

76-9-702.7. Voyeurism offenses -- Penalties.

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(1) A person is guilty of voyeurism who intentionally uses a camcorder, motion picture camera, photographic camera of any type, unmanned aircraft, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means an individual:

(a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(2) A violation of Subsection (1) is a class A misdemeanor, except that a violation of Subsection (1) committed against a child under 14 years of age is a third degree felony.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who, under circumstances not amounting to a violation of Subsection (1), views or attempts to view an individual, with or without the use of any instrumentality:

(a) with the intent of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(5) A violation of Subsection (4) is a class B misdemeanor, except that a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor.