

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 Judiciary Committee

BILL: CS/SB 1064

INTRODUCER: Criminal Justice Committee and Senator Aronberg

SUBJECT: Voyeurism

DATE: April 20, 2009 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------|----------------|-----------|------------------|
| 1. | Clodfelter | Cannon | CJ | Fav/CS |
| 2. | Treadwell | Maclure | JU | Favorable |
| 3. | _____ | _____ | JA | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill amends the voyeurism law to prohibit a person from secretly viewing under or through the clothing of another person to see the body or undergarments of the other person in a public place without the use of an imaging device. In order to be a criminal act, the viewing must be for the viewer’s own amusement, entertainment, or sexual arousal or gratification.

This bill substantially amends section 810.14, Florida Statutes.

II. Present Situation:

Voyeurism

Florida law prohibits voyeurism that is committed either with or without the use of a device to record, transmit, or store images of another person. Section 810.14, F.S., provides:

A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent, secretly observes another person when the other

person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.

The first conviction of voyeurism is a first-degree misdemeanor, which is punishable by a term of imprisonment not exceeding one year and a fine of not more than \$1,000. Any subsequent conviction is a third-degree felony, which is punishable by imprisonment for up to five years and a fine of not more than \$5,000.

Video Voyeurism

Section 810.145, F.S., prohibits video voyeurism. An offender 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 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. A first-time violation of these provisions of s. 810.145, F.S., is a first-degree misdemeanor. 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.

There are enhanced penalties for cases in which video voyeurism is committed by an adult against a child under 16 years of age when the adult is responsible for the welfare of the child, by an adult who is a school employee against a student of the school, or by a person who is more than 24 years old against a child who is under 16 years old. In these cases, the offense is a third-degree felony if the offender has never been convicted of video voyeurism. It is a second-degree felony if the offender has a previous video voyeurism conviction. A second-degree felony is punishable by imprisonment for up to 15 years and a fine of not more than \$10,000.

The video voyeurism 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.

History of the Voyeurism and Video Voyeurism Statutes

Prior to the creation of s. 810.14, F.S., in 1998, there was no provision of Florida law that specifically prohibited the “Peeping Tom” type of voyeuristic act. The voyeur was commonly charged with a misdemeanor offense such as trespass, loitering, prowling, or disorderly conduct that was committed in the process of the voyeuristic act. The original s. 810.14, F.S., included unlawfully observing as well as unlawfully photographing, filming, videotaping, or recording another person.¹

In 2004, s. 810.145, F.S., was created to make video voyeurism a separate offense from voyeurism.² The new statute embraced more modern technologies and included prohibitions against commercial video voyeurism and video voyeurism dissemination. It also prohibited criminal behavior that could not be charged as voyeurism under s. 810.14, F.S., including taking “up-skirt” photos or videos in a public place.

Upskirt Voyeurism

In the late 1990s, there was concern among law enforcement personnel about combating a voyeuristic trend called “up-skirting.”³ “Up-skirting” involves using some form of video or photographic equipment to surreptitiously capture an image of a woman’s underwear or body under their skirt while the victim is in a public location. Most existing laws against voyeurism did not prohibit this conduct because they focused upon observing conduct while the victim was in a private location where she had a reasonable expectation of privacy.⁴ Prosecution of a voyeur who had been caught taking up-skirt photographs or videos was often only possible if a crime such as disorderly conduct or assault had been committed.

Up-skirting behavior existed prior to the miniaturization of cameras, but was usually accomplished by an individual using a mirror or other reflective surface. Since no photographic or video record was made, only the voyeur was able to see the subject and the activity could only be detected if the voyeur was caught in the act. While the conduct was reprehensible, the victim could at least feel secure that the intrusion on her privacy was a limited-time event. With the advent of small imaging devices, particularly cell phones, upskirt pictures and videos are posted on the Internet and are easily accessible to anyone with a computer. As an indication of the magnitude of the problem, a Google search of the term “upskirt” on March 2, 2009, yielded approximately 23,300,000 hits.⁵

¹ Chapter 1998-415, Laws of Florida.

