

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1389 Digital Voyeurism
SPONSOR(S): Cassel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Butcher	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 810.145, F.S., prohibits video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination. Generally, a person commits video voyeurism if he or she intentionally uses or installs, or permits the use or installation of, an imaging device to secretly view, broadcast, or record a person, without that person’s knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy. Generally, a person who is under 19 years of age and who commits any video voyeurism offense commits a first degree misdemeanor; a person who is 19 years of age or older and commits any video voyeurism offense commits a third degree felony; and a person who commits any second or subsequent video voyeurism offense com mits a second degree felony, regardless of his or her age. Currently, a first video voyeurism offense is not listed on the offense severity ranking chart (OSRC), so the penalty for any first offense is the same regardless of conduct.

HB 1389 amends s. 810.145, F.S., to rename the offense from “video voyeurism” to “digital voyeurism” and revise the penalty scheme for digital voyeurism offenses. Under the bill, a person under 19 years of age commits a first degree misdemeanor for a first digital voyeurism offense or digital voyeurism dissemination offense, and a third degree felony for a second or subsequent offense, ranked as a Level 4 offense on the OSRC. A person 19 years of age or older commits a third degree felony for a first digital voyeurism offense, ranked as a Level 4 offense on the OSRC. A person 19 years of age or older commits a second degree felony for a first digital voyeurism dissemination offense, ranked as a Level 5 offense on the OSRC if committed for amusement; and as a Level 6 offense if committed for a commercial purpose or pecuniary gain.

Under the bill, the penalty for a digital voyeurism or digital voyeurism dissemination offense is reclassified to the next highest felony level and OSRC level if a person is 19 years of age or older and:

- Is a family or household member of the victim;
- Holds a position of authority or trust with the victim; or
- Has previously been convicted or adjudicated delinquent for a violation of s. 810.145. F.S.

The bill specifies that each instance of the viewing, broadcasting, recording, disseminating, distributing, or transferring of an image or recording made in violation of s. 810.145, F.S., is a separate offense for which a separate penalty is authorized. The bill also makes other conforming changes.

The bill may have an indeterminate positive impact on the jail and prison bed population by increasing the penalty for video voyeurism dissemination, reclassifying specified voyeurism offenses as second degree felonies, and listing specified felony video voyeurism offenses on the OSRC, which may result in increased admissions to and longer terms of incarceration being served in jail and prison facilities.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Voyeurism

Under section 810.14, F.S., a person commits 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; or
- Secretly observes another person's intimate areas¹ in which the person has a reasonable expectation of privacy, when the other person is located in a public or private dwelling, structure, or conveyance.

A first or second voyeurism offense is punishable as a first degree misdemeanor² and a third or subsequent offense is punishable as a third degree felony.³

Video Voyeurism

Generally, under s. 810.145(2), F.S., a person commits video voyeurism if that person, for amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally:

- Uses or installs an imaging device⁴ to secretly view, broadcast,⁵ or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body,⁶ at a place and time when that person has a reasonable expectation of privacy;⁷
- Permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and 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
- 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 and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.⁸

Video Voyeurism Dissemination

Under s. 810.145(3), F.S., a person commits video voyeurism dissemination if that person, knowing or having reason to believe that an image was created in a manner prohibited under s. 810.145, F.S., intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

¹ "Intimate area" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁴ "Imaging device" means 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. S. 810.145(1)(b), F.S.

⁵ "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by another person. S. 810.145(1)(a), F.S.

⁶ "Privately exposing the body" means exposing a sexual organ. S. 810.145(1)(d), F.S.

⁷ "Place and time when a person has a reasonable expectation of privacy" means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth. S. 810.145(1)(c), F.S.

⁸ S. 810.145(2)(a)-(c), F.S.

