

DOMESTIC VIOLENCE UPDATE - October 16, 2009 - RAGANO, P.A.

I just recently spoke at the annual Domestic Violence Update sponsored by the Hillsborough County Bar Association. This event was held at Stetson College of Law. The panel consisted of the Honorable Judge Jesske, Dr. Joseph Saturley, attorney Natalie Baird, Captain Cherie Adkins, and Investigator Scott Kamp. I was given the task to discuss the recent case law updates of domestic violence as well as a perspective of representing the Respondent with to regard to Restraining Orders.

Part of lecture consisted of identifying new areas wherein the Florida Legislature might codify new statutes with regard to "un-chattered" areas of domestic violence. Due to the recent publicity of "voyeurism" (as it appeared on *Bay News 9*), I began to think that the definition of domestic violence may encompass "voyeurism." If one were to look at the definition of domestic violence, it includes "... or any criminal offense." Thus, if one were to commit an act of voyeurism, potentially, it might serve as a basis for obtaining a domestic violence injunction if one were to suffer from substantial emotional distress. This may be an area for the Legislature to review to see if one has standing to obtaining a restraining order.

741.28 Domestic violence; definitions.--As used in ss. [741.28](#)-[741.31](#):

- (1) "Department" means the Florida Department of Law Enforcement.
- (2) "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

810.14 Voyeurism prohibited; penalties.--

- (1) 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.
- (2) A person who violates this section commits a misdemeanor of the first degree for the first violation, punishable as provided in s. [775.082](#) or s. [775.083](#).
- (3) A person who violates this section and who has been previously convicted or adjudicated delinquent two or more times of any violation of this section commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).
- (4) For purposes of this section, a person has been previously convicted or adjudicated delinquent of a violation of this section if the violation resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense.

History.--s. 2, ch. 98-415; s. 101, ch. 99-3; s. 1, ch. 2006-267.

810.145 Video voyeurism.--

- (1) As used in this section, the term:
 - (a) "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by another person.
 - (b) "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.
 - (c) "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 bathroom, changing room, fitting room, dressing room, or tanning booth.
 - (d) "Privately exposing the body" means exposing a sexual organ.
- (2) A person commits the offense of video voyeurism if that person:

(a) 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 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;

(b) 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, 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

(c) 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 and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

(3) A person commits the offense of video voyeurism dissemination if that person, knowing or having reason to believe that an image was created in a manner described in this section, 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.

(4) A person commits the offense of commercial video voyeurism dissemination if that person:

(a) Knowing or having reason to believe that an image was created in a manner described in this section, sells the image for consideration to another person; or

(b) Having created the image in a manner described in this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

(5) This section does not apply to any:

(a) Law enforcement agency conducting surveillance for a law enforcement purpose;

(b) Security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed for the purpose of security for the premises;

(c) Video surveillance device that is installed in such a manner that the presence of the device is clearly and immediately obvious; or

(d) Dissemination, distribution, or transfer of images subject to this section by a provider of an electronic communication service as defined in 18 U.S.C. s. 2510(15), or a provider of a remote computing service as defined in 18 U.S.C. s. 2711(2). For purposes of this section, the exceptions to the definition of "electronic communication" set forth in 18 U.S.C. s. 2510(12)(a), (b), (c), and (d) do not apply, but are included within the definition of the term.

(6) Except as provided in subsections (7) and (8), a person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(7) A person who violates this section and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(8)(a) A person who is:

1. Eighteen years of age or older who is responsible for the welfare of a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child, and who commits an offense under this section against that child;

2. Eighteen years of age or older who is employed at a private school as defined in s. [1002.01](#); a school as defined in s. [1003.01](#); or a voluntary prekindergarten education program as described in s. [1002.53](#)(3)(a), (b), or (c) and who commits an offense under this section against a student of the private school, school, or voluntary prekindergarten education program; or

3. Twenty-four years of age or older who commits an offense under this section against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child

commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(b) A person who violates this subsection and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(9) For purposes of this section, a person has previously been convicted of or adjudicated delinquent for a violation of this section if the violation resulted in a conviction that was sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense.

History.--s. 1, ch. 2004-39; s. 1, ch. 2008-188.