

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: SUBSTANTIVE CRIMINAL LAW 2.11

SUBJECT:	Substantive Criminal Law
AZ POST DESIGNATION:	2.11 Chapter 14 Sexual Offenses
HOURS:	2.0
COURSE CONTENT:	An analysis of the most frequently used statutes in this chapter.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:
2.11.14.1	Identify examples of the following crimes against children: <ul style="list-style-type: none">A. Public sexual indecency to a minor (A.R.S. §13-1403).B. Sexual conduct with a minor (A.R.S. §13-1405).C. Child molestation (A.R.S. §13-1410).
2.11.14.2	Identify the provision of A.R.S. §13-1407 with regard to defenses to various sexual offenses.
2.11.14.3	Given a written, verbal or visual description depicting the possible commission of one (1) of the following sex crimes, identify if a crime occurred and, if so, the common crime name and classification: <ul style="list-style-type: none">A. Indecent exposure (A.R.S. §13-1402).B. Public sexual indecency (A.R.S. §13-1403).C. Sexual abuse (A.R.S. §13-1404).D. Sexual assault (A.R.S. §13-1406).E. Adultery (A.R.S. §13-1407).

DATE FIRST PREPARED: November 2000

PREPARED BY: SME Committee

REVIEWED – REVISED:	SME Committee	DATE: May 2002
REVIEWED – REVISED:	Sgt. George Sloane, TPD	DATE: August 2002
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INSTRUCTOR REFERENCES: A.R.S. Title 13

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2-11 Ch 14 Sexual Offenses

DATE RELEASE TO THE SHARE FILE: May 27, 2022

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives. **INSTRUCTOR NOTE:** Use if taught as a “stand alone” lesson plan

II. 13-1401 – DEFINITIONS

- A. In Chapters 1 and 11 we discussed the importance of knowing the definitions in order to understand and utilize the statutes. *implied by P. O. 2.11.14.2*
P. O. 2.11.14.3A
- B. Nowhere does this hold more true than here in Chapter 14 – Sexual Offenses.
- C. Many of the definitions you are going to learn here are almost revolutionary in nature and will probably be quite different than you first thought.
- D. IT IS IMPERATIVE THAT YOU HAVE A VERY GOOD WORKING KNOWLEDGE OF THESE DEFINITIONS:
 - 1. Oral sexual contact – means oral contact with the penis, vulva or anus.
 - 2. Position of trust – means a person who is or was any of the following:
 - a. The minor’s parent, step parent, adoptive parent, legal guardian, or foster parent.
 - b. The minor’s teacher.
 - c. The minor’s coach or instructor, whether the coach or instructor is an employee or volunteer.
 - d. The minor’s clergyman or priest.
 - e. Engaged in a sexual or romantic relationship with the minor’s parent, adoptive parent, legal guardian, foster parent, or step parent.
 - 3. Sexual contact – means any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast by any part of the body, or by any object or causing a person to engage in such contact. **INSTRUCTOR NOTE:** *State v. Mendoza, 234 Ariz. 259, 321 P. 3d 424 (Ariz. App. 2014) Sexual contact can involve clothed genitals of either the suspect of victim.*
 - a. Direct contact would be when a person has skin-to-skin contact with any of the three (3) body parts underlined above (i.e., a person places his/her hand down a

- woman's blouse and fondles her breast).
- b. Indirect contact would be touching or fondling on the outside of the clothing.
 - c. You must be able to accurately use and understand the terms "direct" and "indirect" and the three (3) specific body parts.
4. Sexual intercourse – means penetration into the penis, vulva or anus by any part, by any object or manual masturbatory contact with the penis or vulva.
- a. By this definition, there is a very broad way of looking at what used to be a simple specific act (i.e., penetration of the vagina by a penis).
 - b. Now, all of the following acts are considered sexual intercourse:
 - i. Penetrating the penis, vulva or anus by any body part (i.e., penis, finger, etc.).
 - ii. Penetrating the penis, vulva or anus by any object (i.e., bottle, dildo, stick, etc.).
 - iii. Any kind of masturbatory contact with the penis or vulva.
5. Spouse – means a person who is legally married to, and living with, another person.
INSTRUCTOR NOTE: *The two (2) persons MUST be LEGALLY married (no common law marriage) and MUST be LIVING TOGETHER.*
6. Teacher means a certified teacher as defined in section 15-501 or any other person who provides instruction to pupils in any school district, charter school, or accommodation school, the Arizona State schools for the deaf and the blind, or a private school in this state.
7. Without consent – means any of the following:
- a. The victim is coerced by the immediate use, or threatened use, of force against a person or property; or
 - b. The victim is incapable of consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of cognition AND such condition is known, or should have reasonably been known, to the defendant; or ***INSTRUCTOR NOTE:*** *Discuss how this can be. How can someone NOT know that s/he is actually having sexual intercourse with this other person? Not because s/he was asleep or unconscious because this was covered in another section. How about the doctor/patient relationship?*
 - c. The victim is intentionally deceived as to the nature of the act; or