² Chapter 2004-39, Laws of Florida.

³ See David D. Kremenetsky, *Insatiable “Up-Skirt” Voyeurs Force California Lawmakers to Expand Privacy Protection in Public Places*, 31 MCGEORGE L. REV. 285 (2000). There is also a corresponding trend known as “down-blousing” that involves taking picture down a woman’s shirt.

⁴ See *State of Washington v. Glas*, 54 P.3d 147 (Wash. 2002); see also Lance E. Rothenberg, Comment, *Re-Thinking Privacy: Peeping Toms, Video Voyeurs, and the Failure of Criminal Law to Recognize a Reasonable Expectation of Privacy in the Public Space*, 49 AM. U.L. REV. 1127, 1145-46 (2000)

⁵ While this number indicates that the problem is significant, not all sites that mention the word “upskirt” contain illicit material. For example, salon.com has posted a lengthy article on the problem. See Tracy Clark-Flory, *Porn in a Flash: A troubling surge in creepy “upskirt” photography has lawmakers in a twist – and the body parts of women posted all over the Internet* (Nov. 25, 2008), available at www.salon.com/mwt/feature/2008/11/25/upskirting/print.html (last viewed on Apr. 16, 2009).

Many states, including Florida, revised their laws to prohibit up-skirting with a video or photo imaging device. However, it has recently been discovered that the effort to combat up-skirting by more technologically advanced voyeurs may have inadvertently left those who rely on traditional methods of voyeurism without criminal sanction. In Escambia County, a court dismissed a charge of voyeurism that had been filed against a defendant accused of using a mirror to look under the dress of a female customer in a Pensacola bookstore. The judge determined that a person who is in the sales area of a public bookstore is not “located in a dwelling, structure, or conveyance [that] provides a reasonable expectation of privacy” as required by s. 810.14, F.S.⁶ Although the voyeurism charge was dismissed, in this case the evidence was sufficient to convict the accused voyeur of the misdemeanor offense of disorderly conduct.⁷

III. Effect of Proposed Changes:

The bill amends s. 810.14, F.S., the voyeurism law, to address situations in which a person secretly views the body or undergarments of another person in a public place without the use of an imaging device. A person is in violation of the new offense if he or she:

- Secretly views under or through the clothing worn by another person;
- Without the other person’s knowledge or consent;
- In order to view the body or the undergarments worn by the other person;
- For the viewer’s amusement, entertainment, or sexual arousal or gratification.

This language is similar to s. 810.145(2)(c), F.S., which prohibits up-skirting with an imaging device. The difference is that s. 810.145(2)(c), F.S., includes terms related to the use of imaging devices and the ability to share or profit from the images.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ *State v. Presken*, Order on Defendant’s Motion to Dismiss, Case No. 2007 MM 25056, County Court of Escambia County, Florida (May 16, 2008) (unpublished). See also Thyrie Bland, *Bills aim to close voyeurism loophole*, PENSACOLA NEWS-JOURNAL (Feb. 26, 2009), available at <http://www.pnj.com/article/20090226/NEWS01/902260322> (last viewed on Apr. 16, 2009).

⁷ Disposition of Case No. 2007 MM 25056 reflected on the website of the Escambia County Clerk of Court, available at public.escambiaclerk.com.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has estimated that the identical House companion bill would have an insignificant fiscal impact on the state correctional system. It appears that any fiscal impact on other governmental agencies would also be insignificant.

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.)**CS by Criminal Justice on March 4, 2009:**

The committee substitute deletes the word “over” from the bill to conform with the language in s. 810.145(2)(c), F.S., which is the existing statute that prohibits this form of voyeurism using an imaging device. This clarifies that both statutes prohibit up-skirting, down-blousing, and other voyeuristic actions to look underneath another person’s clothes.

B. Amendments:

None.