

STORAGE NAME: h3709s1.cp

DATE: March 20, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3709

RELATING TO: Voyeurism

SPONSOR(S): Crime and Punishment, Representatives Dockery, Bloom, Brown, Casey & others

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME AND PUNISHMENT YEAS 9 NAYS 0

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I. SUMMARY:

The bill creates s. 810.14, F.S., Voyeurism, which prohibits a person from 1) entering or remaining on any property, or 2) using a device -- for the lewd purpose of secretly observing, photographing, filming, videotaping, or recording an occupant of a building or structure in a place where a person would have a reasonable expectation of privacy.

- The bill punishes a first-offense of voyeurism as a misdemeanor, and subsequent offenses as 3rd-degree felonies (max., 5-years prison, \$5,000 fine).
- The bill provides an exception for the observation of inmates in jails and prisons and for law enforcement officers, or those assisting them, in the conduct of lawful investigations.

The effective date is October 1, 1998.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Trespass

Current law prohibits the entry upon private lands. Section 810.09, F.S. (trespass), is defined as follows:

A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or
2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

Definitions

A "conveyance" is any motor vehicle, ship, vessel, etc.

A "structure" is a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

The "curtilage" is any land or building immediately adjacent to a dwelling.

Laws prohibiting Voyeurism

The Florida Statutes contain no law which prohibits conduct amounting to a "peeping Tom." Other states have such laws (e.g., Georgia, Missouri). Still, others have laws which prohibit the secret videotape, photograph or filming of persons in private accommodations (e.g., Michigan, Virginia, Georgia, Missouri).

B. EFFECT OF PROPOSED CHANGES:

A "Peeping Tom" Law

The bill creates the new offense of Voyeurism, as follows in part:

810.14 Voyeurism prohibited.--

- (1) A person who enters or remains on any property, or uses a device, for the lewd, lascivious, or indecent purpose of secretly observing, photographing, filming, videotaping, or recording an occupant of a building or structure in a place where a person would have a reasonable expectation of privacy commits the

offense of voyeurism, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, except as provided in subsection (2).

Thus, the offense is committed, either, 1) when a person enters or remains on any property with a lewd purpose to observe, photograph, etc., or 2) when a person uses a device with a lewd purpose to observe, photograph, etc.

Second Offenses

A second offense is punished as a 3rd-degree felony (max. 5-years prison, and \$5,000 fine).

An Exception Is Provided

An exception is provided for observation of inmates in jails and prisons.

Definition Of Lewd, Lascivious Or Indecent Purpose

A lewd, lascivious, or indecent purpose is defined by the Florida Standard Jury Instructions as a “wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing the act.”

Effective Date

The effective date is October 1, 1998.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. It creates the offense of voyeurism which criminalizes certain "peeping Tom" situations which are not covered under the trespass statute.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 810.14, F.S., is created.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Prohibits voyeurism.

Section 2: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. **Non-recurring Effects:**

See, Fiscal Comments.

2. **Recurring Effects:**

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has determined the bill to have **no fiscal impact.**

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

Because the bill involves a criminal law, it is exempt from the mandate.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill does not reduce anyone's authority to raise revenues.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

The bill does not reduce the state tax shared with counties and municipalities.

V. **COMMENTS:**

Previously Attempted Legislation

In 1974, the House passed a bill (HB 3864) which contained the following provision:

Any person found looking into the residence of another person without that person's consent, for voyeuristic purposes shall be guilty of a misdemeanor of the second degree punishable as provided in Sections 775.082 or 775.083.

However, the bill died in the Senate.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The bill passed the Committee on Crime and Punishment on March 25, 1998. There was one strike-everything amendment which has been reflected in this bill research statement. The bill was made into a CS.

VII. **SIGNATURES:**

COMMITTEE ON CRIME AND PUNISHMENT:

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