- d. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse. **INSTRUCTOR NOTE:** *Discussion: Again, how can this be? How about in a situation where one (1) of the persons is ALREADY married to another? or in a situation involving twins?*
- E. The following factors may be considered in determining whether a relationship is currently or was previously a sexual or romantic relationship:
 1. The type of relationship.
 2. The length of the relationship.
 3. The frequency of the interaction between the two persons.
 4. If the relationship has terminated, the length of time since the termination.

III. 13-1402 – INDECENT EXPOSURE

P. O. 2.11.14.3A

- A. A person commits indecent exposure if he/she exposes his/her genitals or anus or she exposes the areola or nipple of her breast(s) AND another person is present AND the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act.
- B. Indecent exposure to a person who is fifteen or more years of age is a misdemeanor, except that it is a felony if the defendant has two or more prior convictions for a violation of this section or has one or more prior convictions for a violation of section 13-1406. Indecent exposure to a person who is under fifteen years of age is a felony.
- C. Breastfeeding is exempt conduct. This statute implies that this act occurs, obviously, in public. However, it does NOT have to absolutely be that the defendant was on public property when the exposure occurred in order to arrest. For example:
 1. ". . . the defendant was charged with (this crime) for allegedly standing nude before a brightly lit window (of his apartment) and having an erection. This was a "public place" within the meaning of this statute. (People v. Christ, 1975, 32 Ill. APP 3d 1014, 337 N.E. 2d 53.)
 2. "The defendant's dining room, in which he lewdly exposed himself to neighbors, qualified as a "public place" within meaning of this section, since a reasonable man in the position of the defendant would have expected his lewd conduct, performed before an unveiled glass door with a light overhead, to be viewed by others." (People v. Legal, 1974, 24 Ill. App 3d 554, 321 N.E. 2d 164)
- D. Note that this statute requires that the defendant be RECKLESS about whether or not his/her conduct would cause alarm or offense.

1. This qualification excludes from coverage inadvertent and non-offensive exposure such as in a lavatory, dressing room, public beach, etc.
 2. The prime, though not exclusive, target of the statute is the exhibitionist.
- E. Note also that the statute mandates that another person be present.
1. Whether or not this "other" person may be a police officer depends on the jurisdiction.
 2. Some allow it and some do not.
 3. Check with your department and court decision in your jurisdiction.

IV. 13-1403 – PUBLIC SEXUAL INDECENCY

P. O. 2.11.14.3B

P. O. 2.11.14.1A

- A. A person commits public sexual indecency by intentionally or knowingly engaging in any of the following acts if another person is present and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by:
1. An act of sexual contact.
 2. An act of oral sexual contact.
 3. An act of sexual intercourse (remember definition).
 4. An act involving contact between the person's mouth, vulva or genitals and the anus or genitals of an animal.
- B. Public sexual indecency is considered a misdemeanor unless the "other person present" is a minor under the age of 15 years – then it becomes a felony.
- C. Note that the same idea of "public" activity applies here as it does for Indecent Exposure – II-C.
- D. While indecent exposure is concerned with the exposure in public of certain body parts, public sexual indecency is concerned with certain acts committed in public.
- E. Once again, the state statute requires the presence of another person.

V. 13-1404 – SEXUAL ABUSE

P. O. 2.11.14.3C

- A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person 15 years of age or older without consent of that person or with any person under 15 years of age if the sexual contact involves only the female breast.
1. Later on you will see that there are some defenses to this – such as if the person is the

spouse of the other.

2. It follows that a person who is at least 15 years of age CAN give this consent and, therefore, it would not be considered sexual abuse – it MIGHT be a violation of another statute.
3. However, it would be a crime (sexual abuse) to have sexual contact without consent of that person.
4. Note that the only person under 15 years of age who can be the victim of a sexual abuse is a female. (Discuss)

B. Sexual abuse is always a felony offense.

C. The essence of this statute is the "direct or indirect" fondling of the genitals, anus or female breast(s).

1. Under A.R.S. §131203(A)(3), knowingly touching another with the intent to insult or provoke would be considered assault.
2. However, this section's penalty provision recognizes that this conduct represents a greater harm to the victim than assault.

