

**STORAGE NAME:** h0023s2.flc

**DATE:** January 28, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
FAMILY LAW AND CHILDREN  
ANALYSIS**

**BILL #:** CS/CS/HB 23

**RELATING TO:** Children's Protection Act of 1999

**SPONSOR(S):** Committee on Family Law and Children, Committee on Crime and Punishment  
and Representative Ball

**COMPANION BILL(S):** SB 170

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (2) FAMILY LAW AND CHILDREN YEAS 7 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

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**I. SUMMARY:**

The bill creates the "**Children's Protection Act of 1999**" and, generally, **increases the penalty for crimes committed upon children**, as follows:

**Lewd, lascivious, or indecent assault** is redefined into four new categories proscribing four types of lewd acts committed against children, by degree of severity.

The bill increases the penalty for certain Lewd & Lascivious offenses when the defendant is over 18, but reduces the penalty in certain cases, when both parties are minors.

This act is scheduled to take effect on October 1, 1999.

II. SUBSTANTIVE RESEARCH:

## A. PRESENT SITUATION:

**Sexual Battery**

Section **794.011**, Florida Statutes, defines sexual battery as "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; ... ."

**Consent:** A conviction for sexual battery requires proof of non-consent by the victim if he or she is over 12 years of age.

The punishment for sexual battery ranges from a capital felony (child under 12) to a second-degree felony (person over 12, not involving serious physical force).

<b>SEXUAL BATTERY</b>				
<b>Defining Conduct</b>	<b>Age of Victim</b>	<b>Age of Defendant</b>	<b>Felony Penalty</b>	<b>Proof of Non-consent?</b>
Sexual battery or attempt with injury (794.011(2)(a), F.S.)	less than 12	over 18	Capital	No
Sexual battery or attempt with injury (794.011(2)(b), F.S.)	less than 12	less than 18	Life	No
Sexual battery; use or threat of deadly weapon or actual physical force (794.011(3), F.S.)	12 or older		Life	Yes
Sexual battery and victim is physically helpless to resist (794.011(4)(a), F.S.)	12 or older		1st degree	Yes
Sexual battery and coercion by force or threat of force (794.011(4)(b), F.S.)	12 or older		1st degree	Yes
Sexual battery and coercion by threat of retaliation (794.011(4)(c), F.S.)	12 or older		1st degree	Yes
Sexual battery and administration of drug to incapacitate victim (794.011(4)(d), F.S.)	12 or older		1st degree	Yes

SEXUAL BATTERY				
Defining Conduct	Age of Victim	Age of Defendant	Felony Penalty	Proof of Non-consent?
Sexual battery and victim is mentally defective (794.011(4)(e), F.S.)	12 or older		1st degree	Yes
Sexual battery and victim is incapacitated (794.011(4)(f), F.S.)	12 or older		1st degree	Yes
Sexual battery and defendant is a law enforcement officer or elected official (794.011(4)(g), F.S.)	12 or older		1st degree	Yes
Sexual battery without use of force (794.011(5), F.S.)	12 or older		2nd degree	Yes
Person who is in position of familial or custodial authority and who solicits person to engage in sexual battery (794.011(8)(a), F.S.)	less than 18		3rd degree	No
Person who is in position of familial or custodial authority and who commits sexual battery (794.011(8)(b), F.S.)	Between 12 and 18		1st degree	No

### Lewd, Lascivious, or Indecent Assault

Prosecutions for exploitative sexual contact with a child **under 16** years of age are prosecuted under the Lewd & Lascivious Assault statute (**800.04**). The statute proscribes four types of conduct, as follows:

- 1) handling, fondling or assaulting any child under the age of 16 years in a lewd, lascivious, or indecent manner;
- 2) committing **actual** or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, actual lewd exhibition of the genitals, or any act or conduct which simulates that sexual battery is being or will be committed upon any child under the age of 16 years or forces or entices the child to commit any such act;
- 3) committing an act defined as sexual battery under s. 794.011(1)(h) upon any child under the age of 16 years; or

- 4) knowingly committing any lewd or lascivious act in the presence of any child under the age of 16 years.

**Consent** is never a defense, and the offense is punishable as a 2nd-degree felony, regardless of the age of the defendant. This statute is Florida's method of penalizing statutory rape as well. Anyone who has sexual intercourse with a child under the age of 16 may be charged with a violation of 800.04 regardless of the age of the offender.

#### **Unlawful Sexual Activity with Certain Minors**

Section **794.05**, Florida Statutes, criminalizes sexual activity between a person over 24 years of age and a child 16 or 17 years of age.

The offense is punishable as a 2nd-degree felony.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Lewd or Lascivious (L&L): Battery, Molestation, Conduct or Exhibition**

**Consent:** Pursuant to CS/CS/HB 23, neither the lack of chastity of a victim, nor the victim's consent can be raised as a defense to a prosecution for any offense under s. 800.04, F.S.

The bill redefines the proscribed conduct into four new categories, as follows:

- a. **L&L Battery** -- proscribes "sexual activity" which is defined the same as sexual battery (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). Also proscribes encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, or prostitution.
- b. **L&L Molestation** -- proscribes intentional lewd touches to the breasts, genitals, genital area, or buttocks, or the clothing covering them. It, also, includes situations where the defendant "forces or entices" the victim to touch the defendant in a lewd manner.
- c. **L&L Conduct** -- proscribes intentional lewd touches to any part of the body.
- d. **L&L Exhibition** -- proscribes intentional lewd exposure of the genitals, or intentional masturbation. Does not require any physical contact with the victim.

<b><u>Lewd or Lascivious (L&amp;L): Battery, Molestation, Conduct &amp; Exhibition</u></b>				
<b>Offense</b>	<b>Defining Conduct</b>	<b>Age of Victim</b>	<b>Age of Defendant</b>	<b>Felony Penalty</b>
L&L Battery	Sexual Activity (Sexual Battery)	12-16	any age	2nd Degree
L&L Molestation	touching genital area, breasts or buttocks	0-12	18 & over	1st Degree
		0-12	under 18	2nd Degree
		12-16	18 & over	2nd Degree
		12-16	under 18	3rd Degree
L&L Conduct	lewd touching (anywhere) or solicitation	0-16	18 & over	2nd Degree
		0-16	under 18	3rd Degree
L&L Exhibition	exposure of genitals (no contact)	0-16	18 & over	2nd Degree
		0-16	under 18	3rd Degree

## 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?

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

ss. 119.07, 775.084, 775.15, 787.01, 787.02, 787.025, 800.04, 914.16, 921.0022, 944.606, 947.146, 948.03, 985.03, 985.227, and 985.313, Florida Statutes.

**E. SECTION-BY-SECTION RESEARCH:**

**Section 1:** "This act shall be known and may be cited as the 'Children's Protection Act of 1999'."

**Section 2:** Amends s. 119.07, F.S., to conform to new description of lewd and lascivious offenses.

**Section 3:** Amends s. 775.084, F.S. to conform to new description of lewd and lascivious offenses, with regard to violent career criminals.

**Section 4:** Amends s. 787.01, F.S. to conform to new description of lewd and lascivious offenses.

**Section 5:** Amends s. 787.02, F.S. to conform to new description of lewd and lascivious offenses.



**Section 6:** Amends section 800.04 by redefining offenses constituting lewd & lascivious conduct.

**Section 7:** Incorporates the bill by reference.

**Section 8:** Amends s. 921.0022, F.S. to conform to new description of lewd and lascivious conduct.

**Section 9:** Amends s. 947.146, F.S. to conform to new description of lewd and lascivious conduct.

**Section 10:** Amends s. 948.03, F.S. to conform to new description of lewd and lascivious conduct.

**Section 11:** Amends s. 985.03, F.S. to conform to new description of lewd and lascivious conduct.

**Section 12:** Amends s. 985.227, F.S. to conform to new description of lewd and lascivious conduct.

**Section 13:** Amends s. 985.313, F.S. to conform to new description of lewd and lascivious conduct.

**Section 14:** Provides an effective date of October 1, 1999.

### III. FISCAL RESEARCH & 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:**

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:**

Section 921.0012(9)(b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine its impact on the state prison system. The CJEC has determined that CS/HB 23 has an insignificant fiscal impact.

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

**A. APPLICABILITY OF THE MANDATES PROVISION:**

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

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise the 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:**

**The Committee on Crime and Punishment:**

The purpose of the bill appears to modify the penalties for lewd and lascivious behavior so that the ages of the defendant and the victim are taken into account. The bill also more clearly prohibits lewd conduct than current law.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The Committee on Crime and Punishment adopted an amendment which changed the age for which consent is not a defense from victims under 12 years of age to victims under 16 years of age. This change made the committee substitute consistent with current law in this regard and corrected an inadvertent error.

On January 28, 1999, the Committee on Family Law and Children adopted an amendment that removed everything after the enacting clause, and replaced it with language that made the following changes to CS/HB 23:

- a.added five law sections to the bill to conform to new description of lewd and lascivious conduct;
- b.corrected an apparent typographical error;
- c.deleted section 6 from CS/HB 23, to restore current law regarding incest;
- d.reinstated current law that the lack of chastity of a victim may not be used as a defense to specified crimes.

The Committee on Family Law and Children adopted the above amendment as a committee substitute. This analysis is to CS/CS/HB 23.

**VII. SIGNATURES:**

**COMMITTEE ON CRIME AND PUNISHMENT:**

Prepared by:

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Prepared by:

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