



Justice Appropriations Subcommittee

Meeting Packet

**February 11, 2014
3:30 p.m. – 5:30 p.m.
Morris Hall**



The Florida House of Representatives
APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Will Weatherford
Speaker

Charles McBurney
Chair

MEETING AGENDA

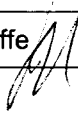

Morris Hall

February 11, 2014

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bill(s):
 - CS/HB 73 Sexual Offenders by Criminal Justice Subcommittee, Reps. Edwards, Eagle
 - HB 161 - Indecent Exposure by Reps. Hager, Harrell
 - CS/HB 445 - Time Limitations by Criminal Justice Subcommittee, Rep. Nunez
 - HB 427 - Traveling Across County Lines to Commit Felony Offenses by Rep. McBurney
- IV.** Closing Remarks
- V.** Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 73 Sexual Offenders
SPONSOR(S): Criminal Justice Subcommittee; Edwards; Eagle and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Sections 948.30, and 947.1405, F.S., require the court or the Florida Parole Commission to impose certain conditions of supervision for probationers, community controlees, and conditional releasees convicted of specified sexual offenses (e.g., curfew, residency restrictions, employment restrictions, sex offender treatment, etc.). Currently, one of these conditions prohibits an offender from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services *that are relevant to the offender's deviant behavior pattern* (unless otherwise indicated in a treatment plan).

The bill amends ss. 948.30 and 947.1405, F.S., to prohibit probationers, community controlees, and conditional releasees convicted of specified sexual offenses, whose crimes were committed on or after October 1, 2014, from possessing obscene, pornographic or sexually stimulating material, *regardless of its content* (unless otherwise indicated in a treatment plan).

The Criminal Justice Impact Conference met January 30, 2014 and determined the prison bed impact of the bill was indeterminate. However, because the bill imposes a new condition of supervision, it could result in more violations of supervision, which could have a negative prison and jail bed impact.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Probation/Conditional Release

Probation is a form of community supervision requiring specified contacts with parole and probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.¹ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by probation officers with restricted caseloads.² Conditional release, administered by the Florida Parole Commission (Commission), is a mandatory postrelease supervision required for certain violent inmates.³ The Department of Corrections (DOC) supervises all probationers, community controlees, and conditional releasees sentenced in circuit court.⁴

Courts are required to impose the conditions of supervision found in s. 948.03, F.S., on probationers and community controlees.⁵ Similarly, the Commission is required to impose conditions of supervision found in s. 947.1405, F.S., on conditional releasees.⁶ In addition to these standard conditions of supervision, the court/Commission may add special conditions of supervision that it deems proper.⁷

Sex Offender Supervision

In addition to the standard conditions of supervision described above, ss. 948.30 and 947.1405, F.S., require the court/Commission to impose additional conditions of supervision for probationers, community controlees, and conditional releasees convicted of specified sexual offenses. For example, these offenders are subject to a curfew, residency restrictions, employment restrictions, and sex offender treatment.

Currently, ss. 948.30(1)(g), and 947.1405(7)(a)7., F.S., require the court/Commission to impose a condition prohibiting an offender convicted of a specified sexual offense⁸ from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material⁹ *that is relevant to the offender's deviant behavior pattern* (unless otherwise indicated in a treatment plan proscribed in the sexual offender treatment program).¹⁰

¹ Section 948.001(8), F.S.

² Section 948.001(3), F.S.

³ Section 947.1405, F.S., requires conditional release for an inmate who:

- Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;
- Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084, F.S.; or
- Is found to be a sexual predator under s. 775.21, F.S., or former s. 775.23, F.S.

⁴ Sections 948.001(1) and 947.1405, F.S.

⁵ Sections 948.001(8) and 948.03, F.S. These conditions require offenders to comply with a variety of requirements (e.g., report to probation supervisors as directed, permit probation supervisors to visit at home or elsewhere, work faithfully at suitable employment, make restitution, not associate with persons engaged in criminal activities, etc.).

⁶ Section 947.1405(2), F.S.

⁷ Sections 948.03(2) and 947.1405(6), F.S.

⁸ These offenses include violations of ch. 794, F.S., relating to sexual battery; s. 800.04, F.S., relating to lewd or lascivious offenses; s. 827.071, F.S., relating to sexual performance by a child; s. 847.0135(5), F.S., relating to certain computer transmissions of pornography; and s. 847.0145, F.S., relating to buying and selling minors.

⁹ This material includes telephone, electronic media, computer programs, or computer services.

¹⁰ The condition applies to offenders whose crime was committed on or after October 1, 1995.

Effect of the Bill

The bill amends ss. 948.30 and 947.1405, F.S., to require the court/Commission to impose a condition prohibiting probationers, community controlees, and conditional releasees from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, *regardless of its content* (unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program). Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

The condition applies to offenders whose crime was committed on or after October 1, 2014, and who are placed on probation, community control, or conditional release for a violation of ch. 794, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses); s. 827.071, F.S. (sexual performance by a child); s. 847.0135(5), F.S. (computer transmissions of pornography); and s. 847.0145, F.S. (buying and selling minors).

As a result, these offenders will be prohibited from possessing obscene, pornographic or sexually stimulating material, regardless of its content.

B. SECTION DIRECTORY:

Section 1. Amends s. 947.1405, F.S., relating to conditional release.

Section 2. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 3. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

3. The Criminal Justice Impact Conference met January 30, 2014 and found the prison bed impact of the bill was indeterminate. However, because the bill imposes a new condition of supervision, it could result in more violations of supervision, which could have a negative prison and jail bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill imposes a new condition of supervision. This could result in more violations of supervision, which could have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

Vagueness

A statute or ordinance is void for vagueness when, because of its imprecision, it fails to give an adequate notice of what conduct is prohibited. Thus, it invites arbitrary and discriminatory enforcement.¹¹

Courts throughout the country are split as to whether a general ban on pornographic materials is unconstitutionally vague. For example, in *McVey v. State*, the court found that the condition prohibiting possession of pornographic or sexually explicit materials was unconstitutionally vague because it failed to clearly inform the offender what conduct was prohibited.¹² Whereas in *Wilfong v. Commonwealth*, the court determined that a commonsense reading of “sexually arousing materials” does not render the phrase unconstitutionally vague.¹³

The bill prohibits persons subject to sex offender supervision from possessing obscene, pornographic or sexually stimulating material, regardless of its content. This language could be challenged as being unconstitutionally vague.

Probationer Rights

The Florida Supreme Court has found that “constitutional rights of probationers are limited by conditions of probation which are desirable for purposes of rehabilitation.”¹⁴ In other words, trial courts have broad discretion to impose various conditions of probation, but cannot impose a condition of probation that is not reasonably related to rehabilitation.¹⁵ In determining whether a condition of probation is reasonably related to rehabilitation, courts look to whether the condition:

- Has a relationship to the crime of which the offender was convicted;
- Relates to conduct which is not in itself criminal; and
- Requires or forbids conduct which is not reasonably related to future criminality.¹⁶

The bill prohibits persons subject to sex offender supervision from possessing obscene, pornographic or sexually stimulating material, regardless of its content. This could be challenged as not being reasonably related to rehabilitation.

¹¹ *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

¹² *McVey v. State*, 863 N.E.2d 434, 447 (Ind.Ct.App.2007). See also *State v. Bahl*, 193 P.3d 678, 688 (Wash. 2008).

¹³ *Wilfong v. Commonwealth*, 175 S.W.3d 84, 99 (Ky.Ct.App.2004). See also *Belt v. State*, 127 S.W.3d 277, 281–82 (Tex.Ct.App.2004) (condition prohibiting possession of “‘sexually stimulating’ or ‘sexually oriented’” material was not unconstitutionally vague); *Commonwealth v. Perreault*, 930 A.2d 553, 560 (Pa.Super.Ct.2007) (a condition is not unconstitutionally vague when statutes provide definitions of the terms).

¹⁴ *Biller v. State*, 618 So.2d 734 (Fla. 1993).

¹⁵ *Nank v. State*, 646 So.2d 762 (Fla. 2nd DCA 1994).

¹⁶ *Biller v. State*, 618 So.2d 734 (Fla.1993).

First Amendment

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."¹⁷

In *Miller v. California*, the Supreme Court of the United States found that obscene materials are not protected by the First Amendment.¹⁸ However, materials not considered to be obscene do receive First Amendment protections.