Commercial Video Voyeurism Dissemination

Under s. 810.145(4), F.S., a person commits commercial video voyeurism dissemination if that person:

- Knowing or having reason to believe that an image was created a manner prohibited under s. 810.145, F.S., sells the image for consideration to another person; or
- Having created the image in a manner prohibited under s. 810.145, F.S., disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

Video Voyeurism Penalties

Generally, a person who commits video voyeurism, video voyeurism dissemination, or commercial digital voyeurism dissemination under s. 810.145, F.S., commits a:

- First degree misdemeanor if he or she is under 19 years of age.
- Third degree felony if he or she is 19 years of age or older.
- Second degree felony⁹ if he or she commits a violation and has previously been convicted of or adjudicated delinquent for any violation of s. 810.145, F.S., regardless of his or her age.¹⁰

A person commits a second degree felony if he or she commits any video voyeurism offense and is:

- 18 years of age or older and commits the offense against a child younger than 16 years of age whose welfare he or she is responsible for, regardless of whether he or she knows or has reason to know the child's age;
- 18 years of age or older, and employed at a private school as defined in s. 1002.01, F.S.;¹¹ a school as defined in s. 1003.01, F.S.;¹² or a voluntary prekindergarten education program as described in s. 1002.53(3)(a), (b), or (c), F.S.,¹³ and commits the offense against a student of the school; or
- 24 years of age or older and commits the offense against a child younger than 16 years of age, regardless of whether he or she knows or has reason to know the child's age.¹⁴

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code¹⁵ are listed in a single offense severity ranking chart (OSRC),¹⁶ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{17,18} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{19,20} The final score

⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁰ S. 810.145(6)-(7), F.S.

¹¹ A "private school" is a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of s. 1003.01(16), F.S., or that gives preemployment or supplementary training in technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 1005, F.S. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with s. 1002.41, F.S.

¹² "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

¹³ These programs include a: (a) school-year prekindergarten program delivered by a private prekindergarten provider under s. 1002.55, F.S.; (b) summer prekindergarten program delivered by a public school or private prekindergarten provider under s. 1002.61, F.S.; and (c) school-year prekindergarten program delivered by a public school.

¹⁴ S. 810.145(8)(a)1.-3., F.S.

¹⁵ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

¹⁶ S. 921.0022, F.S.

¹⁷ S. 921.0022(2), F.S.

¹⁸ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

¹⁹ Ss. 921.0022 and 921.0024, F.S.

calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.²¹

Current Rankings for Video Voyeurism Offenses

Current OSRC rankings for felony offenses under s. 810.145, F.S., are as follows:

- Video voyeurism under s. 810.145(2)-(4), F.S., is unranked and as a third degree felony defaults to a Level 1 offense if committed by a person 19 years of age or older;
- A second or subsequent conviction for video voyeurism under s. 810.145(2)-(4), F.S., is unranked and as a second degree felony defaults to a Level 4 offense, regardless of the offender's age;²² and
- Video voyeurism committed by a specified person against a specified child or student under s. 810.145(8)(a), F.S., is unranked and as a second degree felony defaults to a Level 4 offense, for a first time offense, and is ranked as a Level 6 offense if the offender has a prior violation of any video voyeurism offense.

Effect of Proposed Changes

HB 1389 amends s. 810.145, F.S., to rename the offense from “video voyeurism to “digital voyeurism.”

The bill removes “commercial video voyeurism dissemination” as a separate offense under s. 810.145(4), F.S., and merges it within the prohibited conduct and penalties for digital voyeurism dissemination. Under the bill, a person commits the offense of digital video voyeurism dissemination if that person, knowing or having reason to believe that an image or recording was created in violation of s. 810.145, F.S., intentionally disseminates, distributes, or transfers the image or recording to another person:

- For the purpose of the amusement, entertainment, sexual arousal, or gratification of any person, or for the purpose of degrading, exploiting, or abusing another person; or
- For a commercial purpose or pecuniary gain.

