

HOUSE BILL NO. 5294

December 10, 2019, Introduced by Reps. Haadsma, Brixie, Wittenberg, Byrd, Elder, Peterson, Garrett, Cynthia Johnson, Brenda Carter, Garza, Coleman, Hood, Witwer, Shannon, Tyrone Carter, Kennedy, Manoogian, Whitsett, Clemente, Anthony, Gay-Dagnogo, Stone, Hope, Cambensy, Cherry, Sowerby, Lasinski, Chirkun, Camilleri and Greig and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 539j (MCL 750.539j), as added by 2004 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 539j. (1) A person shall not do any of the following:
- 2 (a) Surveil another individual who is clad only in his or her
- 3 undergarments, the unclad genitalia or buttocks of another
- 4 individual, or the unclad breasts of a female individual under
- 5 circumstances in which the individual would have a reasonable



1 expectation of privacy.

2 (b) Photograph, or otherwise capture or record, the visual
3 image of the undergarments worn by another individual, the unclad
4 genitalia or buttocks of another individual, or the unclad breasts
5 of a female individual under circumstances in which the individual
6 would have a reasonable expectation of privacy.

7 (c) Distribute, disseminate, or transmit for access by any
8 other person a recording, photograph, or visual image the person
9 knows or has reason to know was obtained in violation of this
10 section.

11 (2) A person who violates or attempts to violate this section
12 is guilty of a crime as follows:

13 (a) For a violation or attempted violation of subsection
14 (1) (a) :

15 (i) Except as provided in subparagraph (ii) **or (iii)**, the person
16 is guilty of a felony punishable by imprisonment for not more than
17 2 years or a fine of not more than \$2,000.00, or both.

18 (ii) ~~If~~ **Except as provided in subparagraph (iii)**, **if** the person
19 was previously convicted of violating or attempting to violate
20 subsection (1) (a), the person is guilty of a felony punishable by
21 imprisonment for not more than 5 years or a fine of not more than
22 \$5,000.00, or both.

23 **(iii) If the individual surveilled is less than 18 years of age**
24 **and the person knew or reasonably should have known that the**
25 **individual surveilled is less than 18 years of age, the person is**
26 **guilty of a felony punishable by imprisonment for not more than 7**
27 **years or a fine of not more than \$50,000.00, or both.**

28 (b) ~~For~~ **Except as provided in subdivision (c)**, for a violation
29 or attempted violation of subsection (1) (b) or (c), the person is



1 guilty of a felony punishable by imprisonment for not more than 5
2 years or a fine of not more than \$5,000.00, or both.

3 (c) If the violation of subsection (1)(b) or (c) involved
4 photographing, recording, or capturing of a visual image of, or the
5 dissemination, distribution, or transmission of a photograph,
6 recording, or other visual image of, an individual who is less than
7 18 years of age and the person knew or reasonably should have known
8 the individual is less than 18 years of age, the person is guilty
9 of a felony punishable by imprisonment for not more than 7 years or
10 a fine of not more than \$50,000.00, or both.

11 (3) This section does not prohibit a person from being charged
12 with, convicted of, or punished for any other violation of law
13 committed by that person while violating or attempting to violate
14 subsection (1)(a), ~~to~~(b), or (c).

15 (4) This section does not prohibit security monitoring in a
16 residence if conducted by or at the direction of the owner or
17 principal occupant of that residence unless conducted for a lewd or
18 lascivious purpose.

19 (5) This section does not apply to a peace officer of this
20 state or of the federal government, or the officer's agent, while
21 in the performance of the officer's duties.

22 (6) As used in this section, "surveil" means to subject an
23 individual to surveillance as that term is defined in section 539a.

24 Enacting section 1. This amendatory act takes effect 90 days
25 after the date it is enacted into law.