D. It should be noted that direct fondling of the private parts of a minor under the age of 14 is also prohibited by A.R.S. §131410 – Child Molesting, and its penalty is more severe. **INSTRUCTOR NOTE:** *Consensual direct or indirect fondling of a minor of 14, 15, 16, or 17 years of age is not proscribed by Title 13 if both parties are of this age group.*

E. Moreover, pursuant to A.R.S. §131407, there is a defense for the defendant who did not know or could not reasonably have known that the age of the victim was 14, 15, 16 or 17 years of age, unless the defendant was in a position of trust.

1. The overlap with the child molesting statute will allow the state an additional option in charging conduct which falls under either.

F. Note that we could have a circumstance where two (2) persons engage in sexual contact in public and both parties of the age where consent was given. In this case, the crime of sexual abuse would have no bearing, but they could be liable under public sexual indecency.

VI. 13-1405 – SEXUAL CONDUCT WITH A MINOR

P. O. 2.11.14.1B

A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in SEXUAL INTERCOURSE OR ORAL SEXUAL CONTACT with any person who is under 18 years of age.

B. Sexual conduct with a minor who is under 15 years of age is a felony and is punishable under

sexual conduct with a minor who is at least 15 years of age and is a felony.

- C. Sexual conduct with a minor who is at least 15 years of age is a felony if the person is or was in a position of trust. **INSTRUCTOR NOTE:** *definition of a teacher is a person "who provides instruction".*
- D. This statute replaces the old "statutory rape" law, but goes farther by covering not only sexual intercourse but oral sexual contact as well.
- E. If the minor victim, in fact, consents to the sexual activity, then this statute would be the proper charge.
 - 1. If the minor victim in fact does not consent, then sexual assault (rape) would be the more appropriate charge.
 - 2. If the victim is under 14 years of age, then a charge of child molesting would also be proper assuming the facts show the required fondling or touching.

VII. 13-1406 – SEXUAL ASSAULT

P. O. 2.11.14.3D

- A. Although we do not use the term anymore, this is the "rape" statute.
- B. A person commits sexual assault by intentionally or knowingly engaging in SEXUAL INTERCOURSE OR ORAL SEXUAL CONTACT with any person without consent of such person.
- C. Sexual assault is a felony.
- D. A new section was added in 1998 as follows:
- E. If a sexual assault involves the intentional or knowing administration of **flunitrazepan, gamma hydroxy butyrate (GHB) or ketamine hydrochloride** (all types of Rohypnol, or the "date rape drug") without the victim's knowledge, the sentence for the offense shall be increased by three (3) years.
- F. A new section added in 1998 requires that if a sexual assault involves the intentional or knowing infliction of serious physical injury, the defendant may be sentenced to life imprisonment and is not eligible for early release until at least 25 years is served. (ARS 13-604.1 should be changed to 13-705.)
- G. If the victim is under 12 years of age, the sentence shall be pursuant to A.R.S. §13-705.
- H. Cases from other jurisdictions (all deal with resistance):
 - 1. "Victim of a . . . sexual assault does not have to resist where it would be futile or where victim is reasonably afraid of harm to herself (himself) or others." (People v. Green. 1976, 38 Ill. App 3d 289, 347 N.E. 2d 224.)

2. "Resistance to . . . sexual assault is not necessary where it would be futile and would result in victim's life being endangered when the defendant was armed with a deadly weapon." (People v. Garriott, 174, 20 Ill. App. 3d 994, 313 N. E. 2d 189.
 3. ". . . the presence of a deadly weapon relieves the victim of a . . . sexual assault from the duty to cry out." Id.
- I. This statute is non-sexist and penalizes non-consensual heterosexual and homosexual intercourse and oral sexual contact.
 - J. The courts are still looking for any penetration; therefore, it would be very difficult to actually use the part of the definition of sexual intercourse that refers to manual masturbatory contact to any extent.
 - K. The definitions, once again, play a large role in understanding and using this statute. For example, according to the definition of "spouse," a separated spouse could be the victim of a sexual assault by the other party. **INSTRUCTOR NOTE:** *Rape can occur between any two people regardless of their relationship status.*

