

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Current law: Section 810.14 provides that 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 in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy. The offense is a first degree misdemeanor. A third conviction for the offense is a third degree felony.

Section 877.26, F.S. makes it a first degree misdemeanor for a merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant's dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy.¹

Changes made by HB 523: HB 523 creates several offenses relating to “video voyeurism”. The bill provides that a person commits the offense of video voyeurism if the offender:

1. For his or her own amusement, entertainment, sexual arousal, gratification or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device² to secretly view, broadcast³, or record a person, without that person's knowledge or consent, who is dressing, undressing, or privately exposing the body⁴, at a place and time when that person has a reasonable expectation of privacy⁵;
2. For the amusement, entertainment, sexual arousal, gratification or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view,

¹ The term “merchant” is defined as an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise. s. 877.26(1), F.S.

² The bill defines the term “imaging device” to mean “any mechanical, digital, or electronic viewing device, still camera, camcorder, motion picture camera, or any other instrument, equipment or format capable of recording, storing, or transmitting visual images of another person”.

³ The bill defines the term “broadcast” to mean “electronically transmitting a visual image with the intent that it be viewed by another person”.

⁴ The bill defines the term “privately exposing the body” to mean “exposing an intimate part of the body, as described in s. 800.03, which is not exposed to public view”. Section 800.03, F.S. makes it a first degree misdemeanor to expose or exhibit one's sexual organs in public or on the private premises of another in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

⁵ The bill defines the term “place and time when a person has a reasonable expectation of privacy” to mean “a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that his or her undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth”.

broadcast, or record a person, without that person's knowledge or consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or

3. For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast or record under or through the clothing being worn by another person, without that person's knowledge or consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

Video voyeurism dissemination: The bill provides that a person commits the offense of video voyeurism dissemination if that person, knowing that an image was created in violation of the newly created section, intentionally disseminates, distributes, or transfers the image to another person.

Commercial video voyeurism dissemination: The bill provides that a person commits the offense of commercial video voyeurism dissemination if that person:

1. Knowing that an image was created in violation of this section, sells the image for consideration to another person; or
2. Having created the image in violation of this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

The bill provides that a person who violates any of the provisions of the newly created section commits a first degree misdemeanor. Further, a person who violates the section and who has previously been convicted of any violation of the section two or more times commits a third degree felony.

The bill also provides that the section does not apply to any: law enforcement agency conducting surveillance for a law enforcement purpose; security system when a written notice is conspicuously posted on the premises stating that a vide surveillance system has been installed; or video surveillance device that is installed and operated in such a manner that the presence of the device is clearly and immediately obvious.

Forfeiture: The bill amends section 932.701, F.S. to add "any personal property, including but not limited to any imaging device...photograph, film, or other recorded image, including an image recorded on videotape, compact disc, digital tape, or fixed disk" recorded in violation of the newly created video voyeurism statute to the definition of "contraband article" in the Florida Contraband Forfeiture Act.

Currently, section 932.7055, F.S. provides that when a seizing agency obtains a final judgment granting forfeiture of property, it may elect to retain the property for the agency's use, sell the property or salvage, trade or transfer the property to any public or nonprofit organization. The bill amends this section to provide that a seizing agency must destroy any image and the medium on which the image is recorded, including, but not limited to, a photograph, film, or other recorded image, including an image recorded on videotape, compact disc, digital tape, or fixed disk, recorded in violation of the newly created video voyeurism section.

C. SECTION DIRECTORY:

Section 1. Creates s. 810.145, F.S.; creates offenses relating to video voyeurism.

Section 2. Amends s. 932.701, F.S.; amends Florida Contraband Forfeiture Act to expand definition of contraband article to include property used in violation of video voyeurism statute.

Section 3. Amends s. 932.7055, F.S.; requires seizing agency to destroy images recorded in violation of video voyeurism statute.

Section 4. Amends s. 932.707, F.S.; conforming cross-reference.

Section 5. Reenacts s. 705.101 for the purpose of incorporating the amendment to section 932.701 by reference.

Section 6. Reenacts s. 932.703 for the purpose of incorporating the amendment to section 932.701 by reference.

Section 7. Provides effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has determined that this bill would likely have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that businesses are currently selling videotapes that are obtained using methods that will be prohibited under the provisions of this bill, the bill may have a negative fiscal impact on the private sector.

D. FISCAL COMMENTS:

See above comments.

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:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides the following:

A person who violates this section commits a misdemeanor of the first degree *for the first violation*.....

A person who violates this section *and who has previously been convicted or adjudicated guilty for any violation of this section two or more times* commits a felony of the third degree.....

This provision should be amended to remove reference to the first degree misdemeanor provision applying only to a first violation. As written, a first violation is a first degree misdemeanor and a third violation is a third degree felony but is not clear how a second violation will be treated. Note: The Subcommittee on Criminal Justice recommended the adoption of an amendment that will clarify this language.

The bill makes it unlawful to broadcast an image of a person who is "privately exposing the body". This term is defined by the bill to mean "exposing an intimate part of the body, *as described in s. 800.03*, which is not exposed to public view". Section 800.03, F.S. does not specifically contain a reference to "exposing an *intimate part* of the body" but rather makes it a first degree misdemeanor to expose or exhibit one's *sexual organs* in public or on the private premises of another in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. It may be appropriate to amend the definition of "privately exposing the body" to delete the referral to section 800.03. As written, it may be interpreted to require that, in order to commit the offense of video voyeurism, the offender would have to videotape the criminal act described in section 800.03. A possible alternative to the definition contained in the bill is the following: the term "privately exposing the body" means exposing a sexual organ. Note: The Subcommittee on Criminal Justice recommended the adoption of an amendment that will adopt this recommended language.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Criminal Justice recommended the adoption of an amendment that makes several changes including the following:

- The amendment changes the definition of the term "privately exposing the body" to mean "exposing a sexual organ".
- The amendment adds language creating an exception for the dissemination, distribution or transfer of images by a provider of electronic communication services or remote computing services.
- The amendment also clarifies that a first or second violation of the section will be a first degree misdemeanor and the third violation will be a third degree felony.
- The amendment also makes several technical changes to conform the language to that of CS/SB 284.