The bill prohibits persons subject to sex offender supervision from possessing pornographic or sexually stimulating material. While offenders have diminished constitutional rights by virtue of being on supervision, this provision could be challenged as violating an offender's First Amendment rights.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2014, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment amends ss. 948.30 and 947.1405, F.S., to prohibit probationers, community controllees and conditional releasees, whose crimes were committed on or after October 1, 2014, and who are convicted of specified sexual offenses, from possessing obscene, pornographic or sexually stimulating material, regardless of its content, unless otherwise indicated in a treatment plan.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

¹⁷ *NAACP v. Button*, 371 U.S. 415, 433 (1963).

¹⁸ 413 U.S. 15 (1973).

A bill to be entitled

An act relating to sexual offenders; amending ss. 947.1405 and 948.30, F.S.; prohibiting certain conditional releasees, probationers, or community controllees from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating material; providing exceptions; providing an effective date.

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

Section 1. Subsection (13) is added to section 947.1405, Florida Statutes, to read:

947.1405 Conditional release program.—

(13) Effective for a releasee whose crime was committed on or after October 1, 2014, in violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition to any other provision of this section, the commission must impose a condition prohibiting the releasee from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

27 Section 2. Subsection (5) is added to section 948.30,
 28 Florida Statutes, to read:

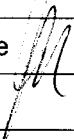

29 948.30 Additional terms and conditions of probation or
 30 community control for certain sex offenses.—Conditions imposed
 31 pursuant to this section do not require oral pronouncement at
 32 the time of sentencing and shall be considered standard
 33 conditions of probation or community control for offenders
 34 specified in this section.

35 (5) Effective for a probationer or community controllee
 36 whose crime was committed on or after October 1, 2014, and who
 37 is placed on probation or community control for a violation of
 38 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.
 39 847.0145, in addition to all other conditions imposed, the court
 40 must impose a condition prohibiting the probationer or community
 41 controllee from viewing, accessing, owning, or possessing any
 42 obscene, pornographic, or sexually stimulating visual or
 43 auditory material unless otherwise indicated in the treatment
 44 plan provided by a qualified practitioner in the sexual offender
 45 treatment program. Visual or auditory material includes, but is
 46 not limited to, telephone, electronic media, computer programs,
 47 and computer services.

48 Section 3. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 161 Indecent Exposure
SPONSOR(S): Hager and Harrell
TIED BILLS: IDEN./SIM. **BILLS:** SB 254

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 800.03, F.S., makes it a first degree misdemeanor for a person to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

Section 901.15, F.S., sets forth the instances in which a law enforcement officer can arrest a person without a warrant. For misdemeanor offenses, the general rule is that law enforcement officers must witness the occurrence of the offense in order to make an arrest without a warrant. However, in certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to this rule.

The bill amends s. 800.03, F.S., to make second or subsequent violations a third degree felony. The bill also amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S.

The Criminal Justice Impact Conference met January 30, 2014 and determined the bill will have a insignificant impact on state prison beds. The bill may also result in an increase in the number of arrests for misdemeanor violations of s. 800.03, F.S., which would have a negative jail bed impact.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Exposure of Sexual Organs

Section 800.03, F.S., makes it a first degree misdemeanor¹ for a person to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

Arrest without a Warrant

Section 901.15, F.S., sets forth the instances in which a law enforcement officer (LEO) can arrest a person without a warrant. For misdemeanor offenses, the general rule is that LEOs must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.²

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes include:

- Violations of injunctions for protection in domestic violence and dating violence situations as well as violations of pretrial release conditions in domestic violence cases;
- Misdemeanor luring or enticing a child and child abuse;
- Aggravated assault upon a law enforcement officer, firefighter and other listed persons;
- Battery;
- Criminal mischief or graffiti-related offenses; and
- Violations of certain naval vessel protection zones or trespass in posted areas in airports.³

For the offenses listed above, an LEO does not have to witness the crime in order to make a warrantless arrest – they only need to have probable cause to believe the person committed the crime.⁴

Effect of the Bill

The bill amends s. 800.03, F.S., to make second or subsequent violations a third degree felony⁵ (rather than a first degree misdemeanor).

