

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 Committee on Fiscal Policy

BILL: CS/CS/SB 1604

INTRODUCER: Fiscal Policy Committee; Criminal Justice Committee; and Senator Book

SUBJECT: Digital Voyeurism

DATE: February 16, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Parker</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1604 amends s. 810.145, F.S., renaming the offense from “video voyeurism” to “digital voyeurism.”

The bill defines “position of authority or trust” to mean a position occupied by a person 18 years of age or older who is a relative, caregiver, coach, employer, or other person who, by reason of his or her relationship with the victim, is able to exercise undue influence over him or her or exploit his or her trust.

The bill amends the definition of “broadcast,” to include visual recordings, and provides that “family or household member,” has the same meaning as in s. 741.28, F.S.

The bill provides that a person who is under 19 years of age and who commits the offense of digital voyeurism commits a first degree misdemeanor.¹ A person who is 19 years of age or older who commits the offense of digital voyeurism commits a third degree felony.²

A person who commits the offense of digital voyeurism dissemination or commercial digital voyeurism dissemination commits a third degree felony.

¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine pursuant to s. 775.082 and s. 775.083, F.S.

² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine pursuant to s. 775.082, s. 775.083, or s. 775.084, F.S.

Each instance of the secret viewing, broadcasting, recording, disseminating, distributing, or transferring of an image or recording made in violation of this section is a separate offense for which a separate penalty is authorized.

The bill provides that if a person who is 19 years of age or older is convicted of committing any violation of s. 810.145, F.S., relating to digital voyeurism, and is a family or household member of the victim, or holds a position of authority or trust with the victim, the court must reclassify the felony to the next higher degree as follows:

- A third degree felony is reclassified as a second degree felony.
- A second degree felony is reclassified as a first degree felony.

The bill ranks felony crimes of digital voyeurism, digital voyeurism dissemination, and commercial digital voyeurism in the offense severity ranking chart.

For purposes of sentencing under ch. 921, F.S., and incentive gain-time eligibility under ch. 944, F.S., a felony that is reclassified is ranked one level above the ranking in s. 921.0022, F.S.

This bill may have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective on October 1, 2024.

II. Present Situation:

Voyeurism

A person commits voyeurism³ 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; or
- Secretly observes another person's intimate areas⁴ in which the person has a reasonable expectation of privacy, when the other person is located in a public or private dwelling, structure, or conveyance.

A first or second voyeurism offense is punishable as a first degree misdemeanor⁵ and a third or subsequent offense is punishable as a third degree felony.⁶

Video Voyeurism

A person commits video voyeurism if that person, for amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally:

³ Section 810.14, F.S.

⁴ Section 810.14(1)(b), F.S., "intimate area" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

⁵ *Supra* Note 1.

⁶ *Supra* Note 2.

- Uses or installs an imaging device⁷ to secretly view, broadcast,⁸ or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body,⁹ at a place and time when that person has a reasonable expectation of privacy;¹⁰
- Permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or
- Uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

Video Voyeurism Dissemination

A person commits the offense of video voyeurism dissemination if that person, knowing or having reason to believe that an image was created in a manner described in this section, intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.¹¹

Commercial Video Voyeurism Dissemination

A person commits the offense of commercial video voyeurism dissemination if that person:

- Knowing or having reason to believe that an image was created in a manner described in this section, sells the image for consideration to another person;¹² or
- Having created the image in a manner described in this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.¹³

Video Voyeurism Penalties

Generally, a person who commits video voyeurism, video voyeurism dissemination, or commercial digital voyeurism dissemination under s. 810.145, F.S., commits a:

- First degree misdemeanor if he or she is under 19 years of age.¹⁴
- Third degree felony if he or she is 19 years of age or older.¹⁵

⁷ Section 810.145(1)(b), F.S., "Imaging device" means 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.

⁸ Section 810.145(1)(a), F.S., "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by another person.

⁹ Section 810.145(1)(d), F.S., "Privately exposing the body" means exposing a sexual organ.

¹⁰ Section 810.145(1)(c), F.S., "Place and time when a person has a reasonable expectation of privacy" means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.

¹¹ Section 810.145(3), F.S.

¹² Section 810.145(4)(a), F.S.

¹³ Section 810.145(4)(b), F.S.

¹⁴ Section 810.145(6)(a), F.S.

¹⁵ Section 810.145(6)(b), F.S.

- Second degree felony¹⁶ if he or she commits a violation and has previously been convicted of or adjudicated delinquent for any violation of s. 810.145, F.S., regardless of his or her age.¹⁷

A person commits a second degree felony if he or she commits any video voyeurism offense and is:

- 18 years of age or older and commits the offense against a child younger than 16 years of age whose welfare he or she is responsible for, regardless of whether he or she knows or has reason to know the child's age;¹⁸
- 18 years of age or older, and employed at a private school as defined in s. 1002.01, F.S.; a school as defined in s. 1003.01, F.S.; or a voluntary prekindergarten education program as described in s. 1002.53(3)(a), (b), or (c), F.S., and commits the offense against a student of the school;¹⁹ or
- 24 years of age or older and commits the offense against a child younger than 16 years of age, regardless of whether he or she knows or has reason to know the child's age.²⁰

Current Rankings for Video Voyeurism Offenses

Current OSRC rankings for felony offenses under s. 810.145, F.S., are as follows:

- Video voyeurism under s. 810.145(2)-(4), F.S., is unranked and as a third degree felony defaults to a Level 1 offense if committed by a person 19 years of age or older;
- A second or subsequent conviction for video voyeurism under s. 810.145(2)-(4), F.S., is unranked and as a second degree felony defaults to a Level 4 offense, regardless of the offender's age;²¹ and
- Video voyeurism committed by a specified person against a specified child or student under s. 810.145(8)(a), F.S., is unranked and as a second degree felony defaults to a Level 4 offense, for a first time offense, and is ranked as a Level 6 offense if the offender has a prior violation of any video voyeurism offense.

