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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/11/2019	.	
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The Committee on Criminal Justice (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 800.04, Florida Statutes, is amended to
read

800.04 Lewd or lascivious offenses ~~committed upon or in the
presence of persons less than 16 years of age.~~

(1) DEFINITIONS.—As used in this section:

(a) "Sexual activity" means the oral, anal, or vaginal



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11 penetration by, or union with, the sexual organ of another or
12 the anal or vaginal penetration of another by any other object;
13 however, sexual activity does not include an act done for a bona
14 fide medical purpose.

15 (b) "Consent" means intelligent, knowing, and voluntary
16 consent, and does not include submission by coercion.

17 (c) "Coercion" means the use of exploitation, bribes,
18 threats of force, or intimidation to gain cooperation or
19 compliance.

20 (d) "Victim" means a person upon whom an offense described
21 in this section was committed or attempted or a person who has
22 reported a violation of this section to a law enforcement
23 officer.

24 (2) PROHIBITED DEFENSES.—Except as provided in paragraph
25 (5) (f), neither the victim's lack of chastity nor the victim's
26 consent is a defense to the crimes proscribed by this section.

27 (3) IGNORANCE OR BELIEF OF VICTIM'S AGE.—The perpetrator's
28 ignorance of the victim's age, the victim's misrepresentation of
29 his or her age, or the perpetrator's bona fide belief of the
30 victim's age cannot be raised as a defense in a prosecution
31 under this section.

32 (4) LEWD OR LASCIVIOUS BATTERY.—

33 (a) A person commits lewd or lascivious battery by:

34 1. Engaging in sexual activity with a person 12 years of
35 age or older but less than 16 years of age; or

36 2. Encouraging, forcing, or enticing any person less than
37 16 years of age to engage in sadomasochistic abuse, sexual
38 bestiality, prostitution, or any other act involving sexual
39 activity.



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40 (b) Except as provided in paragraph (c), an offender who
41 commits lewd or lascivious battery commits a felony of the
42 second degree, punishable as provided in s. 775.082, s. 775.083,
43 or s. 775.084.

44 (c) A person commits a felony of the first degree,
45 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
46 if the person is an offender 18 years of age or older who
47 commits lewd or lascivious battery and was previously convicted
48 of a violation of:

49 1. Section 787.01(2) or s. 787.02(2) when the violation
50 involved a victim who was a minor and, in the course of
51 committing that violation, the defendant committed against the
52 minor a sexual battery under chapter 794 or a lewd act under
53 this section or s. 847.0135(5);

54 2. Section 787.01(3)(a)2. or 3.;

55 3. Section 787.02(3)(a)2. or 3.;

56 4. Chapter 794, excluding s. 794.011(10);

57 5. Section 825.1025;

58 6. Section 847.0135(5); or

59 7. This section.

60 (5) LEWD OR LASCIVIOUS MOLESTATION.—

61 (a) A person who intentionally touches in a lewd or
62 lascivious manner the breasts, genitals, genital area, or
63 buttocks, or the clothing covering them, of a person less than
64 16 years of age, or forces or entices a person under 16 years of
65 age to so touch the perpetrator, commits lewd or lascivious
66 molestation.

67 (b) An offender 18 years of age or older who commits lewd
68 or lascivious molestation against a victim less than 12 years of



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69 age commits a life felony, punishable as provided in s.
70 775.082(3)(a)4.

71 (c)1. An offender less than 18 years of age who commits
72 lewd or lascivious molestation against a victim less than 12
73 years of age; or

74 2. An offender 18 years of age or older who commits lewd or
75 lascivious molestation against a victim 12 years of age or older
76 but less than 16 years of age

77
78 commits a felony of the second degree, punishable as provided in
79 s. 775.082, s. 775.083, or s. 775.084.

80 (d) An offender less than 18 years of age who commits lewd
81 or lascivious molestation against a victim 12 years of age or
82 older but less than 16 years of age commits a felony of the
83 third degree, punishable as provided in s. 775.082, s. 775.083,
84 or s. 775.084.

