

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1243
SPONSOR(S): Ford and others
TIED BILLS:

Voyeurism

IDEN./SIM. BILLS: HB 103, CS/SB 1064

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	7 Y, 0 N, As CS	Padgett	Kramer
2)	Civil Justice & Courts Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

Currently, 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. There is no provision in current law that explicitly prohibits the use of mirrors or similar devices to commit the act of voyeurism.

The first conviction of voyeurism is punishable as a first degree misdemeanor. Any subsequent conviction is punishable as a third degree felony.

The bill amends s. 810.145(1)(b), F.S., video voyeurism, to include the term "mirror or similar device" in the definition of "imaging device."

The bill provides that the section does not confer civil liability on a business or its employees who act reasonably if a violation of the section occurs on the premises of the business.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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 punishable as a first degree misdemeanor¹. Any subsequent conviction is punishable as a third degree felony².

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.

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

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

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 felony³ if the offender has a previous video voyeurism conviction.

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.⁴

In 2004, s. 810.145, F.S., was created to make video voyeurism a separate offense from voyeurism.⁵ 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.

Up-Skirt Voyeurism

In the late 1990s, there was concern among law enforcement personnel about combating a voyeuristic trend called “up-skirting.”⁶ “Up-skirting” involves using some form of video or photographic equipment to surreptitiously capture an image of a woman’s underwear or private parts 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.⁷ 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, up-skirt pictures and videos are posted on the Internet and easily accessible to

³ A second degree felony is punishable by up to 15 years imprisonment and a maximum \$10,000 fine. Sections 775.082, 775.083, 775.084, F.S.

⁴ Chapter 1998-415, Laws of Florida.

⁵ Chapter 2004-39, Laws of Florida.

⁶ 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.

⁷ 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)

anyone with a computer. As an indication of the magnitude of the problem, a Google search of the term “up-skirt” on March 2, 2009, yielded approximately 23,300,000 hits.⁸

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 older methods 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.⁹ 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.¹⁰

Proposed Changes

The bill amends s. 810.145(1)(b), F.S., video voyeurism, to include the term “mirror or similar device” in the definition of “imaging device.”

The bill provides that the section does not confer civil liability on a business or its employees who act reasonably if a violation of the section occurs on the premises of the business.

B. SECTION DIRECTORY:

Section 1: Amends s. 810.145, F.S., relating to video voyeurism.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on February 25, 2009 and determined the bill would have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

⁸ 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* “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,” Salon.com, November 25, 2008, viewed at www.salon.com/mwt/feature/2008/11/25/upskirting/print.html on March 2, 2009.

⁹ Order on Defendant’s Motion to Dismiss, May 16, 2008, *State v. Presken*, County Court of Escambia County, Florida (unpublished). *See also* Bills aim to close voyeurism loophole, Pensacola News-Journal, February 26, 2009, viewed at <http://www.pnj.com/article/20090226/NEWS01/902260322> on February 27, 2009.

¹⁰ Disposition of Case No. 2007 MM 25056 reflected on the website of the Escambia County Clerk of Court (public.escambiaclerk.com).

The bill creates an additional manner in which a person can violate the current video voyeurism statute. The county jail bed impact is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 27, 2009, the Public Safety & Domestic Security Policy Committee adopted a strike-all amendment to the bill. The bill adds the term, "mirror or similar device" to the current definition of an "imaging device" located in s. 810.145, F.S. The bill provides that the section does not confer civil liability on a business or its employees who act reasonably if a violation of the section occurs on the premises of the business.