

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 537 Offense of Voyeurism

SPONSOR(S): Safety & Security Council; Dorworth and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>10 Y, 0 N</u>	<u>Padgett</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Padgett/Davis</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u>33 Y, 0 N</u>	<u>Leznoff</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, s. 810.145, F.S. provides that a person who commits the offense of video voyeurism commits a first degree misdemeanor. If a person commits the offense of video voyeurism and has a prior conviction for video voyeurism, the person commits a third degree felony.

CS/HB 537 amends s. 810.145, F.S., to create additional video voyeurism offenses. The bill creates third degree felonies:

- In cases where the offender is 18 years of age or older and commits video voyeurism against
 - a child under 16 when the offender is responsible for the welfare of the victim or
 - a student at a voluntary prekindergarten program or K-12 school, whether public or private, at which the offender is employed.
- If a person 24 years of age or older commits video voyeurism against a child younger than 16 years of age.

The bill provides that the penalties for a violation of this subsection increase to a second degree felony if the offender has a prior conviction for video voyeurism.

The bill provides an effective date of July 1, 2008.

The Criminal Justice Impact Conference met on February 26, 2008 and determined the original version of the bill would have an insignificant prison bed impact. The amended version of the bill was temporarily postponed by the Criminal Justice Impact on March 14, 2006. Therefore the determination of prison bed impact is pending.

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

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DATE: 3/18/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: This bill increases criminal penalties for video voyeurism in circumstances where the offender is in a position of trust relative to a young victim, or is of a significant age difference from a young victim. The bill also increases criminal penalties if a person commits this offense and has a previous conviction for video voyeurism.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, s. 810.145, F.S. provides that a person commits 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 or for the purpose of degrading or abusing another person.

Section 810.145, F.S., also includes the 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 law enforcement surveillance; video security systems, provided that written notice of the system is posted; or video surveillance systems which are clearly and immediately obvious. Also, the statute provides an exception for internet providers who do not exercise control over user content.

A violation of the provisions of s. 810.145, F.S. is a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine. If an offender has previously been convicted or adjudicated delinquent for any violation of this section, the penalty is enhanced to a third degree felony, punishable by up to 5 years imprisonment and a \$5,000 fine.

Proposed Changes

CS/HB 537 amends s. 810.145, F.S. to create three new video voyeurism offenses which are third degree felonies, punishable by up to 5 years imprisonment and a \$5,000 fine. The bill requires proof of all elements of video voyeurism as currently defined in s. 810.145, F.S., plus additional elements which would result in the increased penalty.

The new s. 810.145(8)(a) F.S., creates a third degree felony if the offender commits video voyeurism and:

- the offender is 18 years of age or older,
- the victim is under the age 16, regardless of whether the offender has knowledge of the age of the victim, and
- the offender is responsible for the welfare of the victim.

The new s. 810.145(8)(b), F.S., creates a third degree felony if the offender commits video voyeurism and:

- the offender is 18 years of age or older,
- the offender is employed at a voluntary prekindergarten program¹ or K-12 school, whether public or private, and
- the victim is a student of the prekindergarten program or school.

The new s. 810.145(8)(b), F.S. creates a third degree felony if the offender commits video voyeurism and:

- the offender is 24 years of age or older, and
- the victim is under the age of 16, regardless of whether the offender has knowledge of the age of the victim

The bill also provides that if a person has previously been convicted or adjudicated delinquent of any form of video voyeurism, a violation of the new offenses in CS/HB 537 would be punished as a second degree felony.

The new offenses created are not ranked in the offense severity ranking chart². Sections 810.145(a) and (b) would default to a Level 1. Section 810.145(c) would default to a Level 4.

C. SECTION DIRECTORY:

Section 1 Amends s. 810.145, F.S., relating to video voyeurism.

Section 2 Provides effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

¹ See generally Ch. 1002, Part V, F.S.

² Section 921.0022, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 26, 2008 and determined the original version of the bill would have an insignificant prison bed impact. The amended version of the bill was temporarily postponed by the Criminal Justice Impact on March 14, 2006. Therefore the determination of prison bed impact is pending.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

- On March 5, 2008, the Committee on Homeland Security & Public Safety adopted one amendment to the bill. The amendment creates a third degree felony if the offender commits video voyeurism and:

- The offender is 24 years of age or older, and
- The victim is under the age of 16

The amendment provides that the new offense may be proven regardless of whether the offender knew or had reason to know the age of the victim.

- On March 12, 2008, the Safety & Security Council adopted one amendment which expands the definition of schools to include voluntary prekindergarten programs.
- On March 12, 2008, the Safety & Security Council made the bill a council substitute.