

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 284

SPONSOR: Communication & Public Utilities Committee and Senator Aronberg

SUBJECT: Video Voyeurism

DATE: January 21, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	_____	_____	CM	_____
3.	_____	_____	CJ	_____
4.	_____	_____	JU	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates the crimes of, and penalties for, video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination and provides definitions relevant to these crimes. It creates exemptions from these provisions. It amends the Florida Contraband Forfeiture Act to include imaging devices and images recorded in violation of the video voyeurism provisions and to provide for the destruction of such forfeited articles.

The bill creates section 810.145 and substantially amends sections 932.701 and 932.7055 of the Florida Statutes.

II. Present Situation:

Section 810.14, F.S., makes voyeurism a crime. A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent, secretly observes, photographs, films, videotapes, or records another person when such other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.

A violation is a first degree misdemeanor, punishable by a definite term of imprisonment not exceeding 1 year or by a fine of not more than \$1,000. If a person who violates this section has been previously convicted or adjudicated delinquent two or more times of any violation of this section, the subsequent violation is a third degree felony, punishable by a term of imprisonment not exceeding 5 years, by a fine of not more than \$5,000, or by a term of imprisonment not exceeding 10 years. For purposes of this section, a person has been previously convicted or adjudicated delinquent of a violation of this section if the violation resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense.

III. Effect of Proposed Changes:

Section 1 creates s. 810.145, F.S., creating the crimes of video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination.

A person commits the offense of video voyeurism if that person, for the amusement, entertainment, sexual arousal, gratification, or profit of himself, herself, or another, or on behalf of another:

- intentionally uses or installs, or permits the use or installation of, an imaging device to secretly view, broadcast, or record a person, without that person's knowledge or consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy,
- 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 or consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

A person also commits video voyeurism if he or she, 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 or consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy.

A person commits the offense of video voyeurism dissemination if that person, knowing that an image was created in violation of the video voyeurism provisions, intentionally disseminates, distributes, or transfers the image to another person.

A person commits the offense of commercial video voyeurism dissemination if that person:

- knowing that an image was created in violation of the video voyeurism provisions, sells the image for consideration to another person; or
- having created the image in violation of the video voyeurism provisions, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

The bill provides the following definitions relevant to these crimes:

- “broadcast” means electronically transmitting a visual image with the intent that it be viewed by another person.
- “imaging device” means any mechanical, digital, or electronic viewing device, still camera, camcorder, motion picture camera, or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.
- “place and time when a person has a reasonable expectation of privacy” means 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.
- “privately exposing the body” means exposing a sexual organ.

The bill exempts from these provisions any:

- law enforcement agency conducting surveillance for a law enforcement purpose;
- security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed for the purpose of security for the premises;
- video surveillance device that is installed in such a manner that the presence of the device is clearly and immediately obvious; or
- dissemination, distribution, or transfer of images subject to this section by a provider of an electronic communication service.

The penalties for these offenses would be the same as under the current voyeurism statute, a first degree misdemeanor for a first violation, punishable by a definite term of imprisonment not exceeding 1 year or by a fine of not more than \$1,000, and a third degree felony if a person who violates this section has been previously convicted or adjudicated delinquent two or more times of any violation of this section, punishable by a term of imprisonment not exceeding 5 years, by a fine of not more than \$5,000, or by a term of imprisonment not exceeding 10 years.

Section 2 amends s. 932.701, F.S., on the Florida Contraband Forfeiture Act. The Act provides for the seizure and forfeiture of “contraband articles,” and this statute defines that term. The bill amends the statute to include any personal property, including, but not limited to, any imaging device used in violation of s. 810.145, F.S. (the video voyeurism provisions created in section 1 of the bill), or any photograph, film, or other recorded image, including an image recorded on videotape, a compact disk, digital tape, or fixed disk, recorded in violation of s. 810.145, F.S.