VIII. 13-1407 – DEFENSES

P. O. 2.11.14.2

- A. It is a defense to a prosecution under Sexual Abuse and Sexual Conduct with a Minor if the act was done in furtherance of lawful medical practice.
- B. It is a defense to a prosecution under Sexual Abuse and Sexual Conduct with a Minor, in which the victim's lack of consent is based on incapacity to consent because the victim was 15, 16 or 17 years of age; if at the time the defendant engaged in the conduct constituting the offense the defendant did not know, and could not reasonably have known, the age of the victim.
- C. It is a defense to a prosecution pursuant to Indecent Exposure, Sexual Abuse, Sexual Conduct with a Minor, and Sexual Assault if the act was done by a duly licensed physician or registered nurse or a person who renders emergency care at the scene of an emergency occurrence and consisted of administering a recognized and lawful form of treatment which was reasonably adapted to promoting the physical or mental health of the patient.
- D. It is a defense to a prosecution under Sexual Abuse and Sexual Conduct with a Minor that the person was the spouse of the other person at the time of the commission of the act (remember the definition of "spouse"). **INSTRUCTOR NOTE:** *Not a defense to 13-1406, Sexual Assault.*
- E. It is a defense to a prosecution under Sexual Abuse or Child Molestation that the defendant was not motivated by a sexual interest.
- F. It is a defense to a prosecution pursuant to A.R.S. §13-1404 involving a victim under 15 years of age, that the defendant was not motivated by a sexual interest.

- G. It is a defense to prosecution pursuant to A.R.S. §13-1405 if the victim is of the age of 15, 16 or 17, the defendant is less than 19 years of age or attending high school and is no more than 24 months older than the victim and the conduct is consensual.

IX. 13-1410 – MOLESTATION OF A CHILD

P. O. 2.11.14.1C

- A. A person commits molestation of a child by intentionally or knowingly engaging in, or causing a person to engage in, sexual contact, except sexual contact with the female breast with a child under 15 years of age.
- B. Note that this statute relates to Sexual Conduct with a Minor and Sexual Abuse in some circumstances.
- C. Also note that a minor 15, 16 or 17 years of age CANNOT be the victim of child molestation as per this statute.
- D. This is a felony.

X. 13-1411 - BEASTIALITY

P. O. 2.11.14.3D

- A. A person commits bestiality by knowingly doing either of the following:
 - 1. Engaging in oral sexual contact, sexual contact, or sexual intercourse with an animal.
 - 2. Causing another person to engage in oral sexual contact, sexual contact, or sexual intercourse with an animal.
 - 3. For the purposes of this section, “animal” means a nonhuman mammal, bird, reptile or amphibian, either dead or alive.

XI. UNLAWFUL SEXUAL CONDUCT; PEACE OFFICERS

P. O. 2.11.14.3D

- A. A peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with any person who is in the officer’s custody or a person who the officer knows or has reason to know is the subject of an investigation.
- B. Unlawful sexual conduct with a victim who is under 15 years of age is a class 2 felony. Unlawful sexual conduct with a victim who is at least 15 years of age, but less than 18 years of age is a class 3 felony. All other unlawful sex conduct is a class 5 felony.
- C. This section does not apply to either of the following:
 - 1. Any direct or indirect touching or manipulating of the genitals, anus or female breast that occurs during a lawful search.
 - 2. An officer who is married to or who is in a romantic or sexual relationship with the

person at the time of the arrest or investigation.

XII. 13-1413 – CAPACITY OF A MINOR SEXUAL ASSAULT VICTIM TO CONSENT TO A MEDICAL EXAMINATION

- A. Notwithstanding any other provision of the law, when it is not possible to contact the parent(s) or legal guardian within the short time span in which the examination should be conducted, a minor 12 years of age or older alleged to be the victim of a violation of A.R.S. §13-1406, may give consent to hospital, medical and surgical examinations, diagnosis and care in connection with such violation.
- B. Such consent shall not be subject to incapacity because of the victim's age.
- C. The consent of the parent(s) or legal guardian of such minor shall not be necessary to authorize such hospital, medical and surgical examinations, diagnosis and care and such parent(s) or legal guardian shall not be liable for payment for any services rendered pursuant to this section.