The bill also amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 800.03, F.S., relating to exposure of sexual organs.

Section 2. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 3. Provides an effective date of October 1, 2014.

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

² Section 901.15, F.S.

³ *Id.*

⁴ *Id.*

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met January 30, 2014 and determined the bill will have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill permits an LEO to arrest a person without a warrant if the officer has probable cause to believe the person violated s. 800.03, F.S. This may result in an increase in the number of arrests for misdemeanor violations of s. 800.03, F.S., which would have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to indecent exposure; amending s. 800.03, F.S.; increasing the classification of second and subsequent violations of the provision prohibiting unlawful exposure of sexual organs; amending s. 901.15, F.S.; authorizing an arrest without a warrant if there is probable cause to believe that a person has committed unlawful exposure of sexual organs in violation of specified provisions; providing an effective date.

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

Section 1. Section 800.03, Florida Statutes, is amended to read:

800.03 Exposure of sexual organs.—

(1) It is unlawful to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. ~~Violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~ A mother's breastfeeding of her baby does not under any circumstance violate this section.

(2) A person who violates this section commits:

27 (a) For a first offense, a misdemeanor of the first
28 degree, punishable as provided in s. 775.082 or s. 775.083.

29 (b) For a second or subsequent offense, a felony of the
30 third degree, punishable as provided in s. 775.082, s. 775.083,
31 or s. 775.084.

32 Section 2. Paragraph (d) is added to subsection (9) of
33 section 901.15, Florida Statutes, to read:

34 901.15 When arrest by officer without warrant is lawful.—A
35 law enforcement officer may arrest a person without a warrant
36 when:


37 (9) There is probable cause to believe that the person has
38 committed:

39 (d) Exposure of sexual organs in violation of s. 800.03.

40 Section 3. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 445 Time Limitations
SPONSOR(S): Criminal Justice Subcommittee; Nuñez
TIED BILLS: IDEN./SIM. BILLS: SB 494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 2 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 800.04, F.S., provides criminal penalties for various lewd and lascivious offenses committed upon or in the presence of a person less than 16 years of age. These offenses, which range from life felonies to third degree felonies, include:

- Lewd or lascivious battery;
- Lewd or lascivious molestation;
- Lewd or lascivious conduct; and
- Lewd or lascivious exhibition.

Section 95.11, F.S., sets forth statutes of limitation for commencing civil actions. Currently, a civil claim for a violation of s. 800.04, F.S., must commence within four years from the date when the cause of action accrues

Similarly, s. 775.15, F.S., sets forth the following general statutes of limitation for commencing criminal prosecutions:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Currently, the general time limitations described above apply to violations of s. 800.04, F.S., but may be extended or their onset delayed in specified circumstances (e.g., if DNA evidence establishes the identity of the accused).

The bill amends ss. 95.11 and 775.15, F.S., to remove the statutes of limitation for civil and criminal actions relating to a lewd or lascivious offense where the victim was under 16. The bill applies the new statutes of limitation to all actions except those which would have been time barred on or before October 1, 2014.

The Criminal Justice Impact Conference met January 30, 2014 and found the prison bed impact of the bill was indeterminate. However, the bill may have a negative prison bed impact in that it allows prosecutions for violations of s. 800.04, F.S., to be commenced at any time.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Lewd or Lascivious Offenses

Section 800.04, F.S., provides criminal penalties for the following lewd and lascivious offenses committed upon or in the presence of a person less than 16 years of age.¹

Lewd or Lascivious Battery

Lewd or lascivious battery, a second degree felony,² occurs when a person:

- Engages in sexual activity³ with a person 12 years of age or older but less than 16; or
- Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.⁴

Lewd or Lascivious Molestation

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.⁵

The penalties for lewd or lascivious molestation are as follows:

- An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony.⁶
- An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age commits a second degree felony.
- An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a second degree felony.
- An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a third degree felony.⁷

Lewd or Lascivious Conduct

Lewd or lascivious conduct occurs when a person:

- Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
- Solicits a person under 16 years of age to commit a lewd or lascivious act.⁸

An offender 18 years of age or older who commits lewd or lascivious conduct commits a second degree felony. An offender less than 18 years of age who commits lewd or lascivious conduct commits a third degree felony.

