

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.)

Prepared By: Judiciary Committee

BILL: SB 162

SPONSOR: Senator Aronberg

SUBJECT: Voyeurism

DATE: March 8, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.	Chinn	Maclure	JU	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends s. 810.14, F.S., to remove references to photographing, filming, videotaping, or recording from the definition of the offense of voyeurism. Almost all of these activities would also violate s. 810.145, F.S., which prohibits video voyeurism.

This bill substantially amends section 810.14, Florida Statutes.

II. Present Situation:

Voyeurism

Section 810.14, F.S., provides that the offense of voyeurism is committed when a person, having lewd, lascivious, or indecent intent, secretly observes, photographs, films, videotapes, or records another person when the second person is in a dwelling, structure, or conveyance that provides a reasonable expectation of privacy. The Florida Standard Jury Instructions in Criminal Cases 11.13, for s. 810.14, F.S., states that the words lewd, lascivious, and indecent mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing the act. The phrase "reasonable expectation of privacy" is not defined in this section or in the Standard Jury Instructions.

A violation is a first-degree misdemeanor, punishable by imprisonment not exceeding one 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 five years, by a fine of not more than \$5,000, or by a term of imprisonment not exceeding 10 years for certain violent or habitual offenders.

Video Voyeurism

Section 810.145, F.S., which became law in 2004, prohibits video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination. Video voyeurism dissemination and commercial video voyeurism dissemination involve the distribution of images that are created as a result of video voyeurism.

The offense of video voyeurism may be committed in three ways. Each involves the use of an imaging device without the victim's knowledge and consent. "Imaging device" is defined as 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. This definition embraces the devices that could be used to observe, photograph, film, videotape, or record another person under the general voyeurism statute.

- A person can commit the offense by intentionally using or installing an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or exposing a sexual organ at a place and time when the person has a reasonable expectation of privacy. In order to violate the statute, the act must be done for the offender's own amusement, entertainment, sexual arousal, or profit, or for the purpose of degrading or abusing another person.
- A person can commit the offense by intentionally permitting the use or installation of an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or exposing a sexual organ at a place and time when the person has a reasonable expectation of privacy.
- A person can commit the offense by intentionally using an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person for the purpose of viewing the person's body or undergarments. The act must be done on the voyeur's own behalf or on the behalf of another person, or for the amusement, entertainment, sexual arousal, gratification, or profit of the voyeur or another person.

The video voyeurism statute defines "place and time when a person has a reasonable expectation of privacy." It is a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without concern for being viewed, recorded, or broadcast. Examples include the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.

The punishment range for video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination under s. 810.145, F.S., is the same as that for voyeurism under s. 810.14, F.S.

Similarities and Differences between Voyeurism and Video Voyeurism

In most cases, a person who is committing voyeurism or attempted voyeurism by means other than unaided visual observation would also be committing video voyeurism. There are

undoubtedly theoretical exceptions, but these do not seem to have significance in the real world. For example, it is theoretically possible that someone could have lewd, lascivious, or indecent intent in viewing another person but not have the purpose of seeing the other person dressing, undressing, or exposing a sexual organ.

While there may be narrow exceptions to the general rule that the offense of video voyeurism includes the offense of voyeurism using an artificial device, the converse—that the offense of voyeurism includes the offense of video voyeurism—is not true. Voyeurism requires “lewd, lascivious, or indecent intent,”¹ while video voyeurism has no intent element.² In addition, the offense of video voyeurism embraces criminal behavior that could not be charged as voyeurism under s. 810.14, including “up-skirt” photography in a public place.

III. Effect of Proposed Changes:

The bill amends the voyeurism criminal statute, s. 810.14, F.S., to remove references to photographing, filming, videotaping, or recording. This clarifies that the proper charge for voyeuristic activities using an imaging device is video voyeurism as set forth in s. 810.145, F.S. Because almost any activity using such devices to commit voyeurism can also be charged as video voyeurism under s. 810.145, F.S., there is no significant change in the law.

The bill provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹ Section 810.14(1), F.S.

² Section 810.145(2), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A number of states, including Arkansas, Idaho, Kentucky, Louisiana, New York, Ohio, Rhode Island, South Carolina, Utah, Virginia, and Washington, have enacted video voyeurism statutes similar to Florida's statute. In addition, the 108th Congress passed the "Video Voyeurism Prevention Act of 2004" to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