XIII. 13-1415 – HUMAN IMMUNODEFICIENCY VIRUS TESTING

P. O. 2.11.14.3E

- A. A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or another offense involving significant exposure, is subject to a court order that requires the defendant to submit to a test for the Human Immunodeficiency Virus and to consent to the release of the test result to the victim.
- B. Pursuant to Subsection A of this section, the prosecuting attorney, if requested by the victim (or if the victim is a minor, by the parent(s) or guardian of the minor), shall petition the court for an order requiring that the person submit a specimen, to be determined by the submitting entity, for laboratory testing by the Department of Health Services or another licensed laboratory for the presence of the Human Immunodeficiency Virus.
 - 1. The court shall, within 10 days, determine if sufficient evidence exists that indicates that significant exposure occurred.
 - 2. If the court makes this finding or the act committed against the victim is a sexual offense, it shall order that the test be performed in compliance with rules adopted by the Department of Health Services.
 - 3. The prosecuting attorney shall provide the victim's name and last known address of record to the Department of Health Services for notification purposes.
 - 4. The victim's name and address are confidential, except that the Department of Health Services may disclose the information to a local health department for victim notification purposes.
- C. After a specimen has been tested for the presence of Human Immunodeficiency Virus pursuant to Subsection B of this section, the laboratory that performed the test shall report the results to

the submitting entity.

- D. The submitting entity shall provide the results to the Department of Health Services or a local health department.
- E. The Department of Health Services, or a local health department, shall notify the victim of the results of the test conducted pursuant to Subsection B of this section and shall counsel the victim regarding the health implications of the results.
- F. The submitting entity or the Department of Health Services shall notify the person tested of the results of the test conducted pursuant to Subsection B of this section and shall counsel the person regarding the health implications of the results.
- G. If the submitting entity does not notify the person tested of the test results, the submitting entity shall provide both the name and last known address of record of the person tested and the test results to the Department of Health Services, or a local health department, for notification purposes.
- H. Notwithstanding any other law, copies of the test results shall be provided only to the victim of the crime, the person tested, the submitting entity and the Department of Health Services.

XIV. 13-1417 – CONTINUOUS SEXUAL ABUSE OF A CHILD

**P. O. 2.11.14.1B & C
P. O. 2.11.14.3D**

- A. A person who, over a period of three (3) months or more in duration, engages in three (3) or more acts in violation of A.R.S. §§3-1405, 13-1406 or 13-1410 with a child under 14 years of age is guilty of continuous sexual abuse of a child.
- B. Continuous sexual abuse of a child is a felony and is punishable pursuant to A.R.S. §3-705.
- C. To convict a person of continuous sexual abuse of a child, the trier of fact shall unanimously agree that the requisite number of acts occurred.
- D. The trier of fact does not need to agree on which acts constitute the requisite number.
- E. Any other felony sexual offense involving the victim shall not be charged in the same proceeding with a charge under this section unless the other charged felony sexual offense occurred outside the time period charged under this section or the other felony sexual offense is charged in the alternative.
 - 1. A defendant may be charged with only one (1) count under this section unless more than one (1) victim is involved.
 - 2. If more than one (1) victim is involved, a separate count may be charged for each victim.

XV. 13-1418 – SEXUAL MISCONDUCT; BEHAVIORAL HEALTH PROFESSIONALS

- A. A behavioral health professional certified pursuant to Title 32, Chapter 33, or a psychiatrist or psychologist licensed pursuant to Title 32, Chapter 13, 17 or 19.1, commits sexual misconduct by intentionally or knowingly engaging in sexual intercourse with a patient who is currently under the care or supervision of the certified behavioral health professional, psychiatrist or psychologist.
- B. Sexual misconduct by a certified behavioral health professional, psychiatrist or psychologist is a felony.
- C. This section does not apply to any act of sexual conduct that occurs between a certified behavioral health professional, psychiatrist or psychologist and a patient after the patient has completed a course of treatment or if the patient is not under the care of the certified behavioral health professional, psychiatrist or psychologist.