Section 3 amends s. 932.7055, F.S., on disposition of seized contraband articles. Subsection 932.7055(1), F.S., provides that upon a final judgment granting forfeiture, a seizing agency may either retain the property for the agency’s use, sell it, or salvage, trade, or transfer it to any public or nonprofit organization. This section of the bill establishes a different disposition of video voyeurism images made in violation of newly created s. 810.145, F.S., requiring that the seizing agency destroy any image and the medium upon on which the image is recorded, including, but not limited to, a photograph, video tape, diskette, compact disk, or fixed disk. The agency may not sell or retain any image.

Section 4 amends s. 932.707, F.S., to conform a cross-reference.

Section 5 re-enacts s. 705.101, F.S., for the purpose of incorporating the amendment to s. 932.701, F.S., made in this bill. Section 705.101, F.S., defines “unclaimed evidence” and contains a cross-reference to the definition of “contraband article” provided in s. 932.701, F.S., which is amended in section 2 of this bill.

Section 6 re-enacts s. 932.703(4), F.S., for the purpose of incorporating the amendment to s. 932.701, F.S., made in this bill. Section 932.703(4), F.S., provides that when possession of a contraband article constitutes a felony, the personal or real property on which the contraband article is located at the time of the seizure is also contraband and subject to seizure. It is presumed that the personal or real property was being used in a manner to facilitate the transportation, concealment, receipt, possession, or sale of the contraband article. Again, the

subsection contains a cross-reference to the definition of “contraband article” provided in s. 932.701, F.S., which is amended in section 2 of this bill.

Section 7 provides that the bill takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill may be subject to challenge as violating the right to free speech. One possible defense to such a challenge is that the bill creates a new category of unprotected speech. There are similarities between the apparent underlying rationale for the bill and the reasons relied upon by the United States Supreme Court in upholding the first child pornography statute to be so challenged. *New York v. Ferber*, 458 U.S. 747, 102 S.Ct. 3348 (1982). First, the state’s interest in protecting residents and visitors against the types of invasions of privacy criminalized by the bill is compelling. Second, the distribution of images is similarly linked to the criminal invasion of privacy behavior by which they were created in at least two ways. The images produced are a permanent record of the invasion and the harm to the victim is exacerbated by their circulation. Also, the distribution network must be closed if the production of images which requires the invasion of privacy is to be effectively controlled. Third, the dissemination of such images provides an economic motive for and is thus an integral part of the criminal invasion of privacy. Fourth, the value of permitting these images “is exceedingly modest, if not *de minimis*.” The fifth criteria of content is different. In the child pornography case, the statute was content based, but was nonetheless upheld as the state interest so overwhelmingly outweighed the expressive interest at stake that no case-by-case adjudication was necessary. Here, content is not at issue. It is the manner in which the image was created that determines the legality of disseminating the image, not the content. Images with the same content that were produced with the consent of the person being photographed are legal and may be disseminated.

The bill may also be subject to challenges that it is overbroad and that it violates due process by being void for vagueness. A similar statute was upheld against such challenges by the Supreme Court of Washington. *State of Washington v. Glas*, 147 Wash.2d 410, 54 P.3d 147 (Wash. 2002).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Those who profit from video voyeurism may have a decrease in income.

C. Government Sector Impact:

The fiscal impact is indeterminable as the number of prosecutions cannot be projected, so the potential cost to the judiciary, State Attorneys, Public Defenders, and penal institutes cannot be projected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Different states use different language and criminal classifications for the activity this bill labels “video voyeurism,” making it difficult to get an accurate total of the states that have such a crime. At least New York, Washington, California, Wisconsin, Louisiana, Connecticut, Hawaii, and Kentucky have such a criminal statute and Maryland, South Carolina, Nevada, and Idaho have had legislation to create one.

Additionally, there is a federal bill, S.1301, the Video Voyeurism Prevention Act of 2003, pending in Congress. This bill has passed the Senate and has been referred to a House committee.

VIII. Amendments:

None.