

STORAGE NAME: h0409
DATE: March 3, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 409
RELATING TO: Criminal Exposure of Sexual Organs
SPONSOR(S): Representative Ball
STATUTE(S) AFFECTED: Section 800.03, F.S.
COMPANION BILL(S): SB 488 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

Section 800.03, F.S., provides that it is unlawful to expose or exhibit one's sexual organs in a vulgar or indecent manner in public. The Courts have interpreted section 800.03, F.S., to require a showing of lewd or lascivious nudity. The disorderly conduct statute, section 877.03, F.S., has been used to prosecute cases involving simple nudity in public, however it requires a showing that a member of the public was "outraged" or otherwise disturbed. A DEP administrative rule bans simple nudity in all state parks. There are currently no federal laws which prohibit nudity on federal lands or parks.

This bill makes it a first degree misdemeanor for a person to willfully and intentionally be naked in any lands within the state, owned or controlled by the National Park Service, over which the state maintains concurrent jurisdiction. If this bill becomes a law, a person who is naked on federal parks in this state will commit a first degree misdemeanor. A lewd act is not a required element.

To the extent that this bill affects the state's tourism industry, there may be a fiscal impact on the private sector and state and local government. The impact is indeterminate. See Fiscal Comments, page 8.

The Florida Supreme Court has held that nudity in and of itself is not constitutionally protected speech, unless it is also associated with other expression which is entitled to First Amendment protections. See Comments, page 8.

The bill as presently drafted could be read to encompass private nudity occurring on National Park Service lands with concurrent jurisdiction. This point can be clarified by amending the bill to specify that only "public" nudity is prohibited. See Comments, page 9.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Lewd or Lascivious Nudity Prohibited:

Section 800.03, F.S., provides that it is unlawful to expose or exhibit one's sexual organs in a vulgar or indecent manner in public. Such exposure or exhibition shall not occur on another person's private property or so near to as to be seen from such private property. Being in a nude state is lawful at those places that are specifically provided or set apart for that purpose. It is also lawful for a mother's breast to be exposed when breast feeding a baby.

The Courts have interpreted section 800.03, F.S., to require a showing of lewd or lascivious nudity. In Hoffman v. Carson, 250 So. 2d 891, 893 (Fla. 1971), the Florida Supreme Court found section 800.03, F.S., was constitutional, but stated:

...(T)he terms in question must be construed as necessarily relating to a lascivious exhibition of those private parts of a person which common propriety requires to be customarily kept covered in the presence of others. This construction necessarily applies also to the language "or so to expose or exhibit his person in such place, or to go or be naked in such place."

Consequently, courts have held that section 800.03, F.S., does not make simple nudity unlawful. e.g., United States v. A Naked Person, 841 F.Supp. 1153 (M.D. Fla. 1993)(Court held section 800.03, F.S., did not cover defendant's act of being "nude but not lewd" in a public place, i.e., Canaveral National Seashore).

2. Simple Nudity Prohibited by Disorderly Conduct Statute:

Section 877.03, F.S., is the disorderly conduct statute. It makes it a second degree misdemeanor to commit "... such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them..." This statute has been used to prosecute cases involving simple nudity in public. e.g., Moffet v. State, 340 So. 2d 1155 (Fla. 1976)(Court holds disorderly conduct statute prohibits adult females from appearing in a public beach with openly exposed breasts). However, enforcement under section 877.03, depends on the "atmosphere surrounding the incident" and requires a member of the public be "outraged" or otherwise disturbed. Attorney General's Opinion, (3/10/95).

3. Administrative Rule Prohibits Simple Nudity in State Parks:

The Department of Environmental Protection, Division of Recreation and Parks, has enacted an administrative rule which bans "simple" nudity in all state parks. Simple nudity means exposure regardless of whether an offender commits a lewd act. Rule 62D-2.104 (7)(b), FAC. Florida Statutes provide that any person who violates a DEP rule commits a second degree misdemeanor. s. 370.021, F.S.

4. Local Government Ordinances Prohibit Nudity:

Various counties and municipalities have enacted ordinances prohibiting nudity, particularly when it is coupled with serving alcoholic beverages. For example, St John's County has recently enacted an ordinance which bans simple nudity in any public place. Ord. # 92-12. The Federal Courts have upheld the ordinance against constitutional challenges. However, federal law enforcement officials do not enforce local ordinances, only state statutes.

5. Federal Laws on Nudity:

There currently exist no federal laws which prohibit nudity on any federal lands or parks.

