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# **Safety & Security Council**

**Wednesday, December 12, 2007  
3:00 p.m. – 5:00 p.m.  
102 House Office Building, Reed Hall**

**Marco Rubio  
Speaker**

**Dick Kravitz  
Chair**



**The Florida House of Representatives**  
**Safety & Security Council**

**Marco Rubio**  
Speaker

**Dick Kravitz**  
Chair

**December 12, 2007**

**AGENDA**  
**3:00 p.m. – 5:00 p.m.**  
**102 House Office Building, Reed Hall**

- I. Call Meeting to Order**
- II. Roll Call**
- III. Opening Comments**
- IV. Consideration of the following bill**  
  
**HB 85 Lewd or Lascivious Molestation by Rep. Kravitz**
- V. Closing Remarks**
- VI. Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 85 Lewd or Lascivious Molestation

SPONSOR(S): Kravitz and others

TIED BILLS: IDEN./SIM. BILLS: SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Safety & Security Council		Kramer TK	Havlicak RH
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits the offense of lewd or lascivious molestation. If an offender is 18 years of age or older and the victim is under the age of 12, the offense of lewd or lascivious molestation is a life felony. As a result of the Jessica Lunsford Act, this offense is punishable by a term of imprisonment for life or by a sentence of not less than 25 years' imprisonment followed by probation or community control for the remainder of the offender's natural life. The offender must be electronically monitored during this term of probation or community control.

HB 85 would require the imposition of a life sentence for a second or subsequent conviction for the offense of lewd or lascivious molestation where the victim is under the age of 12 and the offender is 18 or older. The punishment for a first conviction would remain the same as provided in current law – a minimum sentence of 25 years' imprisonment followed by lifetime supervision with electronic monitoring and a maximum sentence of life in prison.

It is expected that this bill will have an insignificant prison bed impact on the Department of Corrections.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility/provide limited government: The bill increases the sanction for a criminal offense.

#### B. EFFECT OF PROPOSED CHANGES:

A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation. If an offender is 18 years of age or older and the victim is under the age of 12, the offense of lewd or lascivious molestation is a life felony.<sup>1</sup> Section 775.082, F.S. provides that the life felony is punishable by a term of imprisonment for life or by a sentence of not less than 25 years' imprisonment and not exceeding life imprisonment followed by probation or community control for the remainder of the person's natural life. The offender must be electronically monitored during this term of probation or community control.<sup>2</sup>

HB 85 would require the imposition of a life sentence for a second or subsequent conviction for the offense of lewd or lascivious molestation where the victim is under the age of 12 and the offender is 18 or older. The punishment for a first conviction for this offense would remain the same as provided in current law – a minimum sentence of 25 years' imprisonment followed by lifetime supervision with electronic monitoring and a maximum sentence of life in prison.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 775.082(3), F.S. relating to sentence for offense of lewd or lascivious molestation.

Section 2. Amends s. 948.012, F.S. to correct cross-references.

Section 3. Reenacts s. 800.04(5), F.S. for the purpose of incorporating the amendment made by the act to section 775.082, F.S. by reference.

Section 4. Provides effective date of July 1, 2008.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

See fiscal comments.

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<sup>1</sup> The Jessica Lunsford Act increased the severity of this offense from a first degree felony to a life felony. See, Ch. 2005-28(5), Laws of Fla.

<sup>2</sup> S. 948.012(4), F.S. In electronically monitoring this type of offender, the Department of Corrections is required to "use a system that actively monitors and identifies the offender's location and timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographic limitations". S. 948.11(6), F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill on the DOC. During the 2007 session, the conference determined that HB 41, which was identical to this bill, would have an insignificant prison bed impact.

**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:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

This bill provides for a minimum mandatory life sentence for persons committing lewd and lascivious molestation on a child 11 and under for a second time.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to lewd or lascivious molestation;  
 3           amending s. 775.082, F.S.; requiring life sentences for  
 4           certain second or subsequent offenders; amending s.  
 5           948.012, F.S.; conforming a cross-reference; reenacting s.  
 6           800.04(5)(b), F.S., relating to lewd or lascivious  
 7           offenses committed against persons less than 12 years of  
 8           age, to incorporate the amendments made to s. 775.082,  
 9           F.S., in a reference thereto; providing an effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13           Section 1. Paragraph (a) of subsection (3) of section  
 14           775.082, Florida Statutes, is amended to read:

15           775.082 Penalties; applicability of sentencing structures;  
 16           mandatory minimum sentences for certain reoffenders previously  
 17           released from prison.--

18           (3) A person who has been convicted of any other  
 19           designated felony may be punished as follows:

20           (a)1. For a life felony committed prior to October 1,  
 21           1983, by a term of imprisonment for life or for a term of years  
 22           not less than 30.

23           2. For a life felony committed on or after October 1,  
 24           1983, by a term of imprisonment for life or by a term of  
 25           imprisonment not exceeding 40 years.

26           3. Except as provided in subparagraph 4., for a life  
 27           felony committed on or after July 1, 1995, by a term of

28 imprisonment for life or by imprisonment for a term of years not  
 29 exceeding life imprisonment.

30 4.a. Except as provided in sub-subparagraph b., for a life  
 31 felony committed on or after September 1, 2005, which is a  
 32 violation of s. 800.04(5)(b), by:

33 (I)a- A term of imprisonment for life; or

34 (II)b- A split sentence that is a term of not less than 25  
 35 years' imprisonment and not exceeding life imprisonment,  
 36 followed by probation or community control for the remainder of  
 37 the person's natural life, as provided in s. 948.012(4).

38 b. For a life felony committed on or after July 1, 2008,  
 39 which is a person's second or subsequent violation of s.  
 40 800.04(5)(b), by a term of imprisonment for life.

41 Section 2. Subsection (4) of section 948.012, Florida  
 42 Statutes, is amended to read:

43 948.012 Split sentence of probation or community control  
 44 and imprisonment.--

45 (4) Effective for offenses committed on or after September  
 46 1, 2005, the court must impose a split sentence pursuant to  
 47 subsection (1) for any person who is convicted of a life felony  
 48 for lewd and lascivious molestation pursuant to s. 800.04(5)(b)  
 49 if the court imposes a term of years in accordance with s.  
 50 775.082(3)(a)4.a.(II)b- rather than life imprisonment. The  
 51 probation or community control portion of the split sentence  
 52 imposed by the court for a defendant must extend for the  
 53 duration of the defendant's natural life and include a condition  
 54 that he or she be electronically monitored.

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55 Section 3. For the purpose of incorporating the amendment  
56 made by this act to section 775.082, Florida Statutes, in a  
57 reference thereto, paragraph (b) of subsection (5) of section  
58 800.04, Florida Statutes, is reenacted to read:

59 800.04 Lewd or lascivious offenses committed upon or in  
60 the presence of persons less than 16 years of age.--

61 (5) LEWD OR LASCIVIOUS MOLESTATION.--

62 (b) An offender 18 years of age or older who commits lewd  
63 or lascivious molestation against a victim less than 12 years of  
64 age commits a life felony, punishable as provided in s.  
65 775.082(3)(a)4.

66 Section 4. This act shall take effect July 1, 2008.