¹ Neither the victim's lack of chastity nor the victim's consent is a defense. Section 800.04(2), F.S.

² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³ Section 800.04(1)(a), F.S., defines the term "sexual activity" as the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

⁴ Section 800.04(4), F.S.

⁵ Section 800.04(5), F.S.

⁶ A life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), F.S., is punishable by a term of imprisonment for life; or a split sentence that is a term 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, as provided in s. 948.012(4), F.S. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), F.S., by a term of imprisonment for life. Section 775.082(3)(a)4., F.S.

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 800.04(6), F.S.

Lewd or Lascivious Exhibition

A person who commits any of the following acts in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition:

- Intentionally masturbates;
- Intentionally exposes the genitals in a lewd or lascivious manner; or
- Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.⁹

An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a second degree felony. An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a third degree felony.

Statute of Limitations

Background

Statutes of limitations sets forth time limitations, or "statutes of limitations," for commencing criminal prosecutions and civil actions. In *State v. Hickman*,¹⁰ the court explained that:

Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.

Similarly, in *State v. Garofalo*, the court found that "[t]he sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable."¹¹

Civil Cases

Section 95.11, F.S., sets forth statutes of limitation for commencing civil actions in Florida, which range from 30 days to 20 years. The time for commencing civil actions starts to run from the time the cause of action accrues, which occurs when the last element constituting the cause of action occurs.¹²

Currently, a civil claim for a violation of s. 800.04, F.S., must commence within four years from the date when the cause of action accrues.¹³

Criminal Cases

Section 775.15, F.S., sets forth statutes of limitation for commencing criminal prosecutions. For example:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

⁹ Section 800.04(7), F.S.

¹⁰ 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

¹¹ 453 So.2d 905, 906 (Fla. 4th DCA 1984)(citing *State v. Hickman*, 189 So.2d 254 (Fla. 2nd DCA 1966)).

¹² Section 95.031(1), F.S.

¹³ Section 95.11(3)(n), F.S.

The general time limitations described above currently apply to the lewd and lascivious offenses in s. 800.04, F.S. However, these limitations may be extended or their onset delayed in specified circumstances. For example:

- A prosecution for a lewd or lascivious offense under s. 800.04, F.S., committed between July 1, 2004 and June 30, 2006, may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.¹⁴
- A prosecution for a lewd or lascivious offense under s. 800.04, F.S., committed on or after July 1, 2006, may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.¹⁵

It should also be noted that for violations of s. 800.04, F.S., the applicable period of limitation does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier (generally, the time for prosecution of a criminal case starts to run on the day after the offense is committed).¹⁶

Effect of the Bill

The bill amends s. 95.11, F.S., to provide that there is no time limitation for a civil cause of action of a violation of s. 800.04, F.S., involving a victim under the age of 16 at the time of the offense. The bill applies to all actions except those which would have been time barred on or before October 1, 2014.

The bill amends s. 775.15, F.S., to provide there is no time limitation for the criminal prosecution of a violation of s. 800.04, F.S., involving a victim under the age of 16 at the time of the offense. The bill applies to all offenses except those offenses barred by prosecution on or before October 1, 2014.

B. SECTION DIRECTORY:

Section 1. Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 3. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met January 30, 2014 and found the prison bed impact of the bill was indeterminate. However, the bill may have a negative prison bed impact in that it allows prosecutions for violations of s. 800.04, F.S., to be commenced at any time.

¹⁴ Section 775.15(15), F.S.

¹⁵ Section 775.15(16), F.S.

¹⁶ Section 775.15(13)(a), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2014, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removes the statutes of limitation for civil and criminal actions relating to a lewd or lascivious offense where the victim was under 16; and
- Applies the new statutes of limitation to all actions except those which would have been time barred on or before October 1, 2014.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A bill to be entitled
 An act relating to time limitations; amending ss.
 95.11 and 775.15, F.S.; eliminating statutes of
 limitations on the commencement of civil or criminal
 actions relating to lewd and lascivious offenses if
 the victim was under 16 at the time of the offense;
 providing applicability; providing an effective date.

