

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 1389 Digital Voyeurism

**SPONSOR(S):** Judiciary Committee and Criminal Justice Subcommittee, Cassel and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1604

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**FINAL HOUSE FLOOR ACTION:** 116 Y's

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**GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

CS/CS/HB 1389 passed the House on February 28, 2024, and subsequently passed the Senate on March 1, 2024.

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 commits 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 the conduct.

The bill 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, for a first offense of digital voyeurism, a person under 19 years of age commits a first degree misdemeanor and a person 19 years of age or older commits a third degree felony, ranked as a Level 3 offense on the OSRC. A person, regardless of age, commits a third degree felony for a first offense of digital voyeurism dissemination, ranked as a Level 4 offense on the OSRC, and a third degree felony for a first offense of commercial digital voyeurism dissemination, ranked as a Level 5 offense on the OSRC. A person, regardless of age, commits a second degree felony for a second or subsequent digital voyeurism offense, ranked as a Level 5 offense on the OSRC, and a second degree felony for a digital voyeurism offense against a specified minor victim, ranked as a Level 5 offense on the OSRC.

Under the bill, the penalty for a digital voyeurism 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; or
- Holds a position of authority or trust with the victim.

The bill specifies that each instance of secretly viewing a person in violation of s. 810.145(2), F.S., or of broadcasting, recording, disseminating, distributing, or transferring an image or recording made in violation of s. 810.145(2), F.S., is a separate offense for which a separate penalty is authorized.

The Criminal Justice Impact Conference reviewed the bill on February 12, 2024, and determined that the bill may have a positive indeterminate prison bed impact by making digital voyeurism dissemination and commercial digital voyeurism dissemination a felony, regardless of the offender's age, increasing the OSRC ranking for specified digital voyeurism offenses, and providing for reclassification of specified digital voyeurism offenses, which may result in increased admissions to jail and prison facilities and offenders serving longer terms of incarceration in such facilities.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2024.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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 areas<sup>1</sup> 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 misdemeanor<sup>2</sup> and a third or subsequent offense is punishable as a third degree felony.<sup>3</sup>

##### 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 device<sup>4</sup> to secretly view, broadcast,<sup>5</sup> or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body,<sup>6</sup> at a place and time when that person has a reasonable expectation of privacy;<sup>7</sup>
- 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.<sup>8</sup>

##### 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.

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<sup>1</sup> "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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> "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.

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

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

<sup>7</sup> "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.

<sup>8</sup> 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 felony<sup>9</sup> 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.<sup>10</sup>

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.;<sup>11</sup> a school as defined in s. 1003.01, F.S.;<sup>12</sup> or a voluntary prekindergarten education program as described in s. 1002.53(3)(a), (b), or (c), F.S.,<sup>13</sup> 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.<sup>14</sup>

## Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code<sup>15</sup> are listed in a single offense severity ranking chart (OSRC),<sup>16</sup> 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.<sup>17,18</sup> A person's primary offense, any other current offenses, and prior convictions are scored

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<sup>9</sup> 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.

<sup>10</sup> S. 810.145(6)-(7), F.S.

<sup>11</sup> 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.

<sup>12</sup> "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.

<sup>13</sup> 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.

<sup>14</sup> S. 810.145(8)(a)1.-3., F.S.

<sup>15</sup> 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.

<sup>16</sup> S. 921.0022, F.S.

<sup>17</sup> S. 921.0022(2), F.S.

<sup>18</sup> 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.

using the points designated for the offense severity level of each offense.<sup>19,20</sup> The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.<sup>21</sup>

### *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;<sup>22</sup> 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 the Bill**

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

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.
- A person 19 years of age or older commits a third degree felony for a first offense of digital voyeurism, ranked as a Level 3 offense on the OSRC.
  - As such, the bill increases the OSRC ranking from a Level 1 to a Level 3 offense.
- A person, regardless of age, commits a third degree felony for a first offense of digital voyeurism dissemination, ranked as a Level 4 offense on the OSRC.
  - As such, the bill increases the OSRC ranking from a Level 1 to a Level 4 offense.
- A person, regardless of age, commits a third degree felony for a first offense of commercial digital voyeurism dissemination, ranked as a Level 5 offense on the OSRC.
  - As such, the bill increases the OSRC ranking from a Level 1 to a Level 5 offense.
- A person, regardless of age, commits a second degree felony for a second or subsequent digital voyeurism offense, ranked as a Level 5 offense on the OSRC.
  - As such, the bill increases the OSRC ranking from a Level 4 to a Level 5 offense.
- A person commits a second degree felony for a violation of s. 810.145(8)(a), F.S.,<sup>23</sup> ranked as a Level 5 offense on the OSRC.
  - As such, the bill increases the OSRC ranking from a Level 4 to a Level 5 offense.

Under the bill, a violation of s. 810.145(8), F.S., when the offender has a prior digital voyeurism conviction remains a second degree felony ranked as a Level 6 offense.<sup>24</sup>

Under the bill, the penalty for a digital voyeurism 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:

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<sup>19</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> S. 810.145(7), F.S.

<sup>23</sup> *Supra* note 14.

<sup>24</sup> S. 810.145(8)(b), F.S.

- Is a family or household member of the victim; or
- Holds a position of authority or trust with the victim.<sup>25</sup>

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 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 secretly viewing a person in violation of s. 810.145(2), F.S., or of broadcasting, recording, disseminating, distributing, or transferring an image or recording made in violation of s. 810.145(2), F.S., is a separate offense for which a separate penalty is authorized. The bill also makes other conforming changes.

The bill amends the definition of “broadcast” under s. 810.145(1)(a), F.S., to include a “visual recording” in addition to a visual image and adds “exploiting” another person to the list of prohibited purposes for which specified conduct constitutes digital voyeurism.

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

Subject to the Governor’s veto powers, the effective date of this bill is 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.

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<sup>25</sup> 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.

**D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference reviewed the bill on February 12, 2024, and determined that the bill may have a positive indeterminate prison bed impact by making digital voyeurism dissemination and commercial digital voyeurism dissemination a felony, regardless of the offender's age, increasing the OSRC ranking for specified digital voyeurism offenses, and providing for reclassification of specified digital voyeurism offenses, which may result in increased admissions to jail and prison facilities and offenders serving longer terms of incarceration in such facilities.