XVI. 13-1419 – UNLAWFUL SEXUAL CONDUCT; CORRECTIONAL EMPLOYEES; PERSONS IN CUSTODY

- A. A person who is employed by, or who contracts to provide services with, the state Department of Corrections, the department of juvenile corrections, a private prison facility or a city or county jail commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact or sexual intercourse with a person who is in the custody of the department, a private prison facility or a city or county jail or with an offender who is under the supervision of the department or a city or county.
- B. A prisoner who is in the custody of the state Department of Corrections, a private prison facility or a city or county jail or an offender who is on release status and who is under the supervision of the state Department of Corrections or a city or county commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact or sexual intercourse with a person who is employed by the state Department of Corrections, a private prison facility or a city or county jail or who contracts to provide services with the state Department of Corrections, a private prison facility or a city or county jail.
- C. This section does not apply to:
 - 1. A person who is employed by the state Department of Corrections, a private prison facility or a city or county jail or who contracts to provide services with the state Department of Corrections, a private prison facility or a city or county jail or an offender who is on release status if the person was lawfully married to the prisoner or offender on release status before the prisoner or offender was sentenced to the state Department of Corrections or was incarcerated in a city or county jail.
 - 2. An offender who is on release status and who was lawfully married to a person who is employed by the state Department of Corrections, a private prison facility or a city or county jail or who contracts to provide services with the state Department of Corrections, a private prison facility or a city or county jail if the marriage occurred prior to the offender being sentenced to the state Department of Corrections or incarcerated in a city or county jail.

- D. Unlawful sexual conduct with a person under the age of 15 years is a felony.
 - 1. Unlawful sexual conduct with a person between the ages of 15 and 17 years is a felony.
 - 2. All other unlawful sexual conduct is a felony.

XVII. 13-1423 – VIOLENT SEXUAL ASSAULT; NATURAL LIFE SENTENCE

P. O. 2.11.14.1B & C

P. O. 2.11.14.3C & D

- A. A person is guilty of violent sexual assault if in the course of committing an offense under A.R.S. §§13-1404, 13-1405, 13-1406, or 13-1410, the offense involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has a historical prior felony conviction for a sexual offense under this chapter or any offense committed outside this state that if committed in this state would constitute a sexual offense under this chapter.
- B. Notwithstanding A.R.S. §13-705, a person who is guilty of a violent sexual assault shall be sentenced to life imprisonment and the court shall order that the person not be released on any basis for the remainder of the person's natural life.

XVIII. 13-1424 - VOYEURISM

- A. It is unlawful to knowingly invade the privacy of another person without the knowledge of the other person for the purpose of sexual stimulation. (Discuss criteria for “ Invasion of a person’s privacy”.)
- B. It is unlawful for a person to disclose, display, distribute, or publish a photograph, videotape, film, or digital recording that is made in violation of subsection A of this section without the consent or knowledge of the person depicted. (Discuss exceptions and defenses to the crime.)

XIX. 13-1425. UNLAWFUL DISCLOSURE OF IMAGES DEPICTING STATES OF NUDITY OR SPECIFIC SEXUAL ACTIVITIES; CLASSIFICATION; DEFINITIONS

- A. It is unlawful for a person to intentionally disclose an image of another person who is identifiable from the image itself or from information displayed in connection with the image if all of the following apply: **INSTRUCTOR NOTE:** *This statute is commonly referred to as the “Revenge Porn statute”.*
 - 1. The person in the image is depicted in a state of nudity or is engaged in specific sexual activities.
 - 2. The depicted person has a reasonable expectation of privacy. Evidence that a person has sent an image to another person using an electronic device does not, on its own, remove the person’s reasonable expectation of privacy for that image.
 - 3. The image is disclosed with the intent to harm, harass, intimidate, threaten or coerce

the depicted person.

- B. This section does not apply to any of the following:
1. The reporting of unlawful conduct.
 2. Lawful and common practices of law enforcement, criminal reporting, legal proceedings or medical treatment.
 3. Images involving voluntary exposure in a public or commercial setting.
 4. An interactive computer service, as defined in 47 United States Code section 230(f)(2), or an information service, as defined in 47 United States Code section 153, with regard to content wholly provided by another party.
 5. Any disclosure that is made with the consent of the person who is depicted in the image.
- C. A violation of this section is a class 5 felony, except that a violation of this section is a:
1. Class 4 felony if the image is disclosed by electronic means.
 2. Class 1 misdemeanor if a person threatens to disclose but does not disclose an image that if disclosed would be a violation of this section.
- D. For the purposes of this section:
1. “Disclose” means display, distribute, publish, advertise or offer.
 2. “Disclosed by electronic means” means delivery to an email address, mobile device, tablet or other electronic device and includes disclosure on a website.
 3. “Harm” means physical injury, financial injury or serious emotional distress.
 4. “Image” means a photograph, videotape, film or digital recording.
 5. “Reasonable expectation of privacy” means the person exhibits an actual expectation of privacy and the expectation is reasonable.
 6. “Specific sexual activities” has the same meaning prescribed in section 11-811, subsection D, paragraph 18, subdivisions (a) and (b).
 7. “State of nudity” has the same meaning prescribed in section 11-811, subsection D, paragraph 14, subdivision (a).

XX. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).