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

Section 1. Subsection (9) of section 95.11, Florida
 Statutes, is amended to read:

95.11 Limitations other than for the recovery of real
 property.—Actions other than for recovery of real property shall
 be commenced as follows:

(9) ~~SEXUAL BATTERY~~ OFFENSES ON VICTIMS UNDER AGE 16.—

(a) An action related to an act constituting a violation
 of s. 794.011 involving a victim who was under the age of 16 at
 the time of the act may be commenced at any time. This
 subsection applies to any such action other than one which would
 have been time barred on or before July 1, 2010.

(b) An action related to an act constituting a violation
 of s. 800.04 involving a victim who was under the age of 16 at
 the time of the act may be commenced at any time. This
 subsection applies to any such action other than one that would
 have been time barred on or before October 1, 2014.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CS/HB 445

2014

27 Section 2. Subsection (18) is added to section 775.15,
28 Florida Statutes, to read:


29 775.15 Time limitations; general time limitations;
30 exceptions.-

31 (18) If the offense is a violation of s. 800.04 and the
32 victim was under 16 years of age at the time the offense was
33 committed, a prosecution of the offense may be commenced at any
34 time. This subsection applies to an offense that is not
35 otherwise barred from prosecution on or after October 1, 2014.

36 Section 3. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 427 Traveling Across County Lines to Commit Felony Offenses
SPONSOR(S): McBurney and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 550

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

In recent months, news outlets have reported on a "wave" of South Florida burglaries allegedly committed by individuals who intentionally traveled to a county other than their county of residence to commit the offense. According to law enforcement, traditional law enforcement methods, such as using local pawn shop databases, confidential informants, proactive police patrols, and targeted patrols, become less effective when investigating these types of crimes. Currently, there are no statutes that make it a crime for a person to travel to another county with the intent to commit a crime.

The bill creates s. 843.22, F.S., which makes it a third degree felony for a person who resides in Florida to:

- Travel any distance and cross a Florida county boundary;
- With the intent to commit a felony offense in a Florida county that is not their county of residence.

"County of residence" is defined as the county in which a person resides within this state. Evidence of county of residence may include, but is not limited to:

- The address on the person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which the person's motor vehicle is registered;
- The county in which the person is enrolled in a school, college, or university; or
- The county in which the person is employed.

"Felony offense" is defined as a felony violation, or an attempt, solicitation, or conspiracy to commit a felony violation, of sexual battery, lewdness, prostitution, stalking, battery, carjacking, home invasion robbery, burglary, arson, robbery, kidnapping, theft, racketeering, or trafficking in a controlled substance.

The bill also prohibits those charged with s. 843.22, F.S. (traveling across county lines with the intent to commit a felony), from being released on bail until first appearance to ensure the full participation of the prosecutor and the protection of the public.

The Criminal Justice Impact Conference met January 30, 2014 and determined the bill will have an insignificant impact on state prison beds. The bill may also have a negative jail bed impact because it prohibits persons charged under s.843.22, F.S., from being released on bail until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Traveling Across County Lines to Commit Felonies

In recent months, news outlets have reported on a "wave" of burglaries that have occurred in South Florida.¹ These burglaries are allegedly committed by individuals who intentionally travel to a county other than their county of residence to commit the offense. William Snyder, Sheriff of Martin County, states that "traditional law enforcement methods," such as using local pawn shop databases, confidential informants, proactive police patrols, and targeted patrols, "become less effective" with these crimes.² According to Sheriff Snyder, it's difficult for law enforcement officials to establish a pattern and track criminals when they travel from their home county into neighboring counties to commit crimes.³

Currently, there are no statutes that make it a crime for a person to travel to another county with the intent to commit a crime.

Effect of the Bill

The bill creates s. 843.22, F.S., which makes it a third degree felony⁴ for a person who resides in Florida to:

- Travel any distance and cross a Florida county boundary;
- With the intent to commit a felony offense in a Florida county that is not their county of residence.

The bill provides the following definitions:

- "County of residence" means the county in which a person resides within this state. Evidence of county of residence may include, but is not limited to:
 - The address on the person's driver license or state identification card;
 - Records of real property or mobile home ownership;
 - Records of a lease agreement for residential property;
 - The county in which the person's motor vehicle is registered;
 - The county in which the person is enrolled in a school, college, or university; and
 - The county in which the person is employed.
- "Felony offense" means a felony violation, or an attempt, solicitation, or conspiracy to commit a felony violation, of sexual battery, lewdness, prostitution, stalking, battery, carjacking, home invasion robbery, burglary, arson, robbery, kidnapping, theft, racketeering, or trafficking in a controlled substance.

Bail Determinations

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.⁵ Generally, pretrial release is granted by

¹ *Lawmakers file bills pushed by Martin County sheriff to combat 'pillowcase' burglaries*, Jonathan Mattise, December 23, 2013. <https://www.tcpalm.com/news/2013/dec/23/lawmakers-file-bills-pushed-by-martin-county-to/> (last visited on January 9, 2014); *Sheriff Enlists Legislative Help To Crack Down On Growing Problem: 'Pillowcase Burglars'*, Sascha Cordner, December 18, 2013. <http://news.wfsu.org/post/sheriff-enlists-legislative-help-crack-down-growing-problem-pillowcase-burglars> (last visited on January 9, 2014).

² *Id.*

³ *Id.*

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Report No. 10-08, "Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed," Office of Program Policy Analysis & Government Accountability, January 2010 (on file with the Criminal Justice Subcommittee).

releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.⁶

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger.⁷ Courts must consider certain things when determining whether to release a defendant on bail, and what that bail should be (e.g., the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition, etc.).⁸

In certain instances, a person is required to be held without bail until his or her first appearance to ensure the full participation of the prosecutor and the protection of the public. Section 903.046(l), F.S., requires this if the crime charged is a violation of ch. 874, F.S.,⁹ or alleged to be subject to enhanced punishment under ch. 874, F.S.

Effect of the Bill

The bill amends s. 903.046(l), F.S., to prohibit those charged with s. 843.22, F.S. (traveling across county lines with the intent to commit a felony), from being released on bail until first appearance to ensure the full participation of the prosecutor and the protection of the public.

B. SECTION DIRECTORY:

Section 1. Creates s. 843.22, F.S., relating to traveling across county lines to commit a felony offense.

Section 2. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 3. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met January 30, 2014 and determined the bill will have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

⁶ *Id.*

⁷ Section 903.046, F.S.

⁸ *Id.*

⁹ Chapter 874, F.S., relates to criminal gang enforcement and prevention.

The bill prohibits persons charged under s. 843.22, F.S., from being released on bail until first appearance, which may have a negative jail bed impact. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

27 3. Records of a lease agreement for residential property.

28 4. The county in which the person's motor vehicle is
 29 registered.

30 5. The county in which the person is enrolled in a school,
 31 college, or university.

32 6. The county in which the person is employed.

33 (b) "Felony offense" means a felony violation, or an
 34 attempt, solicitation, or conspiracy to commit a felony
 35 violation, of sexual battery, lewdness, prostitution, stalking,
 36 battery, carjacking, home invasion robbery, burglary, arson,
 37 robbery, kidnapping, theft, racketeering, or trafficking in a
 38 controlled substance.

39 (2) A person who resides in this state, travels any
 40 distance, and crosses a county boundary in this state with the
 41 intent to commit a felony offense in a county in this state
 42 other than the person's county of residence commits a felony of
 43 the third degree, punishable as provided in s. 775.082, s.
 44 775.083, or s. 775.084.

45 Section 2. Paragraph (1) of subsection (2) of section
 46 903.046, Florida Statutes, is amended to read:

47 903.046 Purpose of and criteria for bail determination.—

48 (2) When determining whether to release a defendant on
 49 bail or other conditions, and what that bail or those conditions
 50 may be, the court shall consider:

51 (1) Whether the crime charged is a violation of s. 843.22
 52 or chapter 874 or alleged to be subject to enhanced punishment

HB 427

2014

53 | under chapter 874. If any such violation is charged against a
54 | defendant or if the defendant is charged with a crime that is
55 | alleged to be subject to such enhancement, he or she shall not
56 | be eligible for release on bail or surety bond until the first
57 | appearance on the case in order to ensure the full participation
58 | of the prosecutor and the protection of the public.

59 | Section 3. This act shall take effect October 1, 2014.