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****FINAL ACTION****

DATE: May 13, 1998

****SEE FINAL ACTION STATUS SECTION****

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

BILL #: CS/HB 3709

RELATING TO: Criminal Justice

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
- (2)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

Became law without the Governor's signature on June 17, 1998. See, 98-415, Laws of Florida.

II. SUMMARY:

The bill amends s. 806.13, F.S., Criminal Mischief, by allowing the aggregate value for multiple offenses committed in a single crime spree to be used when determining whether the offense should be charged as a misdemeanor or a felony.

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 the first and second convictions for the new offense as misdemeanors (max., 1-year jail, \$1,000 fine).
- The bill punishes 3rd and subsequent offenses as 3rd-degree felonies (max., 5-years prison, \$5,000 fine).

The bill has an effective date of October 1, 1998.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Criminal Mischief

Section 806.13, F.S., Criminal Mischief, prohibits willful or malicious damage to the property of another. Punishment for the offense depends upon the amount of damage caused, as follows:

- If damage is \$200, or less, the offense is a 2nd-degree misdemeanor (max., 60-days jail, \$500 fine).
- If damage is greater than \$200, but less than \$1,000, the offense is a 1st-degree misdemeanor (max., 1-year jail, \$1,000 fine).
- If damage is greater than \$1,000, the offense is a 3rd-degree felony (max., 5-years prison, \$5,000).

Under current law, a person who commits multiple incidents of criminal mischief during a single criminal episode (usually limited to a period of time, or connected by a common purpose) may only be charged with a misdemeanor, as long as the damage for each offense is less than \$1,000.

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:

Criminal Mischief Amended

The bill amends s. 806.13, F.S., Criminal Mischief, by allowing the state to use the aggregate sum of the damages resulting from multiple offenses committed against different victims when charging felony criminal mischief.

Caveat

The new law contains a caveat that, in order to use the aggregate sum of the damages resulting from multiple offenses, all of the offenses must have been committed "during one scheme or course of conduct." This means the offenses must have been committed within a reasonably short period of time (i.e., a crime spree), or that they were committed with a common purpose (e.g., to punish a common victim).

Thus, a defendant who vandalizes several cars in one evening, committing less than \$1,000 damage to each (a misdemeanor), could be charged with a felony if the total damage for all cars exceeds \$1,000.

A "Peeping Tom" Law

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

810.14 Voyeurism prohibited.--

(1) A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent, secretly observes, photographs, films, videotapes, or records another person when such other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.

Because the offense includes the element of secrecy, the offense is not committed by the pedestrian who casually glances through the window of a residence along his route. Likewise, because the offense must be committed with a lewd,

lascivious or indecent intent, it does not prohibit the secret placement of cameras in jails, prisons or other places for legitimate security purposes.

Punishment

- A first or second offense is punished as a 1st-degree misdemeanor (max., 1-year jail, \$1,000 fine).
- A third or subsequent offense is punished as a 3rd-degree felony (max. 5-years prison, and \$5,000 fine).

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. 806.13, F.S., amended; s. 810.14, F.S., is created.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends the criminal mischief statute.

Section 2: Creates the voyeurism statute.

Section 3: Provides an effective date.

IV. 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 met to consider the bill on April 17, 1998, and determined the bill to have an **insignificant fiscal impact**. However, the provision regarding criminal mischief was added after this date.

V. 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.

VI. COMMENTS:

Ambiguous Punishment for Second Voyeurism Offense

The bill contains the following language regarding punishment:

(2) A person who violates this section commits a misdemeanor of the first degree **for the first violation**, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who violates this section and **who has been previously convicted or adjudicated delinquent two or more times** of any violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. [e.a.]

The bill specifies that a first offense is punished as a misdemeanor and a third, or subsequent offense, is punished as a felony, but it does not say how a 2nd-offense shall be punished. CS/HB 3709 punished all second and subsequent offenses as felonies, but this was changed by the Senate to its present form.

It is doubtful that the current language will allow any second offenders to escape punishment. If the legislature chose to punish 1st & 3rd offenders, the courts will have no trouble discerning legislative intent to punish 2nd offenders, as well. Likewise, the language informs persons of ordinary intelligence that 2nd offenses will be punished no less severely than 1st offenses. Nonetheless, defendants will have strong arguments for strict construction of this criminal statute and to resolve any ambiguity in their favor. Hence, this language should be corrected with a follow-up ("glitch") bill in the next session.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Senate added the provision which amends the criminal mischief statute. Also, the Senate reduced the punishment for a 2nd conviction of voyeurism to a misdemeanor, thereby requiring a third offense to obtain felony status.

VIII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

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