85 (e) A person commits a felony of the first degree,
86 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
87 if the person is 18 years of age or older and commits lewd or
88 lascivious molestation against a victim 12 years of age or older
89 but less than 16 years of age and the person was previously
90 convicted of a violation of:

91 1. Section 787.01(2) or s. 787.02(2) when the violation
92 involved a victim who was a minor and, in the course of
93 committing the violation, the defendant committed against the
94 minor a sexual battery under chapter 794 or a lewd act under
95 this section or s. 847.0135(5);

96 2. Section 787.01(3)(a)2. or 3.;

97 3. Section 787.02(3)(a)2. or 3.;



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- 98 4. Chapter 794, excluding s. 794.011(10);
99 5. Section 825.1025;
100 6. Section 847.0135(5); or
101 7. This section.
- 102 (f) A person who intentionally touches in a lewd or
103 lascivious manner the breasts, genitals, genital area, or
104 buttocks, or the clothing covering them, of a person 16 or 17
105 years of age, without that person's consent, or forces or
106 entices a person 16 or 17 years of age to so touch the
107 perpetrator, commits lewd or lascivious molestation, a felony of
108 the third degree, punishable as provided in s. 775.082, s.
109 775.083, or s. 775.084.
- 110 (6) LEWD OR LASCIVIOUS CONDUCT.—
111 (a) A person who:
112 1. Intentionally touches a person under 16 years of age in
113 a lewd or lascivious manner; or
114 2. Solicits a person under 16 years of age to commit a lewd
115 or lascivious act
116
117 commits lewd or lascivious conduct.
- 118 (b) An offender 18 years of age or older who commits lewd
119 or lascivious conduct commits a felony of the second degree,
120 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- 121 (c) An offender less than 18 years of age who commits lewd
122 or lascivious conduct commits a felony of the third degree,
123 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- 124 (7) LEWD OR LASCIVIOUS EXHIBITION.—
125 (a) A person who:
126 1. Intentionally masturbates;



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127 2. Intentionally exposes the genitals in a lewd or
128 lascivious manner; or

129 3. Intentionally commits any other sexual act that does not
130 involve actual physical or sexual contact with the victim,
131 including, but not limited to, sadomasochistic abuse, sexual
132 bestiality, or the simulation of any act involving sexual
133 activity

134
135 in the presence of a victim who is less than 16 years of age,
136 commits lewd or lascivious exhibition.

137 (b) An offender 18 years of age or older who commits a lewd
138 or lascivious exhibition commits a felony of the second degree,
139 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

140 (c) An offender less than 18 years of age who commits a
141 lewd or lascivious exhibition commits a felony of the third
142 degree, punishable as provided in s. 775.082, s. 775.083, or s.
143 775.084.

144 (8) EXCEPTION.—A mother's breastfeeding of her baby does
145 not under any circumstance constitute a violation of this
146 section.

147 Section 2. Paragraph (g) is added to subsection (3) of
148 section 960.03, Florida Statutes, to read:

149 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
150 960.01-960.28, unless the context otherwise requires, the term:

151 (3) "Crime" means:

152 (g) A violation of s. 800.04, related to lewd or lascivious
153 offenses.

154 Section 3. Subsection (2) of section 960.28, Florida
155 Statutes, is amended to read:



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156 960.28 Payment for victims' initial forensic physical
157 examinations.—

158 (2) The Crime Victims' Services Office of the department
159 shall pay for medical expenses connected with an initial
160 forensic physical examination of a victim of sexual battery as
161 defined in chapter 794 or a lewd or lascivious offense as
162 defined in chapter 800. Such payment shall be made regardless of
163 whether the victim is covered by health or disability insurance
164 and whether the victim participates in the criminal justice
165 system or cooperates with law enforcement. The payment shall be
166 made only out of moneys allocated to the Crime Victims' Services
167 Office for the purposes of this section, and the payment may not
168 exceed \$1000 ~~\$500~~ with respect to any violation. The department
169 shall develop and maintain separate protocols for the initial
170 forensic physical examination of adults and children. Payment
171 under this section is limited to medical expenses connected with
172 the initial forensic physical examination, and payment may be
173 made to a medical provider using an examiner qualified under
174 part I of chapter 464, excluding s. 464.003(14); chapter 458; or
175 chapter 459. Payment made to the medical provider by the
176 department shall be considered by the provider as payment in
177 full for the initial forensic physical examination associated
178 with the collection of evidence. The victim may not be required
179 to pay, directly or indirectly, the cost of an initial forensic
180 physical examination performed in accordance with this section.

181 Section 4. This act shall take effect July 1, 2019.

182
183 ===== T I T L E A M E N D M E N T =====

184 And the title is amended as follows:



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185 Delete everything before the enacting clause
186 and insert:

187 A bill to be entitled
188 An act relating to sex crimes; amending s. 800.04,
189 F.S.; providing an exception for when consent can be
190 used as a defense; prohibiting certain lewd or
191 lascivious acts on specified persons; amending s.
192 960.03, F.S.; redefining the term "crime" to include
193 the commission of lewd or lascivious offenses;
194 amending s. 960.28, F.S.; increasing the maximum
195 amount the Crime Victims' Services Office of the
196 Department of Legal Affairs is required to pay for
197 certain medical expenses of victims of specified
198 crimes; providing an effective date.