

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: SB 296
 INTRODUCER: Senator Joyner
 SUBJECT: Offense of Video Voyeurism
 DATE: January 13, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.	Sneed	Sadberry	BJA	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill provides that video voyeurism committed within a residential dwelling is a third degree felony. Currently, the location where video voyeurism takes place is not a distinguishing element of the offense and video voyeurism is a first degree misdemeanor except in certain circumstances when the victim is a child or student.

This bill substantially amends section 810.145 of the Florida Statutes.

II. Present Situation:

Video Surveillance and Voyeurism

Video voyeurism is the unlawful use of an imaging device to surreptitiously observe another person. The practice is most often associated with a sexual motive, such as using a cell phone camera to take pictures beneath women’s skirts in a shopping area or installing hidden cameras in a changing area.

In 2004, the federal government passed the Video Voyeurism Prevention Act of 2004¹ in order to “protect the privacy of individuals from the surreptitious use of hidden surveillance equipment that captures an individual’s image.”² The Act makes it a misdemeanor for a person to

¹ 18 U.S.C. s. 1801. The Act applies only within the special maritime and territorial jurisdiction of the United States, so does not conflict with state law.

² Kristin M. Beasley, *Up-Skirt and Other Dirt: Why Cell Phone Cameras and Other Technologies Require a New Approach to Protecting Personal Privacy in Public Places*, 31 S. ILL. U. L.J. 69, 88 (2006) (quoting H.R. Rep. No. 08-504, at 5, as reprinted in 2004 U.S.C.C.A.N. 3292, 3294-95).

intentionally capture an image of a private area of another person without his or her consent under circumstances in which the other person has a reasonable expectation of privacy. All states have criminal statutes that address video voyeurism in some form.

Florida's Video Voyeurism Statute

Florida law forbids video voyeurism if a person uses or installs an imaging device to secretly view, broadcast or record another person for "amusement, entertainment, sexual arousal, gratification, or profit," or to degrade or abuse that person. The original s. 810.145, F.S., was enacted in 1984 and created misdemeanor video voyeurism offenses. The statute was amended in 2008 to elevate certain video voyeurism offenses committed against children to felonies.

An offender commits the misdemeanor offense of 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.³
- 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.⁴
- 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.⁵
- Committing the offense of "video voyeurism dissemination"⁶ and "commercial video voyeurism dissemination"⁷ 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 any of these provisions is a first-degree misdemeanor, punishable by a term of imprisonment not exceeding one year and a fine of not more than \$1,000. If the offender has previously been convicted of or adjudicated delinquent for any violation of the section, the penalty is enhanced to a third-degree felony, punishable by imprisonment for up to five years and a fine of not more than \$5,000.

There are three felony video voyeurism offenses in addition to those that result from enhancement of the penalty for repeat misdemeanor video voyeurism. Conviction of these offenses requires additional elements of proof:

- Section 810.145(8)(a)1., F.S., applies when the offender was 18 years of age or older, the victim was under the age of 16, and the offender was responsible for the welfare of the

³ Section 810.145(2)(a), F.S.

⁴ Section 810.145(2)(b), F.S.

⁵ Section 810.145(2)(c), F.S.

⁶ Section 810.145(3), F.S.

⁷Section 810.145(4), F.S.

victim. Persons who are responsible for a child's welfare would include coaches, teachers, scout leaders, parents, guardians, babysitters, and those with similar relationships to the child.⁸

- Section 810.145(8)(a)2., F.S., applies when the offender was 18 years old or older, was employed at a public or private K-12 school or a voluntary pre-K program, and the victim was a student at the school or program.
- Section 810.145(8)(a)3., F.S., applies when the offender was 24 years of age or older and the victim was under the age of 16.

These offenses are third-degree felonies, which are punishable by imprisonment for up to five years and a fine of not more than \$5,000. If the offender has previously been convicted of or adjudicated delinquent for any form of video voyeurism, these offenses are second-degree felonies, punishable by imprisonment for up to 15 years and a fine of not more than \$10,000.

The 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.⁹

During Fiscal Year 2010-2011, six persons were convicted of misdemeanor video voyeurism¹⁰ and three persons were placed on community supervision as the result of being convicted of felony video voyeurism.¹¹

III. Effect of Proposed Changes:

The bill creates a new subsection (9) in s. 810.145, F.S., to make video voyeurism that is committed within a residential dwelling a third degree felony. Currently, video voyeurism committed within a residential dwelling is not distinguished from video voyeurism committed in other places and is a first degree misdemeanor. Separate specification of the offense and its elevation to a third degree felony means that an offender could be sentenced to incarceration in state prison or felony community supervision for up to five years.¹² Under the current statute, an offender whose commission of video voyeurism occurs within a residential dwelling can only be sentenced to incarceration in the county jail or misdemeanor probation for up to one year.

The bill defines "residential dwelling" to be:

[A] building or conveyance of any kind which has a roof over it and is designed to be occupied by people lodging therein at night, regardless of whether the building or conveyance is temporary or permanent or mobile or immobile.

⁸ See ss. 39.01(46) and 827.01, F.S.; *P.N. v. Dep't of Health & Rehabilitative Servs.*, 562 So. 2d 810, 811 (Fla. 2d DCA 1990).

⁹ Section 810.145(5), F.S.

¹⁰ Information from the Florida Department of Law Enforcement provided to committee staff by the Office of Economic & Demographic Research, e-mail dated November 30, 2011.

¹¹ Department of Corrections Analysis of Senate Bill 436.

¹² The court can also impose a split sentence that includes both incarceration and community supervision up to a total of five years.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not yet projected the impact that the bill would have on prison beds. However, because of the low volume of convictions in previous years it is anticipated that CJIC will find the fiscal impact to be insignificant or indeterminate.

VI. Technical Deficiencies:

Section 810.145(8)(a), 1. - 3., F.S., describes felony video voyeurism offenses involving children or students. Section 810.145(8)(b), F.S., provides that these offenses are third degree felonies, but that they are elevated to second degree felonies if the offender was previously convicted or adjudicated delinquent of committing any form of video voyeurism. This enhancement provision would not apply to the new felony of video voyeurism within a residential dwelling because the bill places that offense in a new section (9). This is a technical deficiency if it is intended that all third degree felony video voyeurism offenses be enhanced for repeat offenders.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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