

**SMITH, RODGERS & STRICKLAND, PLLC**

**NCGS 14-202  
SECRETLY PEEPING STATUTE AMENDED!  
EFFECTIVE DECEMBER 1, 2003**

**BY**

**REECE TRIMMER  
CONSULTANT AND LECTURER**

**&**

**RALPH B. STRICKLAND, JR.  
OF COUNSEL**

**SMITH, RODGERS & STRICKLAND, PLLC**

In June of this year the North Carolina General Assembly enacted HOUSE BILL 408: AN ACT TO MODIFY THE SECRET PEEPING STATUTE AND TO MAKE CONFORMING CHANGES.

This Act amends **GS 14-202, Secretly peeping into a room occupied by another person**. It is now a crime to secretly peep into a room occupied by another person, *male* or female. *Under certain circumstances such peeping is a Class I felony*. The bill does not apply to law enforcement officers while discharging or attempting to discharge their official duties, or to a DOC officer or a local jail detention officer for security purposes or during investigation of alleged misconduct. Also exempt are those licensed under the authority of the Alarm Systems Licensing Board or the Private Protective Services Board legally engaged in discharge of official duties. See the complete statute herein.

**Remember, it becomes effective December 1, 2003.**

**THE STATUTE:** *§ 14-202. Secretly peeping into room occupied by another person.*

*(a) Any person who shall peep secretly into any room occupied by another person shall be guilty of a Class 1 misdemeanor.*

**Our Comments.** GS 14-202(a): This part is easy. For years and years the crime was for any person, male or female, to secretly peep into a room merely occupied by a female. She wasn't required to be nude or undressing or doing anything sexually suggestive. Now, beginning December 1, it is a crime to secretly peep in a room occupied by either a female or a male (though, with God as our witness, who would want to peek in on some guy? And what man would care – especially if he had served in the armed forces and had lost all false modesty? But fair is fair.) To tell you the truth, if some guy secretly peeps into a room thinking a female occupies it, but a male in fact is the occupant, the peeper will be easy to catch. He's the guy sitting on the curb puking his guts up. You heard it here first. Class 1 misdemeanor.

*(b) For purposes of this section:*

*(1) The term "photographic image" means any photograph or photographic reproduction, still or moving, or any videotape, motion picture, or live television transmission, or any digital image of any individual.*

*(2) The term "room" shall include, but is not limited to, a bedroom, a rest room, a bathroom, a shower, and a dressing room.*

**No comments necessary here; just straightforward definitions.**

*(c) Unless covered by another provision of law providing greater punishment, any person who, while in possession of any device, which may be used to create a photographic image, shall secretly peep into any room shall be guilty of a Class A1 misdemeanor.*

**Our Comments. GS 14-202(c):** If the peeper has a device on his person that could be used to create a photographic image, and he's peeping as well, it's a Class A1 misdemeanor. That device would obviously be a camera of any kind.

*(d) Unless covered by another provision of law providing greater punishment, any person who, while secretly peeping into any room, uses any device to create a photographic image of another person in that room for the purpose of arousing or gratifying the sexual desire of any person shall be guilty of a Class I felony.*

**Our Comments. GS 14-202(d):** If the peeper has a device that can capture a photographic image, and uses it to photograph a person in the room in which he is secretly peeping, he has committed a Class I felony (unless some other provision of law provides an even greater punishment).

*(e) Any person who secretly or surreptitiously uses any device to create a photographic image of another person underneath or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent shall be guilty of a Class I felony.*

**Our Comments. GS 14-202(e):** Next, the General Assembly "closed a loophole". Any person who secretly or surreptitiously uses any device to create a photographic image of another person *underneath or through the clothing being worn* by that other person for the purpose of viewing the body of, *or the undergarments worn* by, that other person without their consent shall be guilty of a Class I felony. As we understand it, there are many Websites devoted to pictures taken ... geez, of bras and panties of ladies while they are wearing them! We are referring to "downblouse" or "upskirt" photographs of these ladies. They are taken surreptitiously and the women never even know it is happening to them. It is now a felony to take such pictures. [NOTE FROM RALPH: In order to check this out, and only for research purposes, I encouraged Trimmer to type in "underwear" on the Google search engine in his computer and hit "Enter," and Bam! Within 30 seconds he was on the telephone with one FBI agent and had two in his study. But word is that these types of photos are common on the Web.]

*(f) Any person who, for the purpose of arousing or gratifying the sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent shall be guilty of a Class I felony.*

**Our Comments. GS 14-202(f):** And, how about this perversion: Any person who, for the purpose of arousing or gratifying the sexual desire of himself or some other person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent shall be guilty of a Class I felony. Not only can a person not secretly peep into an occupied room, he cannot set up a camera to do it for him. Note that he does not actually have to take a picture. He needs only set it up so that he can do so. We are familiar with a number of such cases, and it is usually a family member who is guilty of doing this (stepfather or mom's boyfriend.) But it may also be the

owner of a tanning salon, as happened recently. If the person to be photographed, or who is actually photographed, is less than 16 years of age, you may have the felony of indecent liberties with a minor as well. See GS 14-202.1.

*(g) Any person who knowingly possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of this section shall be guilty of a Class I felony.*

**Our Comments. GS 14-202(g):** And here is a “Gotcha!” Any person who knowingly possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of 14-202 shall be guilty of a Class I felony. So don’t peep, don’t take a picture while peeping, and don’t buy or possess a peeping picture. When this hits the news there will be some computer memory dumping going on, don’t you know?

*(h) Any person who disseminates or allows to be disseminated images that the person knows, or should have known, were obtained as a result of the violation of this section shall be guilty of a Class H felony if the dissemination is without the consent of the person in the photographic image.*

**Our Comments. GS 14-202(h):** It is a felony to disseminate or allow the dissemination of such photographs.

*(i) A second or subsequent felony conviction under this section shall be punished as though convicted of an offense one class higher. A second or subsequent conviction for a Class I misdemeanor shall be punished as a Class A1 misdemeanor. A second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony.*

**Our Comments. GS 14-202(i):** Punishment can be severe, especially for repeat offenders. See, supra. As you know, supra is Latin for “at an earlier place” or “see above.” Well, that’s what Trimmer says. Look for punishment in subsection (i) in the statute above.

*(j) If the defendant is placed on probation as a result of violation of this section:*

*(1) For a first conviction under this section, the judge may impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.*

*(2) For a second or subsequent conviction under this section, the judge shall impose a requirement that the defendant obtain psychological evaluation and comply with any treatment recommended as a result of that evaluation.*

**Our Comments. Here, when an offender is placed on probation, the court is either authorized or mandated (for second or subsequent offenses) to require psychological evaluation and treatment.**

*(k) Any person whose image is captured or disseminated in violation of this section has a civil cause of action against any person who captured or disseminated the image or procured any other person to capture or disseminate the image and is entitled to recover from those persons actual damages, punitive damages, reasonable attorneys' fees and other litigation costs reasonably incurred.*

**Our Comments. GS 14-202(k):** This section establishes and creates a civil action by a victim against the person guilty of such behavior. The victim can recover actual damages, punitive damages (monetary punishment of the defendant, who must pay the victim cash for his outrageous conduct), attorney’s fees and other costs.

*(l) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is convicted of a second or subsequent violation of subsection (a) or (c) of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.*

**Our Comments. GS 14-202(l):** Violations of certain parts of this law can result in the court requiring the person to register as a sex offender. More work for the Sheriffs of North Carolina, but really worth the effort.

*(m) The provisions of subsections (a), (c), (e), (g), (h), and (k) of this section do not apply to:*

- (1) Law enforcement officers while discharging or attempting to discharge their official duties; or*
- (2) Personnel of the Department of Correction or of a local confinement facility for security purposes or during investigation of alleged misconduct by a person in the custody of the Department or the local confinement facility.*

**Our Comments. GS 14-202(m):** This section lists the exemptions for law enforcement and others acting in official capacity in discharge of official duties.

*(n) This section does not affect the legal activities of those who are licensed pursuant to Chapter 74C, Private Protective Services, or Chapter 74D, Alarm Systems, of the General Statutes, who are legally engaged in the discharge of their official duties within their respective professions, and who are not engaging in activities for an improper purpose as described in this section.*

**Our Comments:** Section (n) is also an exemption for legal surveillance in the line of duty for the Private Protective Services folks, and those licensed under Chapter 74D.

**Our Final Comment:** As you now see, much has changed in the crime of secretly peeping into a room occupied by another person. We believe that all law enforcement officers should be familiar with these new amendments to the statute; you may be certain that the good folks you serve will have read and heard about them.

**OK, Our Really, Really Final Comment:** Remember, the amended statute is effective for offenses occurring on or after 12:01AM December 1, 2003. Do not make a charge under this amended statute unless the criminal act occurred AFTER 12:01AM, December 1, 2003.