

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 41 Sexual offenses
SPONSOR(S): Kravitz and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>9 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Kramer</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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.

The bill 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.

The bill also amends section 794.0115, F.S. which requires a judge to impose a minimum of a 25 year sentence and a maximum of a life sentence upon an offender who is sentenced for a violation of one an enumerated list of sexual offenses and who:

- Caused serious personal injury to the victim as a result of the commission of the offense;
- Used or threatened to use a deadly weapon during the commission of the offense;
- Victimized more than one person during the course of the criminal episode applicable to the offense;
- Committed such offense while under the jurisdiction of the court for a felony offense or;
- Has previously been convicted of a violation of one of the enumerated offenses.

The bill adds additional offenses to the list for which the 25 minimum mandatory sentence must be applied in the circumstances listed above. The bill will also require the imposition of a mandatory life sentence for a third conviction for one of the list of enumerated offenses.

The bill creates a new section of statute which will require the reclassification of one of the following offenses to a third degree felony if the offender has a prior conviction for one of the following offenses: making obscene phone calls, possession of an erectile dysfunction drug by a sexual predator; an unnatural and lascivious act, exposure of sexual organs in a vulgar or indecent manner, voyeurism, video voyeurism, or videotaping or observing a dressing room. If the offender commits one of these offenses and has two prior convictions for one of the offenses or has a prior conviction for another enumerated sexual offense, a five year minimum mandatory sentence must be imposed.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

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. 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.¹ 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.²

The bill 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.

Dangerous sexual felony offender sentencing: Section 794.0115, F.S. is known as the "Dangerous Sexual Felony Offender Act". The section provides that if a person is convicted of sexual battery³, lewd or lascivious battery⁴, lewd or lascivious molestation⁵, sexual performance by a child⁶, selling or buying a minor⁷, lewd or lascivious offenses committed upon an elderly person or disabled adult⁸ or luring or enticing a child⁹ where the offender was 18 years of age or older and the person:

1. Caused serious personal injury to the victim as a result of the commission of the offense;
2. Used or threatened to use a deadly weapon during the commission of the offense;

¹ 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.

² Section 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". Section 948.11(6), F.S.

³ s. 794.011(2), (3), (4), (5) or (8), F.S.

⁴ s. 800.04(4), F.S. This section requires proof that the offender had engaged in sexual activity with a person 12 years of age or older but less than 16 years of age. "Sexual activity" means 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. Consent is not a defense to this offense.

⁵ s. 800.04(5), F.S. This section requires proof that a person intentionally touched 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 forced or enticed the victim to so touch the offender.

⁶ s. 827.071(2), (3), (4), F.S. This section makes it unlawful for a person to employ a child less than 18 years of age to engage in sexual performance.

⁷ s. 847.0145, F.S. This section requires proof that the a person sold or purchased a minor with knowledge that as a consequence of the transfer, the minor will be portrayed in a visual depiction engaging in sexually explicit conduct.

⁸ s. 825.1025. This section prohibits various lewd or lascivious offenses committed against a person over the age of 60 or against a disabled adult.

⁹ s. 787.025, F.S. This section makes it a third degree felony to lure or entice a child under the age of 12 into a structure, dwelling or conveyance for other than a lawful purpose.

3. Victimized more than one person during the course of the criminal episode applicable to the offense;
4. Committed such offense while under the jurisdiction of the court for a felony offense or;
5. Has previously been convicted of a violation of one of the above offenses;

must be sentenced as a “dangerous sexual felony offender” to a mandatory minimum term of 25 years imprisonment up to and including life imprisonment. The enhanced sentencing provision could be applied to offenders upon the commission of a first offense if the facts of the case met one of the first four criteria listed above.

HB 41 adds the following to the enumerated offenses in the dangerous sexual felony offender act: procuring a person under the age of 18 for prostitution¹⁰; residing in an unlawful place for persons convicted of certain sex offenses;¹¹ lewd or lascivious conduct,¹² lewd or lascivious exhibition with a child or an elderly person,¹³ possessing child pornography¹⁴. This will require the imposition of a 25 year minimum mandatory sentence for one of these offenses if one of the five criteria listed above are met. Further, the bill requires the imposition of a minimum mandatory life sentence for a third conviction of an enumerated offense.

Reclassification of other sexual offenses: HB 41 creates section 775.0847 which provides that the penalty for one of the following enumerated offenses is subject to the enhanced penalties as described below:

1. making obscene phone calls¹⁵
2. possession of an erectile dysfunction drug by a sexual predator¹⁶
3. unnatural and lascivious act¹⁷
4. exposure of sexual organs in a vulgar or indecent manner¹⁸
5. voyeurism¹⁹
6. video voyeurism²⁰
7. videotaping or observing a dressing room²¹

If the offender is convicted of an enumerated offense and has previously been convicted of an enumerated offense, the offense will be reclassified as a third degree felony. If the offender is convicted of an enumerated offense and has twice previously been convicted of an enumerated offense, the offense will be reclassified to a second degree felony and the offender must be sentenced to a minimum mandatory term of imprisonment of five years.

If the offender is convicted of one of the offenses enumerated above and has previously been convicted of one of the following sexual offenses, the enumerated offense will be reclassified to a second degree felony and the offender must be sentenced to a minimum mandatory term of imprisonment of five years:

¹⁰ s. 796.03, F.S.

¹¹ s. 794.065, F.S.

¹² s. 800.04(6)(b), F.S.

¹³ s. 800.04(7)(c) and s. 825.1025(4), F.S.

¹⁴ s. 827.071(5), F.S.

¹⁵ s. 365.16, F.S. This offense is a second degree misdemeanor.

¹⁶ s. 794.075, F.S. This offense is second degree misdemeanor for a first violation and a first degree misdemeanor for a second violation..

¹⁷ s. 800.02. This offense is a second degree misdemeanor.

¹⁸ s. 800.03, F.S. This offense is a first degree misdemeanor.

¹⁹ s. 810.14, F.S. This offense is a first degree misdemeanor for a first violation and a third degree felony for a second or subsequent violation.

²⁰ s. 810.145, F.S. This offense is a first degree misdemeanor for a first violation and a third degree felony for a second or subsequent violation.

²¹ s. 877.26, F.S. This offense is a first degree misdemeanor.

- luring or enticing a child
- sexual battery
- residing in an unlawful place for persons convicted of certain sex offenses
- procuring a person under 18 for prostitution
- a lewd or lascivious offense with a child or an elderly person
- sexual performance by a child
- buying or selling of a minor

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. 794.0115, F.S. to expand dangerous sexual felony offender law.

Section 3. Creates s. 775.0847, F.S. relating to reclassification of certain sexual offenses.

Section 4. Provides effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference considered the impact of this bill as originally filed and determined that the bill would have an insignificant prison bed impact on the Department of Corrections. Staff of the Office of Economic and Demographic Research has indicated that the amendment adopted in the Safety & Security Council which amended section 794.0115 relating to the dangerous sexual felony offender act and created section 775.0847 relating to the reclassification of certain misdemeanor offenses will also have an insignificant prison bed impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

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

The bill sponsor submitted the following statement relating to the bill as originally filed:

HB 41 protects children under 12 years of age from repeat offenders.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Safety & Security Council adopted an amendment which added the provisions amending section 794.0115, F.S., relating to the dangerous sexual felony offender law and creating section 775.0847, F.S. relating to the reclassification of certain sexual offenses, as described in the Effect of Proposed Changes section of this analysis. The bill as amended was made a council substitute.