The bill revises the penalty scheme for digital voyeurism offenses. Under the bill:

- A person under 19 years of age commits a first degree misdemeanor for a first offense of digital voyeurism or digital voyeurism dissemination, and a third degree felony for a second or subsequent offense, ranked as a Level 4 offense on the OSRC.
 - As such, the bill reduces the penalty for a person under 19 years of age who commits any second or subsequent offense from a second degree felony to a third degree felony.
- A person 19 years of age or older commits a third degree felony for a first digital voyeurism offense, ranked as a Level 4 offense on the OSRC.
 - As such, the bill increases the offense ranking on the OSRC from a Level 1 to a Level 4 offense.
- A person 19 years of age or older commits a second degree felony for a first digital voyeurism dissemination offense, ranked as a Level 5 offense on the OSRC if committed for amusement; and as a Level 6 offense if committed for commercial purpose or pecuniary gain.
 - As such, the bill increases the penalty for video voyeurism dissemination from a third degree felony to a second degree felony and the ranking on the OSRC from a Level 1 offense to a Level 5 offense or a Level 6 offense (commercial dissemination).

Under the bill, the penalty for a digital voyeurism or digital voyeurism dissemination offense is reclassified from a third degree felony to a second degree felony, and from a second degree felony to a first degree felony, if the offender is 19 years of age or older and:

- Is a family or household member of the victim;

²⁰ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

²¹ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

²² S. 810.145(7), F.S.

- Holds a position of authority or trust with the victim; or
- Has previously been convicted or adjudicated delinquent for a violation of s. 810.145, F.S.²³

The bill defines “family or household member” as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

The bill defines a “position of authority or trust” as a position occupied by a person 18 years of age or older who is:

- Employed by, volunteering at, or under contract with a school,²⁴ F.S., when the victim is a person younger than 18 years of age who is enrolled at the school; or
- A relative, caregiver, coach, employer, or other person who, by reason of his or her relationship with the victim, is able to exercise undue influence over him or her or exploit his or her trust.

The bill specifies that each instance of the viewing, broadcasting, recording, disseminating, distributing, or transferring of an image or recording made in violation of this section is a separate offense for which a separate penalty is authorized.

The bill amends the definition of “broadcast” under s. 810.145(1)(a), F.S., to include “visual recording” in addition to a visual image and adds “exploiting” another person to the list of prohibited purposes for which specified conduct will constitute digital voyeurism. Additionally, the bill repeals s. 810.145(8), F.S., which provides enhanced penalties for a person of a specified age who commits a voyeurism offense against a specified child or student.

The bill also makes conforming changes to other provisions of law that reference s. 810.145, F.S.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3: Amends s. 397.417, F.S., relating to peer specialists.

Section 4: Amends s. 435.04, F.S., relating to level 2 screening standards.

Section 5: Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.

Section 6: Amends s. 775.0862, F.S., relating to sexual offenses against students by authority figures; reclassification.

Section 7: Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 8: Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

Section 9: Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 10: Amends s. 943.0584, F.S., relating to criminal history records ineligible for court-ordered expunction or court-ordered sealing.

Section 11: Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 12: Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 13: Amends s. 1012.315, F.S., relating to screening standards.

²³ Under the bill, for purposes of sentencing under chapter 921, F.S., and incentive gain-time eligibility under chapter 944, a reclassified felony is ranked one level above the ranking under s. 921.0022 of the felony offense committed.

²⁴ Under s. 775.0862, F.S., “school” has the same meaning as provided in s. 1003.01, F.S., and includes a private school as defined in s. 1002.01, F.S., a voluntary prekindergarten education program as described in s. 1002.53(3), F.S., early learning programs, a public school as described in s. 402.3025(1), F.S., the Florida School for the Deaf and the Blind, and the Florida Virtual School established under s. 1002.37, F.S. The term does not include facilities dedicated exclusively to the education of adults.

Section 14: Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive impact on the jail and prison bed population by increasing the penalty for video voyeurism dissemination, reclassifying specified voyeurism offenses as second degree felonies, and listing specified felony video voyeurism offenses on the OSRC, which may result increased admissions to and longer terms of incarceration being served in jail and prison facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

