

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 328

INTRODUCER: Senator Aronberg

SUBJECT: Video Voyeurism

DATE: January 14, 2008      REVISED: \_\_\_\_\_

|    | ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|------------|----------------|-----------|------------------|
| 1. | Clodfelter | Cannon         | CJ        | <b>Favorable</b> |
| 2. | _____      | _____          | JU        | _____            |
| 3. | _____      | _____          | JA        | _____            |
| 4. | _____      | _____          | _____     | _____            |
| 5. | _____      | _____          | _____     | _____            |
| 6. | _____      | _____          | _____     | _____            |

**I. Summary:**

This bill increases the penalty for video voyeurism when the offender is at least 18 years old. It requires proof that the offender was responsible for the welfare of a victim who was under 16 years old or was employed at a public or private K-12 school where the victim was a student of any age.

This bill substantially amends section 810.145 of the Florida Statutes.

**II. Present Situation:**

In 2004, the Legislature created s. 810.145, F.S., to distinguish video voyeurism from the existing crime of voyeurism (s. 810.14, F.S.). An offender commits the offense of video voyeurism by:

- Intentionally using or installing an imaging device to secretly view, broadcast, or record a person 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 offender's own amusement, entertainment, sexual arousal, gratification, or profit or for the purpose of degrading or abusing another person.
- Intentionally permitting the use or installation of an imaging device to secretly view, broadcast, or record a person as stated above, but for the amusement, entertainment, sexual arousal, gratification, or profit of another person.
- Intentionally using an imaging device to secretly view, broadcast, or record under or through another person's clothing in order to view that person's body or undergarments,

for the amusement, entertainment, sexual arousal, gratification, or profit of either the offender or another person.

Section 810.145, F.S., also includes offenses of “video voyeurism dissemination” and “commercial video voyeurism dissemination” for distributing a video or image with knowledge or reason to believe that it was created as a result of video voyeurism.

The statute includes exceptions to ensure that it does not criminalize legitimate law enforcement surveillance, or security surveillance devices if a notice is posted or if the device is clearly and immediately obvious. There is also an exception for Internet service providers who do not exercise control over user content.

A first-time violation of any of the provisions of s. 810.145, F.S., is a first-degree misdemeanor, punishable by a term of imprisonment not exceeding one year and a fine of not more than \$1,000. If an offender has previously been convicted of or adjudicated delinquent for any violation of the section, the penalty is enhanced to a third-degree felony. A third-degree felony is punishable by imprisonment for up to five years and a fine of not more than \$5,000.

### **III. Effect of Proposed Changes:**

This bill creates two new video voyeurism offenses that are third degree felonies. Conviction of these offenses requires additional elements of proof beyond that required to prove any other form of video voyeurism. These new offenses recognize the additional societal expectation that is placed upon a person who is entrusted to care for, coach, or otherwise mentor a young person.

The additional elements for the offense described in new s. 810.145(8)(a), F.S., are that the offender must have been 18 years of age or older, the victim must have been under the age of 16, and the offender must have been responsible for the welfare of the victim. Persons who are responsible for a child’s welfare would include coaches, teachers, scout leaders, parents, guardians, babysitters, and those with similar relationships to the child. The additional offense may be proven regardless of whether the person knew or had reason to know the age of the child. Of course, the nature of the relationship that makes the offender responsible for the child’s welfare also makes it likely that he or she is aware of the child’s age. It should be noted that video voyeurism is illegal regardless of the victim’s age, so there can be no “innocent mistake” as is sometimes alleged by persons who engage in consensual sexual activity that is illegal only because of the victim’s age.

The offense described in new s. 810.145(8)(b), F.S., requires additional proof that the offender is 18 or older and is employed at a public or private school where the victim is a student. These are K-12 schools as respectively defined in s. 1003.01, F.S., and s. 1002.01, F.S. The age of the victim is irrelevant as long as he or she is a student at the school. The inclusion of students over 15 years old recognizes that older children are likely to remain vulnerable to abuse because of the additional trust and bond that may be established in a school setting.

As previously noted, the new offenses are third-degree felonies which are punishable by imprisonment for up to five years and a fine of not more than \$5,000. If the offender has previously been convicted of or adjudicated delinquent for any form of video voyeurism, these

offenses are second-degree felonies punishable by imprisonment for up to fifteen years and a fine of not more than \$10,000.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet determined the impact that the new offense will have upon the need for prison beds. However, the identically worded CS/SB 2534 from the 2007 session was forecast to have an insignificant impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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