

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: This bill enhances criminal sanctions if a person uses electronic surveillance equipment to assist in the commission of a crime. Also, this bill provides for criminal sanctions if a person uses electronic surveillance equipment to aid a known suspect in escaping from a crime.

B. EFFECT OF PROPOSED CHANGES:

According to law enforcement, drug dealers who are based out of residences are using sophisticated video surveillance equipment to provide advance warning of approaching law enforcement officers. In addition, law enforcement officials have expressed concern that the video surveillance systems could provide criminals the opportunity to ambush police officers who attempt to enter these drug houses.

Currently, there are two statutes which address the use of communications equipment during the commission of a crime. Section 934.215, F.S., provides that a person commits a third degree felony if the person uses a two-way communications device to assist in the commission of a felony offense. Similarly, s. 843.167, F.S. provides that a person is subject to enhanced criminal penalties if the person uses a scanner to intercept police communication and uses the information to assist in the commission of, or escape from, a crime. The enhanced penalties in s. 843.167, F.S. are identical to the enhanced penalties proposed by HB 203.

HB 203 creates s. 775.08451(2)(a), F.S. which provides for enhanced criminal penalties if a person uses electronic surveillance equipment to assist in committing a crime or uses electronic surveillance equipment to avoid arrest. HB 203 defines electronic surveillance equipment 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.

HB 203 provides that any person who violates s. 775.08451(2)(a), F.S. will be subject to enhanced penalties for the underlying criminal offense. The offense will be treated as if it were an offense of the next higher degree as follows:

- A second degree misdemeanor would be punished as a first degree misdemeanor
- A first degree misdemeanor would be punished as a third degree felony
- A third degree felony would be punished as a second degree felony
- A second degree felony would be punished as a first degree felony
- A first degree felony would be punished as a life felony

In addition, for purposes of sentencing, HB 203 reclassifies the underlying felony offense to the next higher offense level in the offense severity ranking chart¹.

HB 203 also creates s. 775.08451(2)(b)1, F.S., which prohibits a person from using information received from electronic surveillance equipment to assist a known suspect in escaping from a crime. The bill provides that a person who violates this section commits a first degree misdemeanor². The enhanced penalties listed above do not apply to this section.

The bill has an effective date of October 1, 2008.

C. SECTION DIRECTORY:

Section 1 Creates s. 775.08451, F.S., relating to the use of electronic surveillance equipment in criminal acts.

Section 2 Amends s. 921.0022, F.S., relating to the offense severity ranking chart.

Section 3 Provides effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

At its January 17, 2008 meeting, the Criminal Justice Impact Conference determined that this bill would have a potentially significant prison bed impact on the Department of Corrections.

¹ ss. 921.0022, 921.0023, F.S.

² ss. 775.082, 775.083, F.S.

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 16 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill enhances criminal penalties for all crimes in which electronic surveillance equipment is used. Thus, the bill would be applicable to crimes where electronic surveillance equipment is an essential element of the offense. For example, a video camera is an intrinsic element of video voyeurism³. Therefore, every person convicted of video voyeurism would be subject to the enhanced penalties in the bill.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

³ Section 810.145, F.S.