III. Effect of Proposed Changes:

This bill amends s. 810.145, F.S., renaming the offense from “video voyeurism” to “digital voyeurism.”

The bill defines “position of authority or trust” to mean a position occupied by a person 18 years of age or older who is a relative, caregiver, coach, employer, or other person who, by reason of his or her relationship with the victim, is able to exercise undue influence over him or her or exploit his or her trust.

The bill amends the definition of “broadcast,” to include visual recordings, and provides that “family or household member,” has the same meaning as in s. 741.28, F.S.

¹⁶ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine pursuant to s. 775.082, s. 775.083, or s. 775.084, F.S.

¹⁷ Section 810.145(7), F.S.

¹⁸ Section 810.145(8)(a)1., F.S.

¹⁹ Section 810.145(8)(a)2., F.S.

²⁰ Section 810.145(8)(a)3., F.S.

²¹ Section 810.145(7), F.S.

The bill provides that a person who is under 19 years of age and who commits the offense of digital voyeurism commits a first degree misdemeanor. A person who is 19 years of age or older who commits the offense of digital voyeurism commits a third degree felony.

A person who commits the offense of digital voyeurism dissemination or commercial digital voyeurism dissemination commits a third degree felony.

Each instance of the secret viewing, broadcasting, recording, disseminating, distributing, or transferring of an image or recording made in violation of this section is a separate offense for which a separate penalty is authorized.

The bill provides that if a person who is 19 years of age or older is convicted of committing any violation of s. 810.145, F.S., relating to digital voyeurism and is a family or household member of the victim, or holds a position of authority or trust with the victim, the court shall reclassify the felony to the next higher degree as follows:

- A felony of the third degree is reclassified as a felony of the second degree.
- A felony of the second degree is reclassified as a felony of the first degree.

For purposes of sentencing under ch. 921, F.S., and incentive gain-time eligibility under ch. 944, F.S., a felony that is reclassified is ranked one level above the ranking in s. 921.0022, F.S.

The bill ranks crimes of digital voyeurism, digital voyeurism dissemination, and commercial digital voyeurism in the offense severity ranking chart.

Florida Statute	Felony Degree	Offense	Ranking
810.145(2)(c)	3rd	Digital voyeurism; 19 years of age or older	Level 3
810.145(3)(b)	3rd	Digital voyeurism dissemination	Level 4
840.145(4)(c)	3rd	Commercial digital voyeurism dissemination	Level 5
810.145(7)(a)	2nd	Digital voyeurism; 2nd or subsequent	Level 5
810.145(8)(a)	2nd	Digital voyeurism certain minor victims	Level 5
810.145 (8)(b)	2nd	Digital voyeurism certain minor victims; 2nd or subsequent	Level 6

The bill is effective on October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement (FDLE) will be required to update all documentation and training that lists “video” voyeurism or s. 810.145(8), F.S., as a qualifying offense for sexual offender/predator registration. Those costs would be absorbed by the department.²²

FDLE in its legislative analysis reports a federal impact. Florida has been found to have substantially implemented the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Act. This determination is made by the Department of Justice’s Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office. As a state that has substantially implemented SORNA, the Florida registry is prioritized in funding consideration for the yearly SMART grant, which goes directly to the registry and supports staffing,

²² FDLE, 2024 Legislative Bill Analysis for HB 1389 (January 22, 2024), p. 3 (on file with the Senate Committee on Criminal Justice).

equipment, publication, training, and other registry operations. The registry has received over \$2 million in SMART grants over the last 10 years. Additionally, those states that do not substantially implement SORNA see a 10 percent reduction in the Edward Byrne Memorial Justice Assistance Grant (JAG) received by state agencies in Florida. In 2023, Florida received more than \$12 million in state JAG funds.²³

SORNA requires sexual offender registration of those convicted for an offense of video voyeurism of a minor, which is currently covered under s. 810.145(8), F.S. Striking subsection (8) means that future convictions for video voyeurism of a minor will no longer qualify for sexual offender registration. This could impact Florida's substantial implementation of SORNA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 810.145, 921.0022, 397.417, 435.04, 456.074, 775.0862, 775.15, 775.21, 943.0435, 943.0584, 944.606, 944.607, and 1012.315, F.S.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Fiscal Policy on February 15, 2024:

The committee substitute:

- Clarifies that each instance of the secret viewing of a person in violation of this section or the broadcasting, recording, disseminating, distributing, or transferring of an image or recording made is a separate offense for which a separate penalty is authorized.

CS by Criminal Justice on February 6, 2024:

The committee substitute:

- Redefines the definition of “position of authority or trust.”
- Revises the penalties for committing digital voyeurism, digital voyeurism dissemination and commercial digital voyeurism dissemination, and ranks the felony offenses in the offense severity ranking chart.
- Provides that each violation of the statute is a separate offense for which a separate penalty is authorized.

²³ *Id.* at pg. 4.

- Provides enhanced penalties when the offender is a family member, household member or holds a position of authority or trust with the victim.

B. Amendments:

None.

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