

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 14, 1998 Revised: _____

Subject: Voyeurism

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Erickson</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>Withdrawn</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

Committee Substitute for Senate Bill 860 creates a new section of the Florida Statutes, s. 810.14, F.S., which provides that the offense of voyeurism is committed when a person, 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.

The CS authorizes separate convictions and sentences for the voyeurism offense and other offenses, and provides that a first violation of the new section is a first degree misdemeanor; a second or subsequent violation is a third degree felony.

This bill creates section 810.14 of the Florida Statutes.

II. Present Situation:

Presently, there is no provision of Florida law that specifically prohibits the “Peeping Tom” type of voyeuristic act, though unauthorized entry onto the property of another may constitute, given the specific facts of a case, trespass, prowling, or loitering, all of which are misdemeanor offenses if the person is not armed. See ss. 810.08, 810.09, and 856.021, F.S.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 860 creates a new section of the Florida Statutes, s. 810.14, F.S., which provides that the offense of voyeurism is committed when a person, 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.

The CS also provides that a person may be convicted of and sentenced separately for a violation of the new section and for any other criminal offense, including but not limited to, burglary, trespass, or loitering.

The CS also provides that a first violation of the new section is a first degree misdemeanor; a second or subsequent violation is a third degree felony.

This act shall take effect October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In determining whether the person secretly observed has a “reasonable expectation of privacy,” the courts will probably look to the substantial body of case law determining whether persons subject to warrantless searches have a “reasonable expectation of privacy” protected by the Fourth Amendment.

The test applied is a two-part inquiry set forth in *Katz v. United States*, 389 US 347 (1967): “(1) Has the individual manifested a subjective expectation of privacy in the object of the challenged search; (2) If so, is society prepared to recognize that expectation as reasonable.” *Sarantopoulos v. State*, 629 So.2d 121, 122 (Fla. 1993), summarizing the “*Katz*” test.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Staff has requested that CS/SB 860 be placed on the agenda of the Criminal Justice Estimating Conference (CJEC). Staff does not anticipate a significant fiscal impact given that the offense is an unranked third degree felony, and therefore defaults to a Level 1 ranking for purposes of sentencing under the Florida Criminal Punishment Code.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.