6. Lands in which the State and Federal Governments Posses Concurrent Jurisdiction:

The type of jurisdiction applicable to federal lands within the state determines whether a law enforcement officer may arrest an individual for a state law violation committed on federal lands. Section 6.075, F.S., provides a procedure by which the Governor may cede to the National Park Service of the United States Department of Interior concurrent jurisdiction to enforce criminal laws on any lands owned or controlled by the Park Service. Generally, concurrent jurisdiction allows both the state and federal law enforcement officials to enforce any state and federal law violations within a park. This is in contrast to exclusive jurisdiction under which the federal government possesses exclusive enforcement authority, subject only to the state's right to serve criminal and civil process for actions occurring outside a park. Under the Assimilative Crimes Act (18 USCS § 13), the Federal Government may prosecute a person committing a state law violation on any federal lands which are held under the Federal Government's exclusive or concurrent jurisdiction.

Records on file with the Florida Department of State reflect that 10 of Florida's National Park Service lands have concurrent jurisdiction deeds as provided in section 6.075, F.S. These include the following lands: Ft. Caroline National Memorial; Ft. Jefferson National Memorial; Ft. Matanzas National Monument; Castillo de San Marcos National Monument; Big Cypress National Preserve; DeSoto National Memorial; Biscayne National Park; Canaveral National Seashore; Everglades National Park; and Gulf Islands National Seashore.

B. EFFECT OF PROPOSED CHANGES:

This bill makes it a first degree misdemeanor for a person to willfully and intentionally be naked in any lands within the state over which the state maintains concurrent jurisdiction with the Federal Government. Naked is defined to include: "exposure of: a male or female person's genitals or pubic area, the entire buttocks, or a female persons's breast below the top of the areola." A vulgar, indecent, or lewd or lascivious exhibition is not required for the purposes of this definition.

If this bill becomes a law, a person who is naked on federal parks in this state will commit a first degree misdemeanor. A lewd act is not a required element.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill makes it unlawful for a person to willfully and intentionally be naked on any National Park Service lands within the state in which there exists concurrent jurisdiction. Currently, only a lewd act of nudity is unlawful on those lands.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

1. Section One:

Amends section 800.03, F.S., to make it unlawful for a person to willfully and intentionally be naked in any National Park Service lands within the state over which the state maintains concurrent jurisdiction pursuant to s. 6.075, F.S. Provides definition for naked. Provides that a vulgar, indecent, or lewd or lascivious exhibition is not required for the purposes of this new subsection. Provides that a violation shall be punished as a first degree misdemeanor.

2. Section Two:

Reenacts certain provisions of Florida Statutes for the purpose of incorporating the amendment to section 800.03, F.S.

3. Section Three:

Provides that this act shall take effect on October 1, 1997, and shall apply to offenses committed on or after that date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

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1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

To the extent that this bill affects the state's tourism industry, there may be a fiscal impact on the private sector and state and local government. The impact is indeterminate.

A first degree misdemeanor is punishable by up to one year imprisonment in a county correctional facility and a fine not exceeding \$1,000. By adding an additional method by which a person could be found guilty of violating s. 800.03, F.S., the bill could increase the number of convictions. To the extent that this bill results in more persons being charged with, and convicted of, a first degree misdemeanor under s. 800.03, F.S., the bill may have a fiscal impact on state and local governments. The impact is indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt for the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

CONSTITUTIONAL CONSIDERATIONS:

This bill prohibits simple nudity on National Park Service lands in which the state has concurrent jurisdiction for the enforcement of laws. That is, a lewd act need not be proved, in contrast to the general nudity provision currently contained in section 800.03, F.S. In prohibiting simple nudity, this bill is similar to the DEP administrative rule, discussed in part 3 of the Present Situation, (page 2, above). In McGuire v. State, 489 So. 2d 729 (Fla. 1986), the Florida Supreme Court stated that nudity in and of itself is not constitutionally protected speech, unless it is also associated with other expression which is entitled to First Amendment protections, *i.e.*, dancing or literature. The Court upheld the predecessor to the current DEP rule against a constitutional challenge and concluded that nudity which is not associated with other protected expression can be regulated by the state. McGuire, at 731. Using similar reasoning, the Eleventh Circuit Court of Appeals has rejected the argument that nude sunbathing is a constitutionally protected form of expression. South Florida Free Beaches, Inc. v. City of Miami, 734 F. 2d 608 (11th Cir. 1984).

TECHNICAL CONSIDERATIONS:

The bill as drafted provides that it is unlawful for any person to willfully and intentionally be naked in any National Park Service lands within the state over which the state maintains concurrent jurisdiction. The bill does not specify that such nudity must be in public. Consequently, the bill could be read to encompass private nudity. This point can be clarified by amending the bill to specify that only "public" nudity is prohibited.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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