

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	HB 215 (SB 436)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Young and others (Storms and others)	117 Y's	0 N's
<b>COMPANION BILLS:</b>	SB 436	<b>GOVERNOR'S ACTION:</b>	Pending

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### SUMMARY ANALYSIS

HB 215 passed the House on March 7, 2012, as SB 436.

The bill amends s. 810.145, F.S., the video voyeurism statute, to increase 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 1<sup>st</sup> degree misdemeanor to a 3<sup>rd</sup> degree felony for perpetrators who are 19 years of age or older. The penalty for a second or subsequent violation is increased from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony, regardless of the age of the perpetrator.

The bill also increases the penalty for violations of s. 810.145(8)(a), F.S., which relates to video voyeurism committed by certain persons against a child under 16 or a student, from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> 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 2<sup>nd</sup> degree felony, but the bill increases the ranking of such offense in the Offense Severity Ranking Chart from Level 4 to Level 6.

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 met December 14, 2011, and determined this bill will have an insignificant impact on the state prison beds because of the low volume of offenses addressed in this bill. The bill may have a minimal positive jail bed impact on local governments to the extent that those 19 years of age or older 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.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2012.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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,<sup>1</sup> structure,<sup>2</sup> or conveyance<sup>3</sup> that provides a reasonable expectation of privacy.<sup>4</sup> The offense is a 1<sup>st</sup> degree misdemeanor<sup>5</sup> but becomes a 3<sup>rd</sup> degree felony<sup>6</sup> if the person violating the section and has two or more prior convictions for the offense.<sup>7</sup>

In 2004, the Legislature created s. 810.145, F.S., to distinguish video voyeurism from the existing crime of voyeurism.<sup>8</sup> 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.<sup>9</sup>

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

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

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Section 810.14(1), F.S.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Section 810.14(2) and (3), F.S.

<sup>8</sup> Chapter 2004-39, L.O.F.

<sup>9</sup> Section 810.145(2), F.S.

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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

A first-time violation of “video voyeurism,” “video voyeurism dissemination,” or “commercial video voyeurism dissemination” is a 1<sup>st</sup> degree misdemeanor, punishable by a term of imprisonment not exceeding one year and a fine of not more than \$1,000.<sup>13</sup> A second or subsequent violation is a 3<sup>rd</sup> degree felony, punishable by imprisonment for up to five years and a fine of not more than \$5,000.<sup>14</sup>

Section 810.145(8)(a), F.S., enhances the penalty for video voyeurism to a 3<sup>rd</sup> 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,<sup>15</sup> a school,<sup>16</sup> or a voluntary prekindergarten education program,<sup>17</sup> 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.<sup>18</sup>

Section 810.145(8)(b), F.S., makes it a 2<sup>nd</sup> 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,”<sup>19</sup> it defaults to a Level 4 ranking, which equates to 22 sentencing points.<sup>20</sup>

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

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<sup>10</sup> Section 810.145(1)(c), F.S.

<sup>11</sup> Section 810.145(3), F.S.

<sup>12</sup> Section 810.145(4), F.S.

<sup>13</sup> Section 810.145(6), F.S.

<sup>14</sup> Section 810.145(7), F.S.

<sup>15</sup> As defined in s. 1002.01, F.S.

<sup>16</sup> As defined in s. 1003.01, F.S.

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

<sup>18</sup> Section 810.145(8)(a), F.S.

<sup>19</sup> 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.

<sup>20</sup> Sections 921.0023, and 921.0024(1)(a), F.S.

video surveillance devices that are clearly and immediately obvious.<sup>21</sup> There is also an exception for providers of electronic communication services and providers of remote computing services.<sup>22</sup>

### **Effect of the Bill**

The bill increases the penalties associated with all of the above-described video voyeurism offenses for certain persons. 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 1<sup>st</sup> degree misdemeanor to a 3<sup>rd</sup> degree felony for perpetrators who are 19 years of age or older; and
- The penalty for a second or subsequent violation is increased from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony (regardless of the age of the perpetrator), which is punishable by imprisonment for up to fifteen years and a fine of not more than \$10,000.<sup>23</sup>

The penalty for first-time violations of subsection (8)(a) of the statute is increased from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony. Violations of s. 810.145(8)(b), F.S., remain 2<sup>nd</sup> 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.<sup>24</sup>

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.”

## **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 met December 14, 2011, and determined this bill will have an insignificant impact on the state prison system because of the low volume of offenses addressed in this bill.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

The bill increases the penalty for first-time violations of s. 810.145(2), (3), and (4), F.S., from a 1<sup>st</sup> degree misdemeanor to a 3<sup>rd</sup> degree felony for perpetrators who are 19 years of age or older. This may have a positive fiscal impact on local governments to the extent that such persons 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.

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<sup>21</sup> Section 810.145(5), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Sections 775.082 and 775.083, F.S.

<sup>24</sup> Section 921.0024(1)(a), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.