

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1464

INTRODUCER: Senator Dean

SUBJECT: Public Facilities

DATE: March 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			FP	

I. Summary:

SB 1464 creates legislative intent to secure privacy and safety for all individuals using public facilities. It provides that there is an expectation of privacy in public facilities which are places of increased vulnerability and present the potential for crimes against individuals using the facilities.

The bill defines Public Accommodations and Public Facilities. The bill provides that a person who knowingly and willfully enters a public facility with the intent to harass or engage in harassment, lewd behavior, assault, battery, molestation, rape, or voyeurism commits a felony of the second degree.

The bill creates a private cause of action by providing that a person who knowingly and willfully enters a public facility with the intent to harass or engage in harassment, lewd behavior, assault, battery, molestation, rape, or voyeurism is liable for a civil action to any person who is using the public facility at the time of the unlawful entry for the damages caused by the unlawful entry, together with reasonable attorney fees and costs. The bill provides for civil liability of an owner of public accommodations, a school, or a place of employment who maintain public facilities who encourages use of the facilities contrary to its lawful use.

II. Present Situation:

Places of Public Accommodation

Section 760.02, F.S., defines the term to mean “places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:

- Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.
- Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.
- Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.
- Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.”

Lewdness

Under s. 796.07(1)(b), F.S., prohibiting prostitution “lewdness” is defined as any indecent or obscene act. However there is nothing in the Florida Statutes prohibiting a lewd and lascivious act that does not “otherwise define the behavior that constitutes a lewd and lascivious act.”¹ There is case law defining lewdness as the “equivalent of both licentiousness² and lasciviousness.³

Assault

Section 784.011, F.S., defines an “assault” as an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Whoever commits an assault shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Battery

Section 784.03, F.S., provides that the offense of battery occurs when a person:

- Actually and intentionally touches or strikes another person against the will of the other; or
- Intentionally causes bodily harm to another person.

Except as provided below, a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. For purposes of this subsection,

¹ 16A Fla. Jur 2d, *Criminal Law –Substantive Principles/Offenses* s. 793(2015).

² *State ex rel Swanboro v. Mayo*, 155, Fla 330, 19 So. 2d 883 (1944).

³ *Holton v. State*, 28 Fla. 303, 9 So. 716(1891)

“conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Harassment

The definition of “Harass” under s. 784.048, F.S., of the Stalking statute means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

Voyeurism

Section 810.14, F.S., provides that a person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent:

- Secretly observes another person when the other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.
- Secretly observes another person’s intimate areas in which the person has a reasonable expectation of privacy, when the other person is located in a public or private dwelling, structure, or conveyance. As used in this paragraph, the term “intimate area” means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

Sexual Battery

Sexual Battery means 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 battery does not include an act done for a bona fide medical purpose.⁴

III. Effect of Proposed Changes:

The bill creates the following legislative intent:

The purpose of the act is to secure privacy and safety for all individual using public facilities. It makes legislative findings that:

- There is an expectation of privacy in public facilities.
- Public facilities are places of increased vulnerability and present the potential for crimes against individuals using those facilities, including, but not limited to, harassment, lewd behavior, assault, battery, molestation, rape, and voyeurism.

The bill creates s. 398.01, F.S. It provides a definition of “public accommodations” for purposes of the section to mean places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments.

⁴ See s. 794.011, F.S.

The following establishments are places of public accommodation:

- Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.
- Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.
- Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.
- Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located in any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

The bill defines “public facilities” as bathrooms, restrooms, dressing rooms, fitting rooms, locker rooms, showers, and other similar facilities where there is a reasonable expectation of privacy; that are maintained by an owner of public accommodations, a school, or a place of employment; and that are designed or designated to be used by more than one person at a time.

Prohibited Conduct

The bill provides that a person who knowingly and willfully enters a public facility with the intent to harass or engage in harassment, lewd behavior, assault, battery, molestation, rape, or voyeurism commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Private Cause of Action

The bill provides that a person who knowingly and willfully enters a public facility with the intent to harass or engage in harassment, lewd behavior, assault, battery, molestation, rape, or voyeurism is liable for a civil action to any person who is using the public facility at the time of the unlawful entry for the damages caused by the unlawful entry, together with reasonable attorney fees and costs.

The bill provides that an owner of public accommodations, a school, or a place of employment who maintains public facilities and advertises, promotes, or encourages use of those facilities in violation of the above referenced section governing prohibited conduct, or fails to take reasonable remedial measures after learning of the use, is liable in a civil action to any person who is lawfully using those facilities at the time of the unlawful entry for the damages caused by the unlawful entry, together with reasonable attorney fees and costs.

Effective Date

The bill provides an effective date of October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill creates a private cause of action for damages, costs, and fees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bills use of the term “rape” is no longer used in the Florida Statutes. “Sexual Battery” is now the standard terminology to describe 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 in defined circumstances outlined in the Florida Statutes.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 398.01 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
