

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 215 Video Voyeurism
SPONSOR(S): Young and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 810.145, F.S., establishes crimes related to video voyeurism. Currently, first-time violations of “video voyeurism,” “video voyeurism dissemination,” and “commercial video voyeurism dissemination” are 1st degree misdemeanors. Second or subsequent violations are 3rd degree felonies.

Section 810.145(8)(a), F.S., specifies that video voyeurism is a 3rd degree felony if committed by certain persons and the victim was a child less than 16 years of age or a student. However, a violation of subsection (8)(a) by a person who has previously been convicted of any violation of s. 810.145, F.S., is a 2nd degree felony.

The bill increases the penalties associated with video voyeurism offenses. The penalty for a first-time violation of “video voyeurism,” “video voyeurism dissemination,” or “commercial video voyeurism dissemination” is increased from a 1st degree misdemeanor to a 3rd degree felony. The penalty for a second or subsequent violation is increased from a 3rd degree felony to a 2nd degree felony.

The bill also increases the penalty for violations of subsection (8)(a) of the statute from a 3rd degree felony to a 2nd degree felony. A violation of subsection (8)(a) by persons who have previously been convicted or adjudicated delinquent for any violation of s. 810.145, F.S., remains a 2nd degree felony, but the bill ranks such offense in Level 6 of the Offense Severity Ranking Chart.

The bill amends the definition of the phrase “place and time when a person has a reasonable expectation of privacy,” which is used throughout the video voyeurism statute, to specify that such locations include “residential dwellings.”

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, because the bill increases the penalties for violations of s. 810.145, F.S., it will likely have a negative prison bed impact on the Department of Corrections. The bill may have a positive jail bed impact on local governments to the extent that those who commit first-time violations of “video voyeurism,” “video voyeurism dissemination,” or “commercial video voyeurism dissemination” will be subject to a state prison sentence rather than a county jail sentence.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Voyeurism and Video Voyeurism

Section 810.14, F.S., establishes the crime of voyeurism. This section provides that the offense of voyeurism is committed when a person, having lewd, lascivious, or indecent intent, secretly observes another person when he or she is in a dwelling,¹ structure,² or conveyance³ that provides a reasonable expectation of privacy.⁴ The offense is a 1st degree misdemeanor⁵ but becomes a 3rd degree felony⁶ if the person violating the section and has two or more prior convictions for the offense.⁷

In 2004, the Legislature created s. 810.145, F.S., to distinguish video voyeurism from the existing crime of voyeurism.⁸ A person commits the offense of video voyeurism if that person:

- For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy;
- For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or
- For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.⁹

For purposes of video voyeurism, the phrase "place and time when a person has a reasonable expectation of privacy" is defined as:

¹ Section 810.011(2), F.S., defines the term "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

² Section 810.011(1), F.S., defines the term "structure" as a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

³ Section 810.011(3), F.S., defines the term "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term "conveyance" means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

⁴ Section 810.14(1), F.S.

⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁶ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁷ Section 810.14(2) and (3), F.S.

⁸ Chapter 2008-188, L.O.F.

⁹ Section 810.145(2), F.S.

A place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.¹⁰

Section 810.145, F.S., also includes offenses of "video voyeurism dissemination" and "commercial video voyeurism dissemination." Video voyeurism dissemination occurs when a person knows or has reason to believe that an image was created as a result of video voyeurism and intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.¹¹ Commercial video voyeurism dissemination occurs when a person:

- Knows or has reason to believe that an image was created as a result of video voyeurism and sells the image for consideration to another person; or
- Creates the image using video voyeurism and disseminates, distributes, or transfers the image to another person for that person to sell the image to others.¹²

A first-time violation of "video voyeurism," "video voyeurism dissemination," or "commercial video voyeurism dissemination" is a 1st degree misdemeanor, punishable by a term of imprisonment not exceeding one year and a fine of not more than \$1,000.¹³ A second or subsequent violation is a 3rd degree felony, punishable by imprisonment for up to five years and a fine of not more than \$5,000.¹⁴

Section 810.145(8)(a), F.S., enhances the penalty for video voyeurism to a 3rd degree felony for persons:

- Who are 18 years of age or older and who are responsible for the welfare of a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child, who commit video voyeurism against that child;
- Who are 18 years of age or older and who are employed at a private school,¹⁵ a school,¹⁶ or a voluntary prekindergarten education program,¹⁷ who commit video voyeurism against a student of the private school, school, or voluntary prekindergarten education program; or
- Who are 24 years of age or older who commit video voyeurism against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child.¹⁸

Section 810.145(8)(b), F.S., makes it is a 2nd degree felony if a person violates s. 810.145(8)(a), F.S., and that person has previously been convicted or adjudicated delinquent for any violation of s. 810.145, F.S. Because this offense is not currently ranked in the Criminal Punishment Code "offense severity ranking chart,"¹⁹ it defaults to a Level 4 ranking, which equates to 22 sentencing points.²⁰

¹⁰ Section 810.145(1)(c), F.S.

¹¹ Section 810.145(3), F.S.

¹² Section 810.145(4), F.S.

¹³ Section 810.145(6), F.S.

¹⁴ Section 810.145(7), F.S.

¹⁵ As defined in s. 1002.01, F.S.

¹⁶ As defined in s. 1003.01, F.S.

¹⁷ As described in s. 1002.53(3)(a), (b), or (c), F.S.

¹⁸ Section 810.145(8)(a), F.S.

¹⁹ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record; and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. Sections 921.0022 and 921.0024, F.S.

²⁰ Section 921.0023, F.S.

The statute provides exceptions for the above-described criminal penalties to ensure that the statute does not criminalize legitimate law enforcement surveillance, security systems if a notice is posted, and video surveillance devices that are clearly and immediately obvious.²¹ There is also an exception for providers of electronic communication services and providers of remote computing services.²²

Effect of the Bill

The bill increases the penalties associated with all of the above-described video voyeurism offenses. In regards to violations of “video voyeurism,” “video voyeurism dissemination,” and “commercial video voyeurism dissemination”:

- The penalty for a first-time violation is increased from a 1st degree misdemeanor to a 3rd degree felony.
- The penalty for a second or subsequent violation of is increased from a 3rd degree felony to a 2nd degree felony, which is punishable by imprisonment for up to fifteen years and a fine of not more than \$10,000.²³

The penalty for first-time violations of subsection (8)(a) of the statute is increased from a 3rd degree felony to a 2nd degree felony. Violations of s. 810.145(8)(b), F.S., remain 2nd degree felonies, but the bill ranks such offense in Level 6 of the Criminal Punishment Code “offense severity ranking chart, which equates to 36 sentencing points.”

The bill also amends the definition of the phrase “place and time when a person has a reasonable expectation of privacy” to specify that such locations include “residential dwellings.”

B. SECTION DIRECTORY:

Section 1. Amends s. 810.145, F.S., relating to video voyeurism.

Section 2. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, because the bill increases the penalties for violations of s. 810.145, F.S., it will likely have a negative prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

²¹ Section 810.145(5), F.S.

²² *Id.*

²³ Sections 775.082 and 775.083, F.S.

2. Expenditures:

The bill increases the penalty for first-time violations of s. 810.145(2), (3), and (4), F.S., from a 1st degree misdemeanor to a 3rd degree felony. This will have a positive fiscal impact on local governments to the extent that those who commit first-time violations of s. 810.145(2), (3), and (4), F.S., will be subject to a state prison sentence rather than a county jail sentence.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is effective July 1, 2012. Generally, bills that create or enhance criminal penalties are effective October 1 in an effort to provide adequate notice to those impacted by the bill (e.g., law enforcement, state attorneys, public defenders, clerks of court, etc.).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES