

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 523 w/CS Video Voyeurism

SPONSOR(S): Stargel

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice (Sub.)</u>	<u>5 Y, 0 N</u>	<u>Kramer</u>	<u>De La Paz</u>
2) <u>Public Safety & Crime Prevention</u>	<u>18 Y, 0 N w/CS</u>	<u>Kramer</u>	<u>De La Paz</u>
3) <u>Public Safety Appropriations (Sub.)</u>	<u>7 Y, 0 N</u>	<u>Davis</u>	<u>DeBeaugrine</u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 523 with committee substitute creates the misdemeanor offense of video voyeurism. The bill provides that a person commits the offense of video voyeurism if the offender, for the amusement, entertainment, sexual arousal, gratification or profit of the offender or another, or for the purpose of degrading or abusing another person, 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.

Also, the bill provides that a person commits the offense of video voyeurism if the offender, for the amusement, entertainment, sexual arousal, gratification, or profit of the offender or another person, 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. Further, the bill creates the misdemeanor offenses of video voyeurism dissemination and commercial video voyeurism dissemination.

Currently, section 877.26, F.S., makes it a first degree misdemeanor for a merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant's dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy. The bill amends this section to provide that a merchant or merchant's employee does not "directly observe" a customer if the customer knows or has reason to be aware of the presence of the merchant or merchant's employee in the merchant's dressing room, fitting room, changing room or restroom, even when such room provides a reasonable expectation of privacy.

The Criminal Justice Estimating Conference reported this bill appears to have an insignificant impact on prison beds with the Department of Corrections.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0523d.ap.doc

DATE: April 2, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Current law: Section 810.14, F.S., provides that 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 in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy. The offense is a first degree misdemeanor. A third conviction for the offense is a third degree felony.

Section 877.26, F.S., makes it a first degree misdemeanor for a merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant's dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy.¹

Changes made by HB 523 with committee substitute: HB 523 amends section 877.26, F.S., to provide that for purposes of the section, a merchant or merchant's employee does not "directly observe" a customer if the customer knows or has reason to be aware of the presence of the merchant or merchant's employee in the merchant's dressing room, fitting room, changing room or restroom, even when such room provides a reasonable expectation of privacy.

The bill creates several offenses relating to "video voyeurism". The bill provides that a person commits the offense of video voyeurism if the offender:

1. 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 device² to secretly view, broadcast³, or record a person, without that person's knowledge or consent, who is dressing, undressing, or privately exposing the body⁴, at a place and time when that person has a reasonable expectation of privacy⁵;

¹ The term "merchant" is defined as an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise. s. 877.26(1), F.S.

² The bill defines the term "imaging device" to mean "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".

³ The bill defines the term "broadcast" to mean "electronically transmitting a visual image with the intent that it be viewed by another person".

⁴ The bill defines the term "privately exposing the body" to mean "exposing a sexual organ"

⁵ The bill defines the term "place and time when a person has a reasonable expectation of privacy" to mean "a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that his or her 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".

2. 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 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; or
3. 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 or consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

Video voyeurism dissemination: The bill provides that a person commits the offense of video voyeurism dissemination if that person, knowing that an image was created in violation of the newly created section, intentionally disseminates, distributes, or transfers the image to another person.

Commercial video voyeurism dissemination: The bill provides that a person commits the offense of commercial video voyeurism dissemination if that person:

1. Knowing that an image was created in violation of this section, sells the image for consideration to another person; or
2. Having created the image in violation of this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

The bill provides that a person who violates any of the provisions of the newly created section commits a first degree misdemeanor. Further, a person who violates the section and who has previously been convicted of any violation of the section commits a third degree felony.

The bill also provides that the section does not apply to the following:

1. A law enforcement agency conducting surveillance for a law enforcement purpose;
2. A security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed; or
3. A video surveillance device that is installed and operated in such a manner that the presence of the device is clearly and immediately obvious
4. The dissemination, distribution, or transfer of images subject to the newly created section by a provider of an electronic communication service⁶ or a provider of a remote computing service.⁷

Forfeiture: The bill amends section 932.701, F.S., to add "any personal property, including but not limited to any imaging device...photograph, film, or other recorded image, including an image recorded

⁶ The bill refers to the definition of the term "electronic communication service" found in 18 U.S.C. s. 2510(15) which defines the term to mean "any service which provides to users thereof the ability to send or receive wire or electronic communications." The term "electronic communication" is defined in 18 U.S.C. s. 2510(12) to mean "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce". The definition contained in the federal code specifies that the definition of "electronic communication" does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from a tracking device or; electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds. However, HB 523 specifies that these exceptions are to be included within the definition of the term electronic communication.

⁷ The bill refers to the definition of the term "remote computing service" found in s. 18 U.S.C. 2711(2) which defines the term to mean "the provision to the public of computer storage or processing services by means of an electronic communications system".

on videotape, compact disc, digital tape, or fixed disk” recorded in violation of the newly created video voyeurism statute to the definition of “contraband article” in the Florida Contraband Forfeiture Act.

Currently, section 932.7055, F.S., provides that when a seizing agency obtains a final judgment granting forfeiture of property, it may elect to retain the property for the agency’s use, sell the property or salvage, trade or transfer the property to any public or nonprofit organization. The bill amends this section to provide that a seizing agency must destroy any image and the medium on which the image is recorded, including, but not limited to, a photograph, film, or other recorded image, including an image recorded on videotape, compact disc, digital tape, or fixed disk, recorded in violation of the newly created video voyeurism section.

C. SECTION DIRECTORY:

Section 1. Creates s. 810.145, F.S.; creates offenses relating to video voyeurism.

Section 2. Amends s. 877.26, F.S.; relates to direct observation or visual surveillance of customers in merchant’s dressing room.

Section 3. Amends s. 932.701, F.S.; amends Florida Contraband Forfeiture Act to expand definition of contraband article to include property used in violation of video voyeurism statute.

Section 4. Amends s. 932.7055, F.S.; requires seizing agency to destroy images recorded in violation of video voyeurism statute.

Section 5. Amends s. 932.707, F.S.; conforming cross-reference.

Section 6. Reenacts s. 705.101 for the purpose of incorporating the amendment to section 932.701 by reference.

Section 7. Reenacts s. 932.703 for the purpose of incorporating the amendment to section 932.701 by reference.

Section 8. Provides effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference met on February 6, 2004, and determined that this bill would likely have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that businesses are currently selling videotapes that are obtained using methods that will be prohibited under the provisions of this bill, the bill may have a negative fiscal impact on the private sector.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Criminal Justice recommended the adoption of an amendment that made the following changes:

- The amendment changed the definition of the term "privately exposing the body" to mean "exposing a sexual organ".
- The amendment added language creating an exception for the dissemination, distribution or transfer of images by a provider of electronic communication services or remote computing services.
- The amendment also clarified that a first or second violation of the section will be a first degree misdemeanor and the third violation will be a third degree felony.
- The amendment also made several technical changes to conform the language to that of CS/SB 284.

The Committee on Public Safety & Crime Prevention adopted the amendment recommended by the Subcommittee on Criminal Justice. The committee also adopted an amendment to that amendment which made a second violation of the section (rather than a third violation) a third degree felony and made technical changes to the language relating to the exception for the dissemination, distribution or transfer of images by a provider of electronic communication services or remote computing services. The committee also adopted an amendment to section 877.26, F.S. which relates to merchant's observation or surveillance of dressing rooms.

The Subcommittee on Public Safety Appropriations recommended the adoption of three amendments. The first amendment provides that the video voyeurism offenses apply to recording done without the person's knowledge *and* consent, rather than knowledge *or* consent. Further, the offenses will apply to a person who acts knowing *or having reason to believe* that the image was created in a manner described by the bill. The second amendment clarifies when a seizing agency must destroy an image or medium on which an image is

recorded and provides that the destruction must be done "when the image and the medium on which it is recorded is no longer needed for an official purpose." The third amendment changes the language relating to a merchant's observation or surveillance of a dressing room and provides that a merchant may directly observe a customer from outside a dressing room if the observation is within the scope of the merchant's duties and the observation does not otherwise violate the voyeurism or video voyeurism statutes or if the customer invites or consents to the presence